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January 29, 1997

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

RIN 0563–AB50

Common Crop Insurance Regulations, Texas Citrus Tree Crop Insurance Provisions; and Texas Citrus Tree Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of Texas citrus trees. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Texas citrus tree endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Texas citrus tree endorsement to the 1997 and prior crop years.

EFFECTIVE DATE: January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Program Analyst, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 3, 2002.

This rule has been determined to be exempt for the purposes of Executive Order No. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit comments, data, and opinions on information collection requirements previously approved by OMB under OMB control number 056–0003 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) of State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, all producers are required to complete an application and acreage report. If the trees are damaged or destroyed, insureds are required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Thursday, August 29, 1996, FCIC published a proposed rule in the

Federal Register at 61 FR 45369–45373 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR § 457.106 Texas Citrus Tree Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supercede the current provisions for insuring Texas citrus trees found at 7 CFR § 401.134 (Texas Citrus Tree Endorsement). FCIC also amends 7 CFR 401.134 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve § 401.134.

Following publication of the proposed rule, the public was afforded 60 days to submit written comments, data, and opinions. A total of 20 comments were received from the crop insurance industry and FCIC. The comments received and FCIC's responses are as follows:

Comment: A representative of FCIC suggested that the word ''type'' be changed to ''crop'' throughout the provisions where appropriate since the citrus type designations used in the past will be replaced with individual crop codes beginning with the 1998 crop year.

Response: FCIC agrees and has made this change and has also deleted the definition of type.

Comment: The crop insurance industry suggested that the definition of ''deductible'' be defined in the Basic Provisions rather than the crop provisions.

Response: ''Deductible'' must be defined in the crop provisions until the Basic Provisions are revised. No change has been made to the provisions.

Comment: The crop insurance industry questioned the definition of ''dehorning.'' They stated that the definition previously was ''The cutting back of each scaffold limb * * *''; the proposed rule stated ''* * * one or more scaffold limbs * * *.'' This affects the amount of insurance per acre. The commenters questioned if the intent was to limit the amount of insurance per acre to 33 percent for any tree with only one scaffold limb dehorned.

Response: FCIC agrees that the definition of ''dehorning'' as published in the proposed rule is confusing. The definition has been revised to read ''Cutting all scaffold limbs to a length not longer than ¼ the height of the tree before such cutting.''

Comment: The crop insurance industry recommended that the definition of ''irrigated practice'' should also address the quality of the water being applied.

Response: FCIC disagrees. There are no established criteria regarding the quality of water necessary to produce a crop. Such criteria would be difficult to develop and administer due to the complexity of the factors involved. No change has been made in the definition.

Comment: The crop insurance industry suggested defining ''root stock.''

Response: FCIC agrees and has added a definition of ''root stock.''

Comment: The crop insurance industry stated that section 2(f) needs to be revised to say ''Each optional unit must meet one of the following criteria, as applicable * * *'' instead of ''* * * one or more of the following * * *'' so that the policyholder may choose to have optional units either by non-contiguous land or by legal description but not by both.

Response: FCIC agrees and has made the recommended change. Also, the phrase ''In lieu of establishing optional units by section, section equivalent or FSA Farm Serial Number,'' has been deleted from section 2(f)(2) for clarification.

Comment: The crop insurance industry questioned if there should be some reference to type in section 3(b) in regard to amount of insurance for each population density.

Response: FCIC agrees that the per acre amount of insurance for each variety or population density within a crop must bear the same relationship to the maximum amount of insurance available for each variety and population density of the crop as specified in the Actuarial Table. This change has been made.

Comment: The crop insurance industry suggested clarifying section 3(b)(4) by adding the phrase ''the premium and'' before the phrase ''any indemnity will be based is $1,700 ($2,000 multiplied by 0.85).''

Response: FCIC agrees and has made the recommended change.

Comment: The crop insurance industry suggested changing ''and'' to ''or'' in section 7(b)(1) because items 1 and 2 are two separate conditions.

Response: FCIC agrees and has made the change.

Comment: The crop insurance industry questioned whether there were any guidelines to exclude or limit coverage on any acreage that was not insured the previous year.

Response: The M8-Texas Citrus Tree Handbook contains provisions for excluding or limiting the amount of insurance on Texas citrus trees.

Comment: The crop insurance industry stated that since the term ''excess moisture'' is not defined in the provisions whereas the term ''excess precipitation'' was defined in the existing regulation, they assumed that excess moisture would be determined on a case by case basis.

Response: ''Excess moisture'' was an insurable cause of loss in the Texas Citrus Tree Endorsement published in 7 CFR § 401.134 for the 1989 and subsequent crop years and in the proposed rule for these crop provisions. However, the term was not defined. The term is changed to ''excess precipitation'' and is defined as ''An amount of precipitation sufficient to directly damage the tree.''

Comment: The crop insurance industry stated that the covered peril of ''failure of the irrigation water supply'' basically has been eliminated and they questioned if this was the intent and, if so, if the premium would be adjusted accordingly.

Response: It was not the intent to eliminate the covered peril of ''failure of the irrigation water supply'' due to drought. This provision has been revised consistent with the Texas Citrus Fruit Crop Insurance Provisions. It now reads ''Failure of the irrigation water supply if caused by an insured peril or drought that occurs during the insurance period.''

Comment: The crop insurance industry suggested deleting the word ''actual'' in section 12(a)(1) because sections 12(b)(2) and 12(c) may adjust the actual percentages.

Response: FCIC believes that the provisions are clearly stated. No changes have been made.

Comment: The crop insurance industry stated that the existing provisions established the condition that any grove sustaining more than 80 percent actual damage would be considered 100 percent damaged, but the proposed rule establishes this condition on an individual tree basis. If this is an intended change it must be identified as such.

Response: When appraising damage, a sample of trees is selected. Damage to individual scaffold limbs on each tree is assessed to establish the percent of damage for the unit. FCIC has not changed the procedure. These crop provisions have been revised to more accurately identify the process with the addition of the following sentence: ''If this percent of damage is more that 80 percent, the unit will be considered 100 percent damaged.''

Comment: The crop insurance industry questioned whether a tree that has 85 percent actual damage is considered to be 100 percent damaged. They wondered which figure is used

when calculating the average percentage of damage for the unit.

Response: Any tree that sustains more than 80 percent damage following the year of set out will be considered 100 percent damaged. The percent of damage on the unit will be determined by computing the average of the determinations made for the individual trees within each sample, thus any tree with over 80 percent of damage will be regarded as having 100 percent of damage. If the total samples have an average of more than 80 percent damage, the damage will be determined to be 100 percent for the unit.

Comment: The crop insurance industry stated that they believe the written agreement should be continuous if no substantive changes occur from one year to the next.

Response: Written agreements are, by design, temporary and intended to address unusual circumstances. If the conditions for which a written agreement is needed exists each crop year, the policy or Special Provisions should be amended to reflect this condition. Therefore, no change will be made to the provisions.

Comment: The crop insurance industry suggested combining the provisions contained in section 13(e) with the provisions in section 13(a).

Response: FCIC believes that the current provisions are clearly stated and has not opted to combine them.

Comment: The crop insurance industry suggested addressing the extended insurance period for the 1998 crop year in the 1998 Special Provisions or an amendatory endorsement, instead of 3 references in these crop provisions.

Response: The policy itself is the best place to notify the insured of the insurance period to avoid any confusion. FCIC believes that these provisions are clearly stated and the provisions have not been changed.

In addition to the changes described above, FCIC has made the following minor editorial changes to the Texas Citrus Tree Provisions:

1. Section 1—Added a definition for ''crop'' and amended the definitions of ''crop year,'' ''deductible,'' ''destroyed,'' ''excess wind,'' ''FSA,'' ''good farming practices,'' ''interplanted,'' and ''written agreement'' for clarification.

2. Section 9—Revised the provisions to allow all insureds to obtain coverage for the extended 1998 crop year. Previously new insureds would not have had an opportunity to insure their crop from June 1 through November 20, which may have resulted in some losses paid under the crop insurance policy and others under the noninsured crop disaster assistance program.

3. Section 12—Clarified how an indemnity is computed by adding a statement to specify that the result of subtracting the insured's deductible from the percent of damage for the unit must be greater than zero to receive an indemnity. Deleted the provision specifying that any percent of damage paid previously in the same crop year be subtracted. These provisions do not allow an initial payment prior to the final indemnity.

Good cause is shown to make this rule effective upon publication in the Federal Register and without the 30-day period required by the Administrative Procedure Act. This rule improves the Texas citrus tree insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. This rule will allow optional unit division by section, section equivalent, or FSA Farm Serial Number; or by non-contiguous land, but not by both. The unit structure will now be the same for both the Texas Citrus Tree Provisions and the Texas Citrus Fruit Provisions.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Texas citrus tree, Texas citrus tree endorsement.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The introductory text of § 401.134 is revised to read as follows:

§ 401.134 Texas Citrus Tree Endorsement.

The provisions of the Texas Citrus Tree Endorsement for the 1989 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

3. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

4. 7 CFR part 457 is amended by adding a new § 457.106 to read as follows:

§ 457.106 Texas Citrus Tree Crop Insurance Provisions.

The Texas Citrus Tree Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Texas Citrus Tree Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Bud union—The location on the tree trunk where a bud from one tree variety is grafted onto root stock of another variety.

Crop—Specific groups of citrus fruit trees as listed in the Special Provisions.

Crop year—For the 1998 crop year only, a period of time that begins on June 1, 1997, and ends on November 20, 1998. For all other crop years, a period of time that begins on November 21 of the calendar year prior to the year the trees normally bloom, and ends on November 20 of the following calendar year. The crop year is designated by the year in which the insurance period ends.

Days—Calendar days.

Deductible—The amount determined by subtracting the coverage level percentage you choose from 100 percent. For example, if you elected a 65 percent coverage level, your deductible would be 35 percent (100% − 65% = 35%).

Dehorning—Cutting all scaffold limbs to a length not longer than ¼ the height of the tree before such cutting.

Destroyed—Trees damaged to the extent that removal is necessary.

Excess precipitation—An amount of precipitation sufficient to directly damage the tree.

Excess wind—A natural movement of air that has sustained speeds in excess of 58 miles per hour recorded at the U.S. Weather Service reporting station nearest to the crop at the time of crop damage.

Freeze—The formation of ice in the cells of the trees caused by low air temperatures.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture or a successor agency.

Good farming practices—The cultural practices generally in use in the county for the trees to have normal growth and vigor and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice—A method by which the normal growth and vigor of the insured trees is maintained by artificially applying adequate quantities of water during the

growing season using the appropriate irrigation systems at the proper times.

Non-contiguous land—Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Root stock—A root or a piece of a root of one tree variety onto which a bud from another tree variety is grafted.

Scaffold limbs—Major limbs attached directly to the trunk.

Set out—Transplanting the tree into the grove.

Written agreement—A written document that alters designated terms of this policy in accordance with section 13.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), will be divided into additional basic units by each citrus crop designated in the Special Provisions.

(b) Unless limited by the Special Provisions, these basic units may be divided into optional units if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for optional units that have been combined will be refunded to you for the units combined.

(e) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(f) Each optional unit must meet one of the following criteria, as applicable:

(1) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernible, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number; or

(2) *Optional Units on Acreage Located on Non-Contiguous Land:* Optional units may be established if each optional unit is located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In lieu of the requirement of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), that prohibits you from selecting more than one coverage level for each insured crop, you may select a different coverage level for each crop designated in the Special Provisions that you elect to insure.

(b) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(1) If you insure trees within a crop which are either of a different variety or are planted at a different population density, the per acre amount of insurance for each variety or population density for the crop must bear the same relationship to the maximum amount of insurance available for each variety and population density of the crop as specified in the Actuarial Table. For example, if you elect 100 percent of the maximum amount of insurance for a variety within a population density for the crop, you must select 100 percent of the maximum amount of insurance for that variety for all population densities for the crop. The amount of insurance for each variety and population density must be multiplied by any applicable factor contained in section 3(b)(2).

(2) The amount of insurance per acre will be the product obtained by multiplying the reference maximum dollar amount of insurance that is shown in the Actuarial Table for the applicable population density by the percentage for the level of coverage you select and by:

(i) Thirty-three percent (0.33) for the year of set out, the year following dehorning, or the year following grafting of a set out tree. (Insurance will be limited to this amount until trees that are set out are one year of age or older on the first day of the crop year);

(ii) Sixty percent (0.60) for the first growing season after being set out, the second year following dehorning, or the second year following grafting of a set out tree;

(iii) Eighty percent (0.80) for the second growing season after being set out, the third year following dehorning, or the third year following grafting of a set out tree; or

(iv) Ninety percent (0.90) for the third growing season after being set out, the fourth year following dehorning, or the fourth year following grafting of a set out tree.

(3) The amount of insurance per acre for each population density, or factor as appropriate, will be multiplied by the applicable number of insured acres. These results will then be added together to determine the amount of insurance for the unit.

(4) The amount of insurance will be reduced proportionately for any unit on which the stand is less than 90 percent, based on the original planting pattern. For example, if the amount of insurance you selected is $2,000 and the remaining stand is 85 percent of the original stand, the amount of insurance on which the premium and any indemnity will be based is $1,700 ($2,000 multiplied by 0.85).

(5) If any insurable acreage of trees is set out after the first day of the crop year, and you elect to insure such acreage during that crop year, you must report the acreage, practice, crop, number of trees, date set out is completed, and your share to us within 72 hours after set out is completed for the unit.

(6) Production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), are not applicable.

(7) You must report, by the sales closing date contained in the Special Provisions, by type if applicable:

(i) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the amount of insurance, and the number of affected acres;

(ii) The number of trees on insurable and uninsurable acreage;

(iii) The date of original set out and the planting pattern;

(iv) The date of replacement or dehorning, if more than 10 percent of the trees on any unit have been replaced or dehorned in the previous 5 years; and

(v) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(A) The age of the interplanted crop, and type if applicable;

(B) The planting pattern; and

(C) Any other information that we request in order to establish your amount of insurance.

We will reduce the amount of insurance as necessary, based on our estimate of the effect of interplanting a perennial crop; removal of trees; damage; change in practices and any other circumstance on the potential of the insured crop. If you fail to notify us of any circumstance that may reduce the potential for the insured crop, we will reduce your amount of insurance as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are November 20.

6. Annual Premium

In addition to the provisions of section 5 (Annual Premium) of the Basic Provisions (§ 457.8), for the 1998 crop year, the premium amount otherwise payable for the 1998 crop year will be increased by 46 percent as a result of the additional six months of coverage for that crop year.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all of each citrus tree crop designated in the Special Provisions in the county for which a premium rate is provided by the actuarial table that you elect to insure:

(1) In which you have an ownership share;

(2) That is adapted to the area;

(3) That is set out for the purpose of growing fruit to be harvested for the commercial production of fresh fruit or for juice;

(4) That is irrigated; and

(5) That have the potential to produce at least 70 percent of the county average yield for the crop and age, unless a written agreement is approved to insure the trees with lesser potential.

(b) In addition to section 8 (Insured Crop) of the Basic Provisions (§ 457.8), we do not insure any citrus trees:

(1) During the crop year the application for insurance is filed, unless we inspect the acreage and consider it acceptable; or

(2) That have been grafted onto existing root stock or nursery stock within the one-year period prior to the date insurance attaches.

(c) We may exclude from insurance or limit the amount of insurance on any acreage that was not insured the previous year.

8. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, citrus trees interplanted with another perennial crop are insurable, unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

9. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(a) The insurance period is as follows:

(1) For the 1998 crop year only, coverage will begin on June 1, 1997, and will end on November 20, 1998.

(2) For all subsequent crop years, coverage begins on November 21 of the calendar year prior to the year the insured crop normally blooms, except that for the year of application, if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet the requirements for insurability contained in your policy. You must provide any information that we require for the crop or to determine the condition of the grove.

(3) The calendar date for the end of the insurance period for each crop year is November 20.

(b) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(c) If you relinquish your insurable share on any insurable acreage of citrus trees on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to and no premium or indemnity will be due for such acreage for that crop year unless:

(1) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(2) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(3) The transferee is eligible for crop insurance.

10. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(a) Excess precipitation;

(b) Excess wind;

(c) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove;

(d) Freeze;

(e) Hail;

(f) Tornado; or

(g) Failure of the irrigation water supply if caused by an insured peril or drought that occurs during the insurance period.

11. Duties In The Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), in case of damage or probable loss, if you intend to claim an indemnity on any unit, you must allow us to inspect all insured acreage before pruning, dehorning, or removal of any damaged trees.

12. Settlement of Claim

(a) In the event of damage covered by this policy, we will settle your claim on a unit basis by:

(1) Determining the actual percent of damage for the unit in accordance with sections 12 (b), (c), and (d);

(2) Subtracting your deductible from the percent of damage for the unit (this result must be greater than zero to receive an indemnity);

(3) Dividing the result of section 12(a)(2) by your coverage level percentage;

(4) Multiplying the result of section 12(a)(3) by the amount of insurance per acre determined in accordance with section 3(b)(2);

(5) Multiplying the result of section 12(a)(4) by the number of insured acres; and

(6) Multiplying the result of section 12(a)(5) by your share.

(b) The percent of damage for any tree will be determined as follows:

(1) For damage occurring during the year of set out (trees that have not been set out for at least one year at the time insurance attaches):

(i) One-hundred percent (100%) whenever there is no live wood above the bud union;

(ii) Ninety percent (90%) whenever there is less than 12 inches of live wood above the bud union; or

(iii) The tree will be considered undamaged whenever there is more than 12 inches of live wood above the bud union; or

(2) For damage occurring in any year following the year of set out:

(i) The percentage of damage will be determined by dividing the number of scaffold limbs damaged in an area from the trunk to a length equal to one-fourth (¼) the height of the tree, by the total number of scaffold limbs before damage occurred. Whenever this percentage exceeds 80 percent, the tree will be considered as 100 percent damaged.

(ii) The percent of damage for the unit will be determined by computing the average of the determinations made for the individual trees. If this percent of damage exceeds 80 percent, the unit will be considered 100 percent damaged.

(c) The percent of damage on the unit will be reduced by the percentage of damage due to uninsured causes.

13. Written Agreement

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 13(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on January 22, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–2040 Filed 1–28–97; 8:45 am]

BILLING CODE 3410–FA–P

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 96–043–2]

Brucellosis in Cattle; State and Area Classifications; Louisiana

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Louisiana from Class A to Class Free.

We have determined that Louisiana meets the standards for Class Free status. The interim rule was necessary to relieve certain restrictions on the interstate movement of cattle from Louisiana.

EFFECTIVE DATE: The interim rule was effective on October 31, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Gilsdorf, Senior Staff Veterinarian, Brucellosis Eradication Staff, VS, APHIS, USDA, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1236; (301) 734–7708.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the Federal Register on October 31, 1996 (61 FR 56116–56118, Docket No. 96–043–1), we amended the brucellosis regulations in 9 CFR part 78 by removing Louisiana from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a).

Comments on the interim rule were required to be received on or before December 30, 1996. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78 and that was published at 61 FR 56116–56118 on October 31, 1996.

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 23rd day of January 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–2198 Filed 1–28–97; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 35

RIN 3150–AE41

Criteria for the Release of Individuals Administered Radioactive Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning the criteria for the release of patients administered radioactive material. The new criteria for patient release are based on the potential dose to other individuals exposed to the patient. The new criteria are consistent with the recommendations of the National Council on Radiation Protection and Measurements (NCRP) and the International Commission on Radiological Protection (ICRP). This final rule requires the licensee to provide written instructions to patients on how to maintain the doses to others as low as is reasonably achievable if the total effective dose equivalent to any other individual exposed to the released patient is likely to exceed 1 millisievert (0.1 rem). This final rule responds to three petitions for rulemaking regarding the criteria for release of patients administered radioactive material.

EFFECTIVE DATE: May 29, 1997.

ADDRESSES: Copies of Regulatory Guide 8.39, ''Release of Patients Administered Radioactive Materials''; the final regulatory analysis, NUREG–1492, ''Regulatory Analysis on Criteria for the Release of Patients Administered Radioactive Material'' (1997); Revision 2 of NUREG/BR–0058, ''Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission'' (1996); and the public comments received on the proposed rule may be examined and copied for a fee in the Commission's Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC. Single copies of Regulatory Guide 8.39 may be obtained free of charge by writing the Office of Administration, Attn: Distribution and Services Section, USNRC, Washington, DC 20555, or by fax at (301) 415–2260. Single copies of NUREG–1492 and NUREG/BR–0058 may be purchased at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 (telephone (202) 512–1800); or from the National Technical Information Service at 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Stewart Schneider, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6225.

I. Background

Each year in the United States, radioactive pharmaceuticals or compounds or radioactive implants are administered to approximately 8 to 9 million individuals for the diagnosis or treatment of disease or for human research. These individuals to whom radioactive materials have been administered are hereinafter referred to as ''patients.'' These patients can expose others around them to radiation until the radioactive material has been excreted from their bodies or the radioactivity has decayed away.

NRC's current patient release criteria in 10 CFR 35.75, ''Release of patients or human research subjects containing radiopharmaceuticals or permanent implants,'' are as follows:

''(a) A licensee may not authorize release from confinement for medical care any patient or human research subject administered a radiopharmaceutical until either: (1) The measured dose rate from the patient or human research subject is less than 5 millirems per hour at a distance of 1 meter; or (2) The activity in the patient or human research subject is less than 30 millicuries; (b) A licensee may not authorize release from confinement for medical care of any patient or human research subject administered a permanent implant until the measured dose rate from the patient or human research subject is less than 5 millirems per hour at a distance of 1 meter.''

On May 21, 1991 (56 FR 23360), the NRC published a final rule that amended 10 CFR part 20, ''Standards for Protection Against Radiation.'' The rule contained limits on the radiation dose for members of the public in 10 CFR 20.1301. However, when 10 CFR part 20 was issued, there was no discussion in the supplementary information on whether or how the provisions of 10 CFR 20.1301 were intended to apply to the release of patients.

Some licensees were uncertain about what effect the revised 10 CFR part 20 would have on patient release criteria, and two petitions for rulemaking were received on the issue. On June 12, 1991 (56 FR 26945), the NRC published in the Federal Register a notice of receipt of, and request for comment on, a petition for rulemaking (PRM–20–20) from Dr. Carol S. Marcus. In addition, Dr. Marcus submitted a letter dated June 12, 1992, further characterizing her position.

On March 9, 1992 (57 FR 8282), the NRC published a notice of receipt and request for comment in the Federal Register on another petition for rulemaking (PRM–35–10) on patient release criteria from the American College of Nuclear Medicine (ACNM). On May 18, 1992 (57 FR 21043), the NRC published in the Federal Register notice of an amendment submitted by the ACNM to its original petition (PRM–35–10A).

In addition, a third petition (PRM–35–11) dealing, in part, with these same issues was submitted by the American Medical Association (AMA). That petition was noticed in the Federal Register on July 26, 1994 (59 FR 37950). The main point raised in the petition was that the radiation dose limits in 10 CFR part 20 should not apply to individuals exposed to the patient and that the dose limit to the individuals should be 500 millirems per year. The AMA believed that 10 CFR 20.1301 would have an adverse impact on the availability and the cost of treatment of thyroid disease, which would outweigh the advantages of reduced radiation exposure to the public. The AMA stated that treatment of up to 10,000 cancer patients annually for thyroid carcinoma would require the hospitalization of the patients under the revised regulation (10 CFR 20.1301), reducing both early release of patients and the treatment of patients at home.

II. Publication of the Proposed Rule

On June 15, 1994 (59 FR 30724), in response to the first two petitions, the NRC published a proposed rule on criteria for the release of patients administered radioactive material. The proposed rule discussed the public comment letters received on the first two petitions. Three additional comment letters were received on the third petition (PRM–35–11). These letters each supported the petition but did not contain any additional information not covered by the letters on the first two petitions.

The NRC proposed to amend 10 CFR 20.1301(a)(1) to specifically state that the dose to individual members of the public from a licensed operation does not include doses received by individuals exposed to patients who were released by the licensed operation under the provisions of 10 CFR 35.75. This was to clarify that the Commission's policy is that patient release is governed by 10 CFR 35.75, not 10 CFR 20.1301.

The NRC proposed to amend 10 CFR 20.1301(a)(2) to specifically state that the limit on dose in unrestricted areas does not include dose contributions from patients administered radioactive material and released in accordance with 10 CFR 35.75. The purpose was to clarify that licensees would not be required to control areas (such as waiting rooms) simply because of the presence of a patient released pursuant to 10 CFR 35.75. If a patient has been released from licensee control pursuant to 10 CFR 35.75, licensees would not be required to limit the radiation dose from a patient to members of the public (e.g., visitors in a waiting room) to 0.02 millisievert (2 millirems) in any 1 hour. Patient waiting rooms or hospital rooms would need only be controlled for those patients not meeting the release criteria in 10 CFR part 35.

The NRC proposed to adopt a new 10 CFR 35.75(a) to change the patient release criteria from 1,110 megabecquerels (30 millicuries) of activity in a patient or a dose rate of 0.05 millisievert (5 millirems) per hour at 1 meter from a patient to a total effective dose equivalent not to exceed 5 millisieverts (0.5 rem) in any 1 year to an individual from exposure to a released patient. A dose-based limit provides a single limit that could be used to provide an equivalent level of risks from all radionuclides. Also, the proposed changes were supported by the recommendations of the ICRP and the NCRP that an individual could be allowed to receive an annual dose up to 5 millisieverts (0.5 rem) in temporary situations when exposure to radiation is not expected to result in annual doses above 1 millisievert (0.1 rem) for long periods of time.

The NRC proposed to adopt a new 10 CFR 35.75(b)(1) to require that the licensee provide released patients with written instructions on how to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any individual other than the released patient is likely to exceed 1 millisievert (0.1 rem) in any 1 year. A requirement to give instructions to certain patients was already contained in 10 CFR 35.315(a)(6) and 35.415(a)(5), but the proposed requirement would also require instructions for an additional 50,000 individuals who are administered iodine-131 for the treatment of hyperthyroidism and another 27,000 individuals who are breast-feeding and administered various diagnostic and therapeutic radioactive materials. The purpose of the instructions is to maintain doses to individuals exposed to patients as low as is reasonably achievable.

The NRC proposed to adopt a new 10 CFR 35.75(b)(2) to require that licensees maintain, for 3 years, a record of the released patient and the calculated total effective dose equivalent to the individual likely to receive the highest dose if the total effective dose equivalent to any individual other than the released patient is likely to exceed 1 millisievert (0.1 rem) in a year from a single administration. The major purpose was to provide a record to allow licensees to assess the need to limit the dose to individuals exposed to a patient who may receive more than one administration in a year.

Finally, the NRC proposed to amend its requirements on instructions in 10 CFR 35.315(a)(6) and 35.415(a)(5). These regulations already required instructions (not necessarily written) in certain cases, but the phrase ''if required by § 35.75(b)'' was added to each. The purpose of this change was to make part 35 consistent as to when instructions must be given.

In addition, the NRC concurrently issued an associated draft regulatory guide and supporting draft regulatory analysis for public comment. The draft regulatory guide, DG–8015, ''Release of Patients Administered Radioactive Materials,'' proposed guidance on determining the potential doses to an individual likely to receive the highest dose from exposure to a patient and established appropriate activities and dose rates for release of a patient. The draft guide also proposed guidelines on instructions for patients on how to maintain doses to other individuals as low as is reasonably achievable and it described recordkeeping requirements. The draft regulatory analysis, NUREG–1492, ''Regulatory Analysis on Criteria for the Release of Patients Administered Radioactive Material'' (May 1994), examined the benefits and impacts of the proposed rule considered by the NRC.

III. Public Comments on the Proposed Rule

A total of 63 comment letters were received on the proposed rule, the draft regulatory guide, and the draft regulatory analysis. A majority of the comment letters were from medical practitioners and medical organizations, but there were also comment letters from private individuals, public-interest groups, and regulatory agencies in Agreement States. Overall, the majority of comment letters supported a dose limit of 5 millisieverts (0.5 rem) for individuals exposed to patients released with radioactive material. However, about one-fourth of the comment letters opposed the proposed recordkeeping requirement. The significant comments are discussed below, arranged by subject.

Exclusion of Patient Release From § 20.1301(a)

All the commenters except one supported governing patient release by the regulations in 10 CFR 35.75 and excluding the dose to individuals exposed to a released patient from 10 CFR 20.1301(a).

Comment. One commenter, representing a public-interest group, objected to any exposure of a member of the general public who has not consented freely to the dosage. They said that such exposure would lead to widespread morbidity and mortality.

Response. In its revision of 10 CFR part 20 (56 FR 23360; May 21, 1991), the NRC determined that, while doses should be maintained as low as is reasonably achievable, a dose limit of 1 millisievert (0.1 rem), or a dose limit of 5 millisieverts (0.5 rem) in certain special circumstances, provides adequate protection. The revised part 20 is based, in part, upon the recommendations of the International Commission on Radiological Protection (ICRP) and the recommendations of the National Council on Radiation Protection and Measurements (NCRP). The NCRP recommends public dose limits of 1 millisievert (0.1 rem) for continuous or frequent exposure and 5 millisieverts (0.5 rem) for infrequent exposure.

The ICRP recommends that the limit for public exposure should be expressed as an effective dose of 1 millisievert (0.1 rem) in a year, except that, in special circumstances, the dose could be higher in a single year provided the average over 5 years does not exceed 1 millisievert (0.1 rem) per year. In ICRP Publication 60, in defining medical exposure, ICRP stated that medical exposure includes ''exposures (other than occupational) incurred knowingly and willingly by individuals helping in the support and comfort of patients undergoing diagnosis or treatment.'' Furthermore, in explaining dose limits in medical exposure, the ICRP stated in the same publication that ''the Commission therefore recommends that dose limits should not be applied to medical exposures.'' Thus, in ICRP's opinion, family members who are helping in the support and comfort of patients would not be restricted under the dose limit stated above.

The revision of part 20 incorporated the long-term objective as the dose limit and included a provision (§ 20.1301(c)) to allow for alternative limits on an occasional basis. Section 20.1301(c) provides that an annual dose of up to 5 millisieverts (0.5 rem) is acceptable if there is a need for it and if steps are taken to reduce the dose to as low as is reasonably achievable. The NRC reaffirms that previous determination in this rulemaking.

In the case of released patients, it would be unlikely for a single individual exposed to a patient to receive a dose in a year of over 5 millisieverts (0.5 rem) because large therapeutic doses (greater than 3,700 megabecquerels (100 millicuries)) are usually not administered more than once to the same patient in a given year.

Comment. One commenter said that the NRC should change the 0.1 rem dose limit for the public in 10 CFR 20.1301(a)(1) to 0.5 rem for all licensed activities because a dose limit of 0.5 rem offers adequate protection and is a dose that has no proven effects.

Response. This issue of the general public dose limit is outside the scope of this rulemaking. The issue was dealt with when 10 CFR part 20 was recently revised (56 FR 23360; May 21, 1991). That rulemaking explained the NRC's rationale for adopting the 1-millisievert (0.1-rem) dose limit in 10 CFR 20.1301(a)(1).

Activity-Based vs. Dose-Based Release Limit

The issue is whether to retain the current patient release limit in 10 CFR 35.75, which is expressed as an activity limit together with an alternative but approximately equivalent limit on dose rate at 1 meter, or to express the release limit as a dose to an individual exposed to the patient. The majority of commenters supported the dose-based limit. However, some commenters opposed the dose-based approach.

Comment. A number of commenters said that 10 CFR 35.75 should not be changed and that the 30 millicurie or 5 millirem per hour release criteria should be retained because they are working well. Some commenters said that a dose-based release limit as proposed would cause confusion and potential problems. One commenter said that the Part 20 revision was not intended to alter the status quo for patient release. Commenters objected to the dose-based release limit because they thought the dose estimates to the public would be very inaccurate as these estimates are based on the unreliable method of predicting the anticipated time and proximity to others. Commenters also said that dose estimation and the subsequent recordkeeping would be time consuming and would add to the cost of treatment without a probable significant decrease in radiation exposure.

Response. The NRC is adopting a dose-based limit rather than an activity-based limit because the dose-based limit better expresses the NRC's primary concern for the public's health and safety. A single activity requirement was not retained because different radionuclides with the same activity can give very different doses under identical exposure conditions. Likewise, a single dose rate requirement for all radionuclides was not retained because different radionuclides with the same dose rate, at the time of release, can give very different doses depending upon the half-life of the radionuclide. The total dose depends on the effective half-life of the radioactive material in the body of the patient and other factors that vary for different materials. For these reasons, the NRC is establishing a dose limit rather than an activity or dose rate limit.

The NRC is establishing a dose limit of 5 millisieverts (0.5 rem) total effective dose equivalent to an individual from exposure to the released patient for each patient release. This dose limit is consistent with the underlying risk basis of the current 10 CFR 35.75 (50 FR 30627; July 26, 1985), the recommendations of the NCRP and the ICRP, and the provisions in 10 CFR 20.1301(c) pertaining to temporary situations in which there is justification for a dose limit higher than 1 millisievert (0.1 rem).

The NRC believes that the dose-based release limit can and will work well because the associated Regulatory Guide 8.39, ''Release of Patients Administered Radioactive Materials,'' can be used to relate the dose to the quantity of activity in the patient. The guide provides conservative estimates of activities for commonly used radionuclides and their corresponding dose rates with which a patient may be released in compliance with the dose limits in the final rule. The approach used in the regulatory guide is based on NCRP Report No. 37, ''Precautions in the Management of Patients Who Have Received Therapeutic Amounts of Radionuclides.'' [1] In the case of iodine-131, the most significant radionuclide, the release quantity based on the standard conservative assumptions is 1.2 gigabecquerels (33 millicuries), which is essentially the same as the current release quantity.

NUREG–1492 contains a detailed examination of the benefits and impacts of the final rule that includes dose

[1] National Council on Radiation Protection and Measurements (NCRP), ''Precautions in the Management of Patients Who Have Received Therapeutic Amounts of Radionuclides,'' NCRP Report No. 37 (October 1, 1970). (Available for sale from the NCRP, 7910 Woodmont Avenue, Suite 800, Bethesda, MD 20814–3095.)

estimation, recordkeeping, and radiation exposure. Single copies of the final regulatory analysis and Regulatory Guide 8.39, ''Release of Patients Administered Radioactive Materials,'' are available as indicated in the **ADDRESSES** heading.

Comment. A commenter said that the calculational approach in the rule would require the physician to ask many personal questions of the patient.

Response. The commenter is incorrect in believing that the dose-based approach will generally require personal information from the patient. The NRC anticipates that nearly all patients will be released based on default assumptions which do not require any personal information from the patient. A table of release quantities, based on standard conservative assumptions, is provided in Regulatory Guide 8.39, ''Release of Patients Administered Radioactive Materials.'' However, the rule does allow the physician to calculate patient-specific dose estimates to allow early release of a patient not otherwise subject to release under the default values in Regulatory Guide 8.39.

Comment. One commenter said that it should continue to be acceptable to release patients based on the dose rate at 1 meter.

Response. The rule authorizes release of patients based on the dose to an individual for each patient release. However, release quantities based on dose rate and conservative assumptions can be calculated. The table of release quantities in Regulatory Guide 8.39, ''Release of Patients Administered Radioactive Materials,'' specifies the dose rate at 1 meter of commonly used radionuclides that allow licensees to authorize patient release.

Release Quantities

Using a dose-based system based on a dose to the most highly exposed individual of 5 millisieverts (0.5 rem) would, in some circumstances, allow release of a patient with more than 1,110 megabecquerels (30 millicuries) of activity. Some commenters were opposed to allowing releases with higher activities than are now permitted.

Comment. Several commenters said that the release of patients with more than 30 millicuries of iodine-131 should not be permitted because of concerns about the risk of internal exposure. One commenter said that doses to family members from the patient vomiting were not adequately considered. The same commenter also said that a study indicated that in-home contamination by patients dosed with I–131 could double family members' risk of developing thyroid cancer.

Response. The concern over contamination is not justified by the radiation doses that are likely to be caused by the removal of radionuclides from the patient's body by the pathways of exhaled air, feces, saliva, sweat, urine, and vomit. Measurements from several studies, as discussed in the supporting regulatory analysis, have shown that a relatively small proportion of the radioactive material administered will appear as contamination. Doses to family members exposed to contamination from living in close contact with released patients have been measured in several studies and in every case were less than 10 percent of the 5-millisievert (0.5-rem) total effective dose equivalent limit and were most often less than 1 percent of the 5-millisievert (0.5-rem) limit. In addition, the internal doses resulting from contamination were always less and generally far less than the external dose, meaning that contamination was the less important source of radiation exposure. These measurements show that even if the family members repeatedly touched household items touched by the patient, contamination does not cause unacceptably high doses. These findings were true even in the case of a British study where eleven patients volunteered to disregard special precautions against contamination and minimizing spousal and family exposure. These measurements are discussed in NUREG–1492. Also, the NCRP recently addressed the risk of intake of radionuclides from patients' secretions and excreta in NCRP Commentary No. 11, ''Dose Limits for Individuals Who Receive Exposure from Radionuclide Therapy Patients,'' and concluded that, ''* * * a contamination incident that could lead to a significant intake of radioactive material is very unlikely.'' [2]

In general, the physical reactions (e.g., vomiting) that a patient may experience from the administration of any radiopharmaceutical are rare. Vomiting is seldom an important elimination route for radiopharmaceuticals after the patient has left the medical facility since orally administered radiopharmaceuticals such as iodine-131 are rapidly absorbed, within a half hour, by the gastrointestinal system.

Regarding the comment on the doubling of risk of developing thyroid cancer, there is no scientific consensus by the United Nations Scientific Committee on the Effects of Atomic Radiation, ICRP, or NCRP to support the suggested increased risk of thyroid cancer following ingestion of iodine-131. Based on the information currently available, the Commission continues to conclude that the benefits outweigh the potential of small increased risks associated with this rule.

Comment. One commenter noted that hospitals now make great efforts to control contamination from patients who are now hospitalized because they contain more than 30 millicuries of iodine-131. This commenter stated that it would not be possible to maintain the same level of contamination control at these patients' homes if these patients were released with more than 30 millicuries of iodine-131.

Response. The NRC agrees that, even though released patients are given instructions on how to limit the hazard from contamination, contamination control in a hospital can be more effective than contamination control out of the hospital. However, the two situations are not really comparable. In the case of the released patient at home, therapeutic administrations usually occur no more than once in a year and probably no more than once in a lifetime; but in the case of a hospital, large therapeutic administrations are done repeatedly on many patients. Therefore, areas in hospitals have the potential for contamination from many patients, and people who frequent the hospital (e.g., clergy or a hospital orderly) have the potential to be exposed to contamination from many patients. In addition, the 5-millisievert (0.5-rem) limit that is applied to household members exposed to a patient is a special limit that is appropriate for only occasional use and for use where there is a definite need. This special limit fits the case of doses received by the household members of a released patient, but does not fit the case of people who frequent a hospital on a routine basis. Lastly, in limiting doses, the NRC considers what is reasonably achievable. The mere fact that a home cannot control contamination as well as a hospital does not mean that the contamination control achieved in homes is not adequate. Actual measurements of doses to household members from contamination, as discussed in NUREG–1492, show that the doses from contamination are low, demonstrating that the degree of contamination control that was achieved is adequate.

[2] National Council on Radiation Protection and Measurements, ''Dose Limits for Individuals Who Receive Exposure from Radionuclide Therapy Patients,'' NCRP Commentary No. 11 (February 28, 1995). (Available for sale from the NCRP, 7910 Woodmont Avenue, Suite 800, Bethesda, MD 20814–3095.)

Comment. One commenter said that the proposed rule did not adequately address the concerns that the Agreement States expressed on the petitions for rulemaking concerning releasing patients with quantities of iodine-131 in excess of 30 millicuries.

Response. In commenting on the petitions, a number of States expressed concerns about releasing patients administered 14.8 gigabecquerels (400 millicuries) of iodine-131, which one of the petitioners had requested. However, the States that commented were generally favorable to the proposed rule limiting the dose to the most exposed individual to 5 millisieverts (0.5 rem), and none of the States indicated that their concerns were misrepresented. In fact, one Agreement State commented that it was pleased that the NRC had considered the comments made by the Agreement States at various meetings with the NRC. The dose-based limit would generally permit releases if the dose to another individual would not be likely to exceed 5 millisieverts (0.5 rem). For example, if a licensee uses the default table of release quantities provided in the regulatory guide as the basis for release, a patient administered 1.2 gigabecquerels (33 millicuries) or less of iodine-131 could be immediately released and no record of release is required. However, if the licensee wishes to release a patient with an activity that is greater than the value in the default table, the licensee must do a dose calculation using case-specific factors to demonstrate compliance with the release criteria. Furthermore, if the table is used as the basis for release but the administered activity exceeds the value in the table, the licensee must hold the patient until the time at which the retained activity is no greater than the quantity in the table or the dose rate at 1 meter is no greater than the value in the table. When the administered activity is greater than the value in the default table, a record of the basis for the release must be maintained for NRC review during inspection. Regardless of the method used by the licensee to authorize release, the dose limit of 5 millisieverts (0.5 rem) in the revised 10 CFR 35.75 applies. By identifying more than one method for calculating the release of a patient in accordance with 10 CFR 35.75, the NRC provides greater flexibility for licensees to achieve compliance with the new requirement while still providing adequate protection of public health and safety.

Comment. One commenter said that in some cases it should be permissible to authorize the release of a patient even if the dose to a family member might exceed 0.5 rem because the release might be beneficial and acceptable to family members. Another commenter said that a dose of 0.5 rem to an individual exposed to a patient has so little hazard that the NRC should not be concerned with it.

Response. The NRC does not believe that individuals exposed to a patient should, in general, receive doses in excess of 5 millisieverts (0.5 rem). This is consistent with the recommendations of the ICRP in ICRP Publication 60,[3] ''1990 Recommendations of the International Commission on Radiological Protection''; and the recommendations of the NCRP in NCRP Report No. 116,[4] ''Limitation of Exposure to Ionizing Radiation.'' Each of these recommendations provides a basis for allowing individuals to receive annual doses up to 5 millisieverts (0.5 rem) under certain circumstances. Both the ICRP and the NCRP recommend that an individual can receive a dose up to 5 millisieverts (0.5 rem) in a given year in situations when exposure to radiation is not expected to result in doses above 1 millisievert (0.1 rem) per year for a long period of time, as would be the case for doses from released patients. In NCRP Commentary No. 11, ''Dose Limits for Individuals Who Receive Exposure from Radionuclide Therapy Patients,''[2] the NCRP recommended a dose limit of 5 millisieverts (0.5 rem) annually for members of the patient's family. However, on the recommendation of the treating physician, the NCRP considered it acceptable that members of the patient's family be permitted to receive doses as high as 50 millisieverts (5 rems). The NRC does not agree that the latter NCRP recommendation should apply in general. The NRC believes that if the dose to another individual is likely to exceed 5 millisieverts (0.5 rem), the patient should remain under the control of the licensee. Licensee control is necessary to provide adequate protection to the individuals exposed to the patient.

Recordkeeping

The strongest opposition to the proposed rule was to the proposed requirement to maintain a record of the released patient and the calculated total effective dose equivalent to the individual likely to receive the highest dose if the dose to that person is likely to exceed 1 millisievert (0.1 rem). Under the proposed rule, if a patient had or might have had one or more administrations within the same year, the licensee would use the records to determine the dose from the previous administrations so that the total dose to an individual exposed to a patient from all administrations would not exceed 5 millisieverts (0.5 rem).

Comment. Many commenters indicated that this requirement would cause excessive costs in time, effort, and money to track down records of previous administrations, to perform calculations, and to keep records of all the work and asked that the requirements to make calculations and keep records be removed. The commenters believed that the work would not produce an increased level of safety, that the NRC greatly underestimated the cost, and that the recordkeeping would be unnecessary, inappropriate, and impractical. Some commenters said that multiple administrations that would result in a total effective dose equivalent greater than 1 millisievert (0.1 rem) are not done to the same patient routinely. Other commenters said that there have been decades of experience unencumbered by any paperwork burden at all with no evidence that a lack of paperwork has resulted in any additional problems. One commenter said that if 0.5 rem is acceptably safe, why have the documentation required at the 0.1 rem level.

Another commenter said that it cannot be a licensee's responsibility to know the details of a radionuclide therapy performed by another licensee in terms of which members of the public received the most radiation dose from that other licensee's therapy procedure.

One commenter said that the excessive recordkeeping cost would be a nonreimbursable cost, and the burden will cause many physicians to stop offering iodine therapy, which would force patients to travel to large medical facilities in cities and cause problems with patient access in sparsely populated areas.

Response. Upon reconsideration, the NRC has decided to delete the requirement to keep records when the dose to the most highly exposed individual is likely to exceed 1 millisievert (0.1 rem). The requirement was proposed so that it would be possible to account for the dose from multiple administrations in the same year to ensure that the total dose to an individual exposed to the patient did not exceed 5 millisieverts (0.5 rem).

[3] International Commission on Radiological Protection (ICRP), ''1990 Recommendations of the International Commission on Radiological Protection,'' ICRP Publication No. 60 (November 1990). Available for sale from Pergamon Press, Inc., Elmsford, NY 10523.

[4] National Council on Radiation Protection and Measurements, ''Limitation of Exposure to Ionizing Radiation,'' NCRP Report No. 116 (March 31, 1993). Available for sale from the NCRP, 7910 Woodmont Avenue, Suite 800, Bethesda, MD 20814–3095.

The NRC has an advisory committee, the Advisory Committee on the Medical Uses of Isotopes, or ''ACMUI,'' which advises the NRC on rulemakings and other initiatives related to the medical use of byproduct materials. The NRC also has a visiting medical fellows program that recruits selected physicians or pharmacists to work for the NRC for a period of 1 to 2 years. Both the ACMUI and the current Visiting Medical Fellow, Myron Pollycove, M.D., provided advice to the NRC during the development of this rule. In addition, Barry A. Siegel, M.D., former Chairman of the ACMUI, reviewed the patient records at his medical facility for the 1-year period from July 1, 1993, to June 30, 1994 (Mallinckrodt Institute of Radiology, St. Louis, Missouri). Drs. Siegel and Pollycove concluded that no common nuclear medicine practice, be it diagnostic, therapeutic, or a combination of the two, results in multiple large administrations that would be likely to cause the 5-millisievert (0.5-rem) dose limit to be exceeded because of multiple administrations in a year.

While the proposed requirement to maintain a record of the dose to another individual if the dose is likely to exceed 1 millisievert (0.1 rem) has been deleted, a recordkeeping requirement with a reduced impact has been retained as discussed under the heading, ''Discussion of Text of Final Rule.''

Comment. Several commenters said that those who pay for health care will put great pressure on physicians to optimize calculations to reduce in-patient days and to justify out-patient treatments.

Response. There is no objection to optimizing calculations to reduce in-patient days as long as the calculations are realistic and the 5-millisievert (0.5-rem) limit in 10 CFR 35.75 is met. Regulatory Guide 8.39, ''Release of Patients Administered Radioactive Materials,'' describes examples of calculations that are acceptable to the NRC.

Written Instructions To Patients

In general, there was little objection to providing instructions to patients on how to minimize the dose to others, but there was significant opposition to the proposed requirement that the instructions would have to be written.

Comment. One commenter said that the Statement of Considerations for the proposed rule was in error in stating that the existing regulations already required that the instructions to patients be written.

Response. The commenter is correct. The Statement of Considerations was in error on that point. The existing regulations do not specify that instructions have to be in written form.

Comment. A number of commenters said that instructions should not need to be written and that oral instructions should be permissible. Some of these commenters said that oral instructions are more effective and that how the instructions should be given is within the province of the doctor-patient relationship and that the NRC and its regulations should not interfere with that relationship. One commenter said that the physical condition of the patient could lessen the patient's ability to follow the instructions. Another commenter said that the standard written instructions require too much time explaining how each patient varied from the standard instruction sheet. However, one Agreement State and a major health maintenance organization strongly supported the requirement that the instructions be written.

Response. The NRC believes that providing written instructions has a significant value because often patients will not remember all of the instructions given orally. In addition, written instructions can be read by other family members or care-givers. The requirement to provide the instructions in written form was also supported by the ACMUI.

This regulation allows the licensee to determine the form of the written instructions. The NRC believes that for the majority of releases requiring written instructions, the written instructions can be prepared in a generic form. For example, the Society of Nuclear Medicine has prepared a brief pamphlet, ''Guidelines for Patients Receiving Radioiodine Treatment,'' which can be given to patients at nominal cost (less than $1 per patient). However, oral instructions may also be provided in all cases.

Comment. Several commenters said that dictating to a physician how and what he or she must tell a patient is not the purview, mandate, or competence of the NRC and interferes with an essential part of medical practice, which is communication between physician and patient.

Response. In a policy statement published on February 9, 1979 (44 FR 8242), entitled ''Regulation of the Medical Uses of Radioisotopes; Statement of General Policy,'' the NRC made three specific statements. The third statement of the policy is ''The NRC will minimize intrusion into medical judgments affecting patients and into other areas traditionally considered to be a part of the practice of medicine.'' The final rule is consistent with this statement because it does not dictate the choice of medical treatment or diagnosis, does not specify the details of what the physician must say or must include in the contents of the written instructions, and is directed at minimizing the risk to the patient's family who have no doctor-patient relations to the prescribing or administering personnel. However, Regulatory Guide 8.39, ''Release of Patients Administered Radioactive Materials,'' recommends contents of the written instructions.

Further discussion of the 1979 Medical Policy Statement is presented under the heading, ''VIII. Consistency with 1979 Medical Policy Statement.''

Comment. Several commenters asked whether written instructions were appropriate if the patient was blind, illiterate, or did not read English. Another commenter said that the instructions should be both written and oral and should be in the primary language of the patient.

Response. The NRC believes that written instructions are useful and should be required. If the patient is blind, illiterate, or does not read English, it is likely that someone else will be able to read the instructions for the patient. NRC considers it too much of a burden to require that the instructions be given in the primary language of the patient, although the regulations do not preclude foreign language written instructions if the licensee chooses to provide them. In most situations, it will be possible to find someone who can translate for the patient if necessary. The requirement that written instructions be given to the patient does not preclude additional oral instructions.

Comment. Several commenters asked how the NRC would enforce implementation of the instructions given to the patient. Another commenter asked how the licensee could verify that the instructions are followed. Another commenter said that a sizable fraction of patients may not follow radiation safety instructions to protect spouses and may be even less careful about protecting total strangers. This commenter also asked whether it is reasonable to expect that released patients will alter their behavior and limit their activities for the protection of others.

Response. The NRC does not intend to enforce patient compliance with the instructions nor is it the licensee's responsibility. However, it is the responsibility of licensees to provide instructions to the patients. Following the instructions is normally the

responsibility of the patient. However, American medical practice routinely depends on patients following instructions, such as instructions on when and how to take medications.

With regard to compliance with the instructions, surveys of patients and their spouses, as discussed in the supporting regulatory analysis, indicate that most will attempt to follow the instructions faithfully, especially with regard to protecting their children, although some patients and their spouses indicated that they might not keep physically distant from their spouse for prolonged periods of time.

Comment. One commenter said that instructions should be given for all administrations of radioactive material, regardless of the quantity administered.

Response. The NRC does not agree. In some cases, particularly in the large number of diagnostic administrations, the potential doses are so small that the burden of requiring instructions cannot be justified. Under the final rule, if the dose to any individual exposed to the patient is not likely to exceed 1 millisievert (0.1 rem), instructions are not required but the physician could give any instructions that he or she considers desirable.

Confinement of Patients

Comment. Two commenters said that patients cannot be confined against their wishes and that the rule provides no penalty for the patient who leaves confinement in the hospital ''against medical advice.'' Another commenter said that the rule seems to require that the licensee have control of the patient's activities after release.

Response. The NRC recognizes that patients cannot be held against their will. The rule deals with the conditions under which the licensee may authorize release. The NRC would not penalize a licensee for the activities of the patient after release or if the patient were to leave ''against medical advice.''

Comment. One commenter asked whether a patient who was releasable but was still hospitalized for other reasons would still be considered under the licensee's control.

Response. Once the licensee has authorized the release of the patient, there is no need to keep the patient under licensee control for radiation protection purposes if the patient remains hospitalized for other reasons. However, good health physics practice would be to continue to make efforts to maintain doses to people at the facility as low as is reasonably achievable.

Comment. Commenters also asked how a patient can be confined to his or her house.

Response. These commenters misunderstood the concept of confinement. As explained in the Statement of Considerations for the proposed rule (59 FR 30724), the term ''confinement'' no longer applies to the revision to 10 CFR 35.75. Instead, the text of the rule uses the phrase ''licensee control'' to more clearly reflect the NRC's intent.

The NRC believes that there is a distinct difference between a patient being under licensee control in a hospital or other licensee facility (e.g., a hospice or nursing home) and being at home. In a hospital or other area or address of use listed on the NRC license, the licensee has control over access to the patient as well as having trained personnel and instrumentation available for making radiation measurements not typically available at the patient's home. In addition, while under licensee control, a licensee has control over the dose by limiting the amount of time that individuals are in close proximity to the patient. A patient who goes home is released from licensee control.

Comment. One commenter thought that the rule should define the term ''release.''

Response. The term ''release from licensee control,'' when read in context, refers to radiation protection considerations and is sufficiently clear that there is no need to define the term.

Miscellaneous Comments on the Rule

Comment. Several commenters said that the rule should not be a matter of Agreement State compatibility at any level.

Response. The NRC does not agree. The NRC conducts an assessment of each proposed requirement or rule to determine what level of compatibility will be assigned to the rule. These case-by-case assessments are based, for the most part, on protecting public health and safety. NRC has evaluated the final rule and assigned compatibility designations ranging from level 1 (full compatibility required) to level 3 (uniformity not required) as detailed later in this Federal Register notice.

Comment. Several commenters said that a breast-feeding infant should not be considered as an individual exposed to the patient for the purposes of determining whether patient release may be authorized. These commenters said that consideration of the breast-feeding infant should be under the jurisdiction of the physician, that the issue is a medical issue rather than a regulatory issue, and that the NRC should not interfere in medical issues.

Response. The NRC does not agree. The NRC has a responsibility to protect the public health and safety, and that responsibility extends to all individuals exposed to a patient administered licensed radioactive materials, including breast-feeding children. When the release is authorized, it is based on the licensee's determination that the total effective dose equivalent to an individual from the released patient is not likely to exceed 5 millisieverts (0.5 rem). The dose to the breast-feeding child from breast-feeding is a criterion for release but it can be controlled by giving the woman guidance on the interruption or discontinuation of breast-feeding, as required by the new 10 CFR 35.75. However, the release could be based on the default table of release activities in the regulatory guide or a patient-specific calculation, as required by the new 10 CFR 35.75. The issue of the dose to the breast-feeding child is discussed in NUREG–1492 and Regulatory Guide 8.39, ''Release of Patients Administered Radioactive Materials.''

Comment. One commenter said that the proposed rule did not accurately represent the position of the Advisory Committee on Medical Uses of Isotopes.

Response. A review of the transcript for the ACMUI meeting in May 1992 shows that the Federal Register Notice provided an accurate description of the ACMUI position. The final rule was discussed with the ACMUI on October 18, 1995, and the ACMUI, in general, supported the rule. (For ACMUI's comments and NRC's responses, see Section V. Coordination with the Advisory Committee on Medical Uses of Isotopes.)

Comment. One commenter said that its facility treated many foreign patients with therapeutic pharmaceuticals. These patients frequently may leave the hospital and immediately board a plane to return home. Thus, there is a limit to the amount of control that a licensee has over the patient.

Response. The NRC recognizes that the licensee has no control over the patient after the patient has been released. The quantities for release listed in Table 1 of Regulatory Guide 8.39, ''Release of Patients Administered Radioactive Materials,'' were calculated using conservative assumptions (for example, by using the physical half-life of the radioactive material rather than the more realistic effective half-life). Thus, the NRC considers it unlikely that the dose to an individual in real circumstances would approach 5 millisieverts (0.5 rem).

In special situations, such as when a released patient would immediately board an airplane and would therefore be in close contact with one or more

individuals, it may be necessary to base the release on a more realistic case-specific calculation. Once the patient is released, the responsibility for following the instructions is entirely the patient's, not the licensee's.

Comments on the Draft Regulatory Guide

Comments were also requested on Draft Regulatory Guide, DG–8015, ''Release of Patients Administered Radioactive Materials,'' associated with this rulemaking. Because the guide is associated with the rule, the comments received on the draft guide are discussed here. Most of the comments concerned the method and the assumptions used to calculate the dose to the individual likely to receive the highest dose.

Comment. Several commenters said that the calculational methodology in the draft guide is too complex and that the assumptions are too conservative. As an example, several commenters said that the assumed 24-hour nonvoiding assumption used in calculating doses is too conservative. As evidence that the calculations are too conservative, several commenters said that the doses measured using dosimeters were much lower than doses calculated using the models in the draft guide.

Response. The NRC has revised the guide to use a phased approach for determining when release can be authorized. While the calculations can sometimes be complex, the results of calculations that use conservative assumptions are given in a table of release quantities in Regulatory Guide 8.39, ''Release of Patients Administered Radioactive Materials.'' Of the 8 to 9 million administrations performed annually, in all except about 10,000 cases (radioiodine therapy for thyroid cancer), release can be authorized based on conservative assumptions and using Table 1 with no calculational effort on the part of the licensee and no additional recordkeeping beyond what is already required. For permanent implants, the guide provides dose rates at 1 meter from the patient at which release may be authorized. Thus, for implants, there would be no calculational effort needed. In addition, the guide provides information on iodine therapy for thyroid cancer that can be used for determining release based on retention and elimination. This additional information in the guide will allow the licensee to perform the calculation with relatively little effort.

With regard to the comments that the methodology is too conservative and that measured values are lower than calculated by the methodology, the methodology in the table giving default release quantities is intended to be conservative. The NRC believes it is appropriate and prudent to be conservative when providing generally applicable release quantities that may be used with little consideration of the specific details of a particular patient's release. A review of published information, as described in the regulatory analysis, NUREG–1492, ''Regulatory Analysis on Criteria for the Release of Patients Administered Radioactive Material'' (1997), finds that measured doses are generally well below those predicted by the methodology used to calculate the table of default release quantities. Thus, the default release quantities are conservative as the NRC intended. However, the licensee is given the option of using case-specific calculations that may be less conservative.

Nevertheless, the NRC agrees that the assumption used in the draft guide of 24-hour nonvoiding in the thyroid cancer example was overly conservative. The revised example uses an excretion half-life of 8 hours as recommended by the ICRP in ICRP Publication 53, ''Radiation Dose to Patients from Radiopharmaceuticals.'' [5]

Comment. One commenter said that the occupancy factor (generally assumed to be 0.25 at 1 meter) should not be left to the discretion of the licensee because low occupancy factors could easily be justified by providing strict safety instructions without any verification that the instructions will be followed. Another commenter liked the flexibility provided by being able to adjust the occupancy factor, but wanted to know if other considerations are allowed and if it is acceptable to use values lower than 0.125.

Response. Draft Regulatory Guide 8.39 discussed situations in which it might be permissible to lower the occupancy factor from 0.25 to 0.125, but did not recommend occupancy factors less than 0.125. Occupancy factors less than 0.125 may be difficult to justify because it is generally not realistic to assume that the patient can avoid all contact with others. However, lower values for the occupancy factor are not prohibited by the regulation, but they must be justified in the record of the calculation, as the record will be subject to inspection.

Comment. Several commenters said that the iodine-131 retention fraction of 0.3 used in the draft guide for treatment of thyroid cancer is too large and that the correct value should be 0.05 or less. Another commenter said that the biological half-life of extrathyroidal iodine should be 0.5 day for both the euthyroid and hyperthyroid condition. One commenter said that the biological half-lives from ICRP Publication No. 53 should be used for thyroid cancer.

Response. The NRC agrees that the commenters raised valid points. In Regulatory Guide 8.39, the iodine retention fraction for thyroid cancer was changed to 0.05. The biological half-life for the extrathyroidal fraction was changed to 0.33 day. In addition, the biological half-lives from ICRP Publication No. 53 were used for the thyroid cancer case.

Comment. One commenter said the table of release quantities in the draft guide should be expanded to include beta emitters such as strontium-89 and phosphorous-32. Another commenter said that the table should be expanded to include chromium-51, selenium-75, yttrium-90, tin-117m, and iridium-192.

Response. Values for the beta emitters strontium-89 and phosphorous-32 have been added to the table of release quantities in Regulatory Guide 8.39. The table of release quantities was also expanded to add values for chromium-51, selenium-75, yttrium-90, tin-117m, and iridium-192.

Comment. The table of release quantities in the draft regulatory guide should be expanded to include accelerator-produced radioactive materials as an aid to Agreement States.

Response. Several accelerator-produced materials were added to Regulatory Guide 8.39 as an aid to the States and to medical facilities. The NRC has no regulatory authority over the release of patients administered accelerator-produced materials and would not inspect the release of patients administered accelerator-produced materials.

Comment. One commenter said that the regulatory guide should have a table of release quantities based on biological half-life rather than only the physical half-life.

Response. Regulatory Guide 8.39 now provides more information on release quantities for iodine-131 based on biological half-lives.

Comment. One commenter said that the factor of 10^{-6} used in the draft guide to estimate internal dose is not well supported for nonoccupational exposures. Another commenter said that the calculation of dose to individuals exposed to the patient ignores the potential of radiation dose from the excretion of radioactive material from the patient, and this could present a

[5] International Commission on Radiological Protection (ICRP), ''Radiation Dose to Patients from Radiopharmaceuticals,'' ICRP Publication No. 53 (March 1987). Available for sale from Pergamon Press, Inc., Elmsford, NY 10523.

significant radiological hazard to family members.

Response. It is true that there is not a great deal of information on the use of the factor in nonoccupational settings, but measurements (described in NUREG–1492) have been made in which iodine uptake was measured in people exposed to a patient. These data suggest that the fractional uptake of the administered activity will be on the order of 10^{-6}. Since iodine is among the most soluble and volatile radiopharmaceuticals, it can be expected that the transfer to others of less soluble and less volatile radiopharmaceuticals would be less than that of iodine.

In addition, the NCRP recently concluded that, for individuals exposed to radionuclide therapy patients, the risks of external irradiation and potential contamination are minor from a public health viewpoint; therefore a significant intake from a contamination incident is very unlikely.[2]

Comment. A medical organization commented that the draft guide is not complete and does not provide sufficient comprehensive examples to assist licensees in complying with the rule.

Response. The NRC has expanded the guide to include information and further examples on the biological elimination of iodine-131 and on when guidance on the interruption or discontinuation of breast-feeding should be given. Expanded examples are now given in Regulatory Guide 8.39, ''Release of Patients Administered Radioactive Materials.'' The example on thyroid cancer was revised to include more realistic assumptions, and an additional example on hyperthyroidism was added. The NRC believes that the examples provided illustrate the techniques sufficient to perform the whole range of potential calculations.

Comment. One commenter said that the draft regulatory guide did not provide enough information on when and for how long breast-feeding of infants should be interrupted.

Response. Regulatory Guide 8.39 has been greatly expanded with respect to information on the breast-feeding child, including a table on recommendations for the interruption or discontinuation of breast-feeding for specific radiopharmaceuticals.

Comment. One commenter said that the sample instructions in the draft guide concerning implants should include a picture of an implant seed.

Response. The sample instructions were not expanded to include this because of graphics limitations, but licensees may add photos if desired.

Comment. Several commenters asked whether multiple individual calculations have to be done or if a generally applicable calculation could be done once and used for many patients.

Response. The NRC believes that there may be some situations for which a case-specific calculation could be done for a class of patients. The record for a particular patient's release could then reference the calculation done for the class of patients. However, depending on a patient's individual status (e.g., lower occupancy factor), there may be cases when the calculation will be done for a specific individual.

Comment. One commenter said that the discussion on radiolabeled antibodies in the draft guide was wrong because antibodies labeled with iodine-131 will be deiodinated in the body and the iodine will behave like other iodine. None of the radiolabeled antibodies now being developed or planned for the future should have an internal dose hazard for the general public.

Response. The NRC agrees with this *Comment.* Statements in Regulatory Guide 8.39 are now modified.

Comments on the Draft Regulatory Analysis (Draft NUREG–1492)

Comment. One commenter said that the value of a person-rem should be $40 rather than $1,000 as used in the draft regulatory analysis for the purpose of evaluating the costs and benefits of the rule. The commenter cited a 1993 Health Physics Society position paper as a reason that the value should be $40 per person-rem.

Response. The Commission recently adopted a value of $2,000 per person-rem as explained in Revision 2 of NUREG/BR–0058, ''Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission (November 1995),'' Section 4.3.3, ''Evaluation of Values and Impacts.'' (Single copies of NUREG/BR–0058 are available as indicated in the **ADDRESSES** heading.) The draft regulatory analysis, which was prepared utilizing $1,000 per person-rem, employed a simple computational model using the physical half-life only of radiopharmaceuticals. The regulatory analysis has been revised to include use of $2,000 per person-rem, as well as a more realistic dose model based on biological retention and elimination of the radiopharmaceuticals. The more realistic model with a value of $2,000 continues to demonstrate the cost-effectiveness of the dose-based limit. Specifically, the savings in hospital costs under the earlier release time allowed are estimated at $14 million, whereas the collective dose of 2,740 person-rem (at a value of $2,000 per person-rem) corresponds to a cost of about $5 million.

NUREG–1492 contains a detailed discussion of the model and the benefits and impacts of the dose-based limit. Single copies of the final regulatory analysis are available as indicated in the **ADDRESSES** heading.

Comment. One commenter said that the benefits of the rule were overestimated because the length of time that a thyroid patient would have to remain in the hospital was overestimated and the cost of a hospital room was overestimated, being $450 per day rather than $1,000 per day as assumed in the draft regulatory analysis.

Response. The commenter is correct that the benefits of the rule were overestimated. The estimates in the draft regulatory analysis of days of hospitalization required did not include biological elimination of the radioactive material; only radioactive decay was considered. As a consequence, the draft regulatory analysis, in some cases, overestimated the time that patients would need to be retained under licensee control, and therefore the costs of patient retention were too high. The final regulatory analysis corrects the estimates.

The NRC believes that the current cost of $1,000 per day for a hospital room is not an overestimate. Under 10 CFR 35.315(a)(1), licensees are required to provide a private room with a private sanitary facility for each patient receiving radiopharmaceutical therapy and hospitalized for compliance with 10 CFR 35.75. Considering this NRC requirement and the recent reference cited in the final regulatory analysis on the cost of hospitalization, $1,000 per day for a hospital room is a reasonable estimate.

Comment. One commenter said that the description of the measured doses received by family members was not consistent with the reference cited.

Response. The commenter is correct. An incorrect reference was given. The final regulatory analysis provides the correct reference.

IV. Coordination With NRC Agreement States

The NRC staff discussed the status of this rulemaking effort at two public meetings: The Agreement State Managers Workshop held on July 12–14, 1994, and at the All Agreement States Meeting held on October 24–25, 1994. The Agreement States expressed no objections to the approach in this rule.

V. Coordination With the Advisory Committee on Medical Uses of Isotopes

The Advisory Committee on Medical Uses of Isotopes (ACMUI) is an advisory body established to advise the NRC staff on matters that involve the administration of radioactive material and radiation from radioactive material. The NRC staff presented a summary of the comments on the proposed rule to the ACMUI during a public meeting held in Rockville, Maryland, on November 17 and 18, 1994.

Drafts of the final rule and regulatory guide were discussed with ACMUI in Rockville, Maryland, on October 18 and 19, 1995. The ACMUI supported the approach in this rule but suggested some clarifying changes. The NRC staff made all but one of the suggested changes. The ACMUI suggested using the term ''rationale'' instead of ''consequences'' in the requirement under the revised 10 CFR 35.75(b), to provide ''guidance on the interruption or discontinuation of breast-feeding, and information on the consequences of failure to follow the guidance'' for cases where failure to follow the instructions could result in a dose to the infant exceeding 1 millisievert (0.1 rem). Since most of the administrations that would be affected by this requirement are technetium-99m administrations, the ACMUI suggested the change because there was concern that the consequences of low doses of radiation cannot always be explained to the patient without causing unjustified alarm. Also, there was concern that physicians cannot explain with certainty the effects of low doses of radiation, such as would be caused by diagnostic administrations of technetium-99m. The staff did not change the rule in response to the ACMUI comment. The requirement to provide information on the consequences is included primarily to protect the breast-feeding infant from therapeutic administrations of radioiodine, which could cause serious thyroid damage. Regulatory Guide 8.39 will contain guidance on the types of information, including expected consequences, to be provided to patients to meet this requirement. Transcripts of the meetings have been placed in and are available for examination at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

VI. Discussion of Text of Final Rule

This section summarizes the final rule. The NRC is amending 10 CFR 20.1301(a)(1) to state specifically that the dose to individual members of the public from a licensed operation does not include doses received by individuals exposed to patients who were released by the licensed operation under the provisions of 10 CFR 35.75. This is not a substantive change. It is a clarifying change to make clear that the Commission's policy is that patient release is governed by 10 CFR 35.75, not 10 CFR 20.1301.

For the sake of consistency and clarity, the same words are used in § 20.1002, ''Scope''; in § 20.1003, ''Definitions'' (in the definitions of both public dose and occupational dose); and in § 20.1301, ''Dose limits for individual members of the public.'' Also for consistency and clarity, the exclusion of dose from background radiation and from voluntary participation in medical research programs that are now included in §§ 20.1002 and 20.1003 are added to § 20.1301(a). In addition, the definition of ''member of the public,'' as published in 60 FR 36038 on July 13, 1995, is revised by removing the footnote which read, ''Except as delineated in other parts of 10 CFR Chapter 1.'' With the publication of this rule that footnote is no longer needed.

The NRC is amending 10 CFR 20.1301(a)(2) to state specifically that the limit on dose in unrestricted areas does not include dose contributions from individuals administered radioactive material and released in accordance with 10 CFR 35.75. The purpose of this change is to clarify that after a patient has been released under 10 CFR 35.75, licensees are no longer required to control radiation from the patient. The regulation uses the term ''individual'' to refer to the individual to whom the radioactive material has been administered rather than ''patient'' to clarify that the regulation refers to anyone receiving a medical administration.

The NRC is amending 10 CFR 20.1903(b) to use the term ''licensee control'' rather than ''confinement'' because the latter term no longer applies to 10 CFR 35.75. The conforming change is necessary since the term ''licensee control'' more clearly reflects the NRC's intent in 10 CFR 35.75.

The NRC is adopting a new 10 CFR 35.75(a) to change the patient release criteria from 30 millicuries of activity in a patient or a dose rate of 5 millirems per hour at 1 meter from a patient to a dose limit of 5 millisieverts (0.5 rem) total effective dose equivalent to an individual from exposure to a released patient. (The dose from the radionuclide involved is taken to be the dose to total decay.) A dose-based limit provides a single limit that can be used to provide an equivalent level of protection from risks from all radionuclides. Also, the changes are supported by the recommendations of the ICRP and NCRP that an individual can receive an annual dose up to 5 millisieverts (0.5 rem) in temporary situations where exposure to radiation is not expected to result in annual doses above 1 millisievert (0.1 rem) for many years. Usually, the only individuals likely to exceed a dose of 1 millisievert (0.1 rem) will be those who are aware of the patient's condition such as the primary care-giver, a family member, or any other individual who spends significant time close to the patient.

This dose-based rule would, in some instances, permit the release of patients with activities greater than currently allowed. This is especially true when case-specific factors are evaluated to more accurately assess the dose to other individuals. The individuals exposed to the patient could receive higher doses than if the patient had been hospitalized longer. These higher doses are balanced by shorter hospital stays and thus lower health care costs. In addition, shorter hospital stays may provide emotional benefits to patients and their families. Allowing earlier reunion of families can improve the patient's state of mind, which in itself may improve the outcome of the treatment and lead to the delivery of more effective health care.

The release criteria in 10 CFR 35.75(a) could prevent a woman from being released because of the potential transmission of radioactive materials in breast milk. The dose to the breast-feeding child is controlled by giving the woman guidance, as required by 10 CFR 35.75(b), on the interruption or discontinuation of breast-feeding and information on the consequences of failure to follow the guidance. The expectation is that the woman would follow the instructions and would interrupt or discontinue breast-feeding.

Finally, 10 CFR 35.75(a) includes a footnote to inform licensees that the NRC has made available guidance on rule implementation. The footnote states that Regulatory Guide 8.39, ''Release of Patients Administered Radioactive Material,'' contains tables of activities not likely to cause doses exceeding 5 millisieverts (0.5 rem) and describes methods for calculating doses to other individuals.

The NRC is adopting a new 10 CFR 35.75(b) to require that the licensee provide released patients with instructions, including written instructions, on how to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any individual other than the released patient is likely to exceed 1 millisievert

(0.1 rem). This also requires giving instructions to a woman who is breast-feeding a child if the dose to the child could exceed 1 millisievert (0.1 rem) assuming there were no interruption of breast-feeding. The instructions must include guidance on discontinuation or the interruption period for breast-feeding and the consequences of failing to follow the recommendation. Regulatory Guide 8.39 contains tables that show temporary interruption periods for various radiopharmaceuticals or discontinuation. The temporary interruption periods were calculated based on the determination that the dose to a child from breast-feeding is unlikely to exceed 1 millisievert (0.1 rem). However, the physician may use discretion in the recommendation, increasing or decreasing the duration of interruption somewhat depending on the woman's concerns about radioactivity or interruption of breast-feeding.

The purpose of describing the consequences is so that women will understand that breast-feeding after an administration of certain radionuclides could cause harm (e.g., iodine-131 could harm the child's thyroid). In other cases, the guidance could simply address avoidance of any unnecessary radiation exposure to the child from breast-feeding.

A requirement for instructions for certain patients was already contained in 10 CFR 35.315(a)(6) and 35.415(a)(5), but the modified requirement for written instructions adds approximately (a) 50,000 patients per year who are administered iodine-131 for the treatment of hyperthyroidism and (b) 27,000 patients per year, among about 8 million administered radiopharmaceuticals, who may be breast-feeding to whom additional written instructions be given. The purpose of the written instructions is to maintain doses to individuals exposed to patients as low as is reasonably achievable. The instructions may be either written only or written plus oral. The NRC believes that written instructions are necessary so that the patient and the patient's family and friends will have a document to refer to rather than having to rely solely on the patient's memory and understanding of the instructions.

The requirement of 10 CFR 35.75(b), requiring a licensee to provide guidance on discontinuation or the interruption period for breast-feeding and the consequences of failing to follow the recommendation, presumes that the licensee will make appropriate inquiry regarding the breast-feeding status of the patient. For women who are breast-feeding a child where the dose to the child is likely to exceed 1 millisievert (0.1 rem), the NRC requires that the patient be provided with specific instructions, as described in 10 CFR 35.75(b). There is no specific requirement to maintain a record indicating that breast-feeding status was determined prior to the release of the patient.

The NRC is adopting a new 10 CFR 35.75(c) to require that the licensee maintain a record of the basis for authorizing the release for 3 years if the calculation of the total effective dose equivalent to other individuals uses the retained activity rather than the activity administered, an occupancy factor less than 0.25 at 1 meter, the biological or effective half-life of the radionuclide, or shielding of radiation by the patient's tissue. Thus, records of release are required when the default assumptions are not used as discussed in Regulatory Guide 8.39. Measurements made in several studies indicate that the default assumptions should generally overpredict the dose even when instructions are not given or are not strictly followed. If a licensee administers an activity no greater than the value in the default table of release quantities provided in the regulatory guide as the basis for release, no record of release is required.

Licensees are already required by 10 CFR 35.53 to retain records of the measurement of the activity of each dosage of radioactive material administered to a patient; these records are typically maintained in a patient dose log. In addition, 10 CFR 35.32 requires licensees to retain a written directive and a record of each administered radiation dose or radiopharmaceutical dosage for therapeutic administrations and diagnostic administrations of iodine-125 or iodine-131 sodium iodide greater than 30 microcuries. These records can be used in conjunction with Regulatory Guide 8.39 to demonstrate that patient releases meet the requirements of 10 CFR 35.75(a) when no record is required by 10 CFR 35.75(c). When the licensee determines that the patient must be held to allow the reduction of radioactivity and then released, the licensee will need a record of release time to demonstrate that the release criteria have been met. A licensee may use any existing record to establish the release time. If biological elimination of radioiodine is a basis for release and the licensee uses the information in Regulatory Guide 8.39, a record of the thyroid uptake may be necessary as part of the basis for release because it is one of the nonstandard conservative assumptions listed in 10 CFR 35.75(c). If other case-specific factors are used as the basis for patient release that are in addition to, or modify, the standard conservative assumptions, a record of the basis for the release, including the assumptions used for the calculations, must also be maintained.

This recordkeeping requirement is a modification of the proposed rule. The proposed rule would have required that a record be maintained of the basis for the patient's release, including all calculations performed, if the total effective dose equivalent to any individual other than the released patient is likely to exceed 1 millisievert (0.1 rem) in a year from a single administration. Under the proposed rule, the major purpose of the record was to provide the basis for limiting the dose to 5 millisieverts (0.5 rem) to individuals exposed to a patient who may receive more than one administration in a year. Upon reconsideration, based on public comments and consultation with the ACMUI, an NRC medical consultant, and the NRC Visiting Medical Fellow, the NRC has decided to delete this requirement. A review of medical treatment practices revealed no common practice that would result in doses exceeding the 5 millisievert (0.5 rem) limit because of multiple administrations in the same year to the same patient. Without the need to account for the dose from multiple administrations, maintaining records for the many tens of thousands of patients released when their dose to an individual is likely to exceed 1 millisievert (0.1 millisievert) becomes an unnecessary burden. The requirement to retain these records has therefore been deleted. Each patient release is to be treated as a separate event, and licensee knowledge of previous administrations is unnecessary.

The NRC is also adopting a new 10 CFR 35.75(d) to require that the licensee maintain a record that instructions were provided to a woman who is breast-feeding a child if the administered activity could result in a total effective dose equivalent to the breast-feeding child exceeding 5 millisieverts (0.5 rem) if the woman did not interrupt or discontinue breast-feeding. Thus, the NRC is requiring records for certain radiopharmaceutical administrations (e.g., therapeutic administrations of iodine-131). The activities of radiopharmaceuticals that require this record are described in Regulatory Guide 8.39.

Finally, the NRC is deleting its requirements on written instructions in 10 CFR 35.315(a)(6) and 35.415(a)(5) because those paragraphs are redundant now that 10 CFR 35.75 has requirements for instructions. In addition, 10 CFR 35.415(a) and (a)(1) are reworded to clarify the original intent of the paragraphs, which was to limit the dose rate at 1 meter from the patient. The ambiguity was introduced when part 20 was revised and a conforming change was made in 10 CFR 35.415. The conforming change that was made was not fully consistent with the original intended meaning of 10 CFR 35.415(a) and (a)(1).

VII. Disposition of the Petitions for Rulemaking

The three petitions for rulemaking submitted by Dr. Marcus (PRM–20–20), the ACNM (PRM–35–10 and PRM–35–10A), and the AMA (PRM–35–11) requested that the NRC amend the revised 10 CFR part 20 and 10 CFR part 35. These requests and their disposition by this rulemaking are discussed below.

The requests made by Dr. Marcus and their disposition may be summarized as follows:

(1) Raise the radiation dose limit in 10 CFR 20.1301(a) for individuals exposed to radiation from patients receiving radiopharmaceuticals for diagnosis or therapy from 1 millisievert (0.1 rem) to 5 millisieverts (0.5 rem). The final rule grants this request.

(2) Amend 10 CFR 35.75(a)(2) to retain the 1,110-megabecquerel (30-millicurie) limit for iodine-131, but provide an activity limit for other radionuclides consistent with the calculational methodology employed in the National Council on Radiation Protection and Measurements (NCRP) Report No. 37, ''Precautions in the Management of Patients Who Have Received Therapeutic Amounts of Radionuclides.'' [1] The final rule does not contain activity limits, but Regulatory Guide 8.39 uses a calculational methodology based on NCRP Report No. 37 to relate the dose to the quantity of activity in the patient. Therefore, the wish of the petitioner to have an easy method to determine when the patient may be released is granted in Regulatory Guide 8.39.

(3) Delete 10 CFR 20.1301(d), which requires licensees to comply with provisions of the Environmental Protection Agency's environmental regulations in 40 CFR part 190 in addition to complying with the requirements of 10 CFR part 20. The EPA regulations referenced in 10 CFR 20.1301(d) are contained in 40 CFR part 190, which deals only with doses and airborne emissions from uranium fuel cycle facilities. Part 190 of Title 40 of the Code of Federal Regulations does not apply to hospitals or to the release of patients.

Furthermore, 10 CFR 20.1301(d) does not incorporate the EPA's Clean Air Act standards in 40 CFR part 61 that applies to hospitals. The NRC is separately pursuing actions with the EPA to minimize the impact of dual regulation under the Clean Air Act and to take agreed upon actions that will lead to EPA recision of 40 CFR part 61 for NRC and Agreement State licensees. Because the reference to EPA regulations in 10 CFR 20.1301(d) has nothing to do with the patient release issue, and therefore is outside the scope of this rulemaking, the final rule denies this request.

The requests made by the ACNM and their disposition may be summarized as follows:

(1) Adopt a dose limit of 5 millisieverts (0.5 rem) for individuals exposed to patients who have been administered radiopharmaceuticals. The final rule grants this request.

(2) Permit licensees to authorize release from hospitalization any patient administered a radiopharmaceutical regardless of the activity in the patient by defining ''confinement'' to include not only confinement in a hospital, but also confinement in a private residence. The final rule denies this request for the reasons described in the discussion on this issue.

Finally, the requests made by the AMA did not all pertain to the issue of patient release. The final rule grants the request pertaining to patient release, i.e., that the radiation dose limits in 10 CFR 20.1301 should not apply to individuals exposed to the patient and that the dose limit to the individuals should be 5 millisieverts (0.5 rem). The request to change the term ''hospitalized'' in 10 CFR 35.310(a) and 35.315(a) to the term ''confined'' was denied for the reasons discussed above. The request not related to the subject of patient release (that it should be clear in Part 20 that Part 20 does not limit the intentional exposure of patients to radiation for the purpose of medical diagnosis or therapy) was addressed in another rulemaking, ''Medical Administration of Radiation and Radioactive Materials,'' which was published as a final rule on September 20, 1995 (60 FR 48623), and became effective on October 20, 1995.

VIII. Consistency With 1979 Medical Policy Statement

On February 9, 1979 (44 FR 8242), the NRC published a Statement of General Policy on the Regulation of the Medical Uses of Radioisotopes. The first statement of the policy reads ''The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public.'' The rule is consistent with this statement because its purpose is to provide for the safety of individual members of the public exposed to patients administered radioactive materials.

The second statement of the policy is ''The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.'' This statement is not relevant to the rule because the rule does not affect the safety of patients themselves. The rule instead affects the safety of individuals exposed to patients.

The third statement of the policy reads ''The NRC will minimize intrusion into medical judgments affecting patients and into other areas traditionally considered to be a part of the practice of medicine.'' The rule is consistent with this statement because it places no requirements on the administration of radioactive materials to patients and because the release of patients administered radioactive materials has long been considered a matter of regulatory concern to protect members of the public rather than solely a matter of medical judgment.

Thus, the final rule is considered to be consistent with the 1979 Medical Policy Statement.

IX. Issue of Compatibility for Agreement States

The NRC considers the definitions contained in § 20.1003 and the text in § 20.1301(a) that are modified by this rulemaking are Division 1 levels of compatibility. The definitions and text in these sections must be the same for all NRC and Agreement State licensees so that national consistency can be maintained.

Section 20.1002, ''Scope,'' is a Division 3 level of compatibility because this section by nature is not a regulatory requirement and many States are prohibited by their administrative procedures act from including such sections in their rules. The scope section is a general statement of scope of the rule and does not contain specific requirements that are not presented in other sections of part 20. Rules at the Division 3 level would be appropriate for Agreement States to adopt, but they do not require any degree of uniformity between NRC and State rules.

Additionally, §§ 35.75(a) and (b) are a Division 2 level of compatibility because the patient release criteria

required by the rule are the minimum requirements necessary to ensure adequate protection of the public health and safety. The Agreement States will be allowed to establish requirements that are more stringent than the NRC's requirements, but not less stringent. The recordkeeping requirements in §§ 35.75(c) and (d) are a Division 3 level of compatibility because uniformity in recordkeeping is not considered essential for this rule.

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

XI. Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that the amendments are not a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. The final amendments clarify the pertinent regulatory language to reflect explicitly the relationship between 10 CFR part 20 and part 35 with respect to release of patients, and the amendments revise the release criteria for patients receiving radioactive material for medical use from an activity-based standard to a dose basis. It is expected that there will be relatively little change in radiation dose to the public or to the environment as a result of the revised regulation.

The final environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available as indicated in the **FOR FURTHER INFORMATION CONTACT** heading.

XII. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0010.

The public reporting burden for this collection of information is estimated to average 13 hours per licensee per year, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on any aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0010), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC 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.

XIII. Regulatory Analysis

The NRC has prepared a final regulatory analysis (NUREG–1492) on this regulation. The analysis examines the benefits and impacts considered by the NRC. The NRC has received public comments regarding the draft regulatory analysis and has addressed the comments (see Comments on the Draft Regulatory Analysis in Section III. Public Comments on the Proposed Rule). The final regulatory analysis is available for inspection at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC. Single copies are available as indicated in the **ADDRESSES** heading.

XIV. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects medical use of byproduct material licensees. The impact of the final rule will not be significant because the final rule basically represents a continuation of current practice.

XV. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, that a backfit analysis is not required for this rule, because these amendments do not involve any provisions that impose backfits as defined in 10 CFR 50.109(a)(1).

Lists of Subjects

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR parts 20 and 35.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. Section 20.1002 is revised to read as follows:

§ 20.1002 Scope.

The regulations in this part apply to persons licensed by the Commission to receive, possess, use, transfer, or dispose of byproduct, source, or special nuclear material or to operate a production or utilization facility under parts 30 through 35, 39, 40, 50, 60, 61, 70, or 72 of this chapter. The limits in this part do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with § 35.75, or to exposure from voluntary participation in medical research programs.

3. In § 20.1003, the footnote to the definition of member of the public is removed and the definitions of occupational dose and public dose are revised to read as follows:

§ 20.1003 Definitions.

* * * * *

Occupational dose means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with § 35.75, from voluntary participation in medical research programs, or as a member of the public.

* * * * *

Public dose means the dose received by a member of the public from exposure to radiation or radioactive material released by a licensee, or to any other source of radiation under the control of a licensee. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with § 35.75, or from voluntary participation in medical research programs.

* * * * *

4. In § 20.1301, paragraph (a) is revised to read as follows:

§ 20.1301 Dose limits for individual members of the public.

(a) Each licensee shall conduct operations so that—

(1) The total effective dose equivalent to individual members of the public from the licensed operation does not exceed 0.1 rem (1 millisievert) in a year, exclusive of the dose contributions from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with § 35.75, from voluntary participation in medical research programs, and from the licensee's disposal of radioactive material into sanitary sewerage in accordance with § 20.2003, and

(2) The dose in any unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released in accordance with § 35.75, does not exceed 0.002 rem (0.02 millisievert) in any one hour.

* * * * *

5. In § 20.1903, paragraph (b) is revised to read as follows:

§ 20.1903 Exceptions to posting requirements.

* * * * *

(b) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to § 20.1902 provided that the patient could be released from licensee control pursuant to § 35.75 of this chapter.

* * * * *

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

6. The authority citation for part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

7. In § 35.8, paragraph (b) is revised to read as follows:

§ 35.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 35.6, 35.12, 35.13, 35.14, 35.20, 35.21, 35.22, 35.23, 35.29, 35.13, 35.50, 35.51, 35.52, 35.53, 35.59, 35.60, 35.61, 35.70, 35.75, 35.80, 35.92, 35.204, 35.205, 35.310, 35.315, 35.404, 35.406, 35.410, 35.415, 35.606, 35.610, 35.615, 35.630, 35.632, 35.634, 35.636, 35.641, 35.643, 35.645, 35.647, 35.980 and 35.981.

* * * * *

8. Section 35.75 is revised to read as follows:

§ 35.75 Release of individuals containing radiopharmaceuticals or permanent implants.

(a) The licensee may authorize the release from its control of any individual who has been administered radiopharmaceuticals or permanent implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed 5 millisieverts (0.5 rem).[1]

(b) The licensee shall provide the released individual with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed 1 millisievert (0.1 rem). If the dose to a breast-feeding infant or child could exceed 1 millisievert (0.1 rem) assuming there were no interruption of breast-feeding, the instructions shall also include:

(1) Guidance on the interruption or discontinuation of breast-feeding and

(2) Information on the consequences of failure to follow the guidance.

(c) The licensee shall maintain a record of the basis for authorizing the release of an individual, for 3 years after the date of release, if the total effective dose equivalent is calculated by:

(1) Using the retained activity rather than the activity administered,

(2) Using an occupancy factor less than 0.25 at 1 meter,

(3) Using the biological or effective half-life, or

(4) Considering the shielding by tissue.

(d) The licensee shall maintain a record, for 3 years after the date of release, that instructions were provided to a breast-feeding woman if the radiation dose to the infant or child from continued breast-feeding could result in a total effective dose equivalent exceeding 5 millisieverts (0.5 rem).

§ 35.315 [Amended]

9. In § 35.315, paragraph (a)(6) is removed and reserved.

§ 35.315 Safety precautions.

(a) * * *

(6) [Reserved]

* * * * *

10. In § 35.415, the introductory text to paragraph (a) and paragraph (a)(1) are revised and paragraph (a)(5) is removed.

§ 35.415 Safety precautions.

(a) For each patient or human research subject receiving implant therapy and not released from licensee control pursuant to § 35.75 of this part, a licensee shall:

(1) Not quarter the patient or the human research subject in the same room as an individual who is not receiving radiation therapy.

* * * * *

Dated at Rockville, Md., this 23rd day of January, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–2166 Filed 1–28–97; 8:45 am]

BILLING CODE 7590–01–P

[1] Regulatory Guide 8.39, ''Release of Patients Administered Radioactive Materials,'' describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding 5 millisieverts (0.5 rem).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. 28764; Amdt. No. 13–28]

RIN 2105–AC63

Inflation Adjustment of Civil Monetary Penalties; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This document contains a correction to the final rule published in the Federal Register on December 20, 1996, (61 FR 67444). That final rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

EFFECTIVE DATE: January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Joyce Redos, (202) 267–7158.

SUPPLEMENTARY INFORMATION:

Need for Correction

In the final rule document (FR Doc. 96–32258) published in the Federal Register on December 20, 1996, (61 FR 67444), the chart entitled, Minimum and Maximum Civil Penalties Adjusted for Inflation, Effective January 21, 1997, is corrected to read as follows:

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Investigations, Law enforcement, Penalties.

The Amendments

Accordingly, 14 CFR part 13 is corrected by making the following correcting amendments:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 is revised to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 46101–46110, 46301–46316, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532.

§ 13.305 [Amended]

2. In § 13.305(d), the chart is revised to read as follows:

MINIMUM AND MAXIMUM CIVIL PENALTIES—ADJUSTED FOR INFLATION, EFFECTIVE JANUARY 21, 1997

United States Code citation	Civil monetary penalty description	Minimum penalty amount as of 10/23/96	New adjusted minimum penalty amount	Maximum penalty amount as of 10/26/96	New adjusted maximum penalty amount
49 U.S.C. 5123(a) (changed 1990).	Violations of hazardous materials transportation law or regulations.	$250 per violation per day	$250 per violation per day	$25,000 per violation per day.	$27,500 per violation per day.
49 U.S.C. 46301(a)(1) (1958).	Violations of FAA statute or regulations by a person.	N/A	N/A	$1,000 per violation per day or per flight.	$1,100 per violation per day or per flight.
49 U.S.C. 46301(a)(2) (changed 1987).	Violations of FAA statute or regulations by a person operating an aircraft for the transportation of passengers or property for compensation.	N/A	N/A	$10,000 per violation per day or per flight.	$11,000 per violation per day or per flight.
49 U.S.C. 46301(a)(3)(A) (1974).	Violations of FAA statute or regulations involving the transportation of hazardous materials by air.	N/A	N/A	$10,000 per violation per day or per flight.	$11,000 per violation per day or per flight.
49 U.S.C. 463(a)(3)(B) (1988).	Violations of FAA statute or regulations involving the registration or recordation under chapter 441 of aircraft not used to provide air transportation.	N/A	N/A	$10,000 per violation per day or per flight.	$11,000 per violation per day or per flight.
49 U.S.C. 46301(b) (1987).	Tampering with a smoke alarm device.	N/A	N/A	$2,000 per violation	$2,200 per violation.
49 U.S.C. 46302 (1984)	Knowingly providing false information about alleged violations involving the special aircraft jurisdiction of the United States.	N/A	N/A	$10,000 per violation	$11,000 per violation.
49 U.S.C. 46303 (1984)	Carrying a concealed deadly or dangerous weapon.	N/A	N/A	$10,000 per violation	$11,000 per violation.

Issued in Washington, DC on January 23, 1997.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 97–2244 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 27

[Docket No. 97–ASW–1; Special Condition 27–ASW–4]

Special Condition: McDonnell Douglas Helicopter Systems Model MD–600N Helicopter

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for McDonnell Douglas Helicopter Systems (MDHS) Model MD–600N helicopter. This helicopter will have a novel or unusual design feature associated with the Full Authority Digital Engine Control (FADEC). The applicable airworthiness regulations do not contain appropriate safety standards to protect systems that perform critical functions from the effects of high-intensity radiated fields (HIRF). This special condition contains additional

safety standards that the Administrator considers necessary to ensure that critical functions of systems will be maintained when exposed to HIRF.

DATES: Effective January 29, 1997. Comments for inclusion in the Rules Docket must be received by April 29, 1997.

ADDRESSES: Comments may be mailed in duplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attn: Rules Docket No. 97–ASW–1, Fort Worth, Texas 76193–0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Fort Worth, Texas 76137. Comments must be marked Docket No. 97–ASW–1. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 9 a.m. and 3 p.m.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, FAA, Rotorcraft Standards Staff, Regulations Group, Fort Worth, Texas 76193–0110; telephone (817) 624–5121.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly further delay issuance of the approval design and thus delay delivery of the affected helicopter. Reaching agreement on the certification basis has delayed issuance of this special condition. These notice and comment procedures are also considered unnecessary since the public has been previously provided with a substantial number of opportunities to comment on substantially identical special conditions, and their comments have been fully considered. Therefore, good cause exists for making this special condition effective upon issuance.

Comments Invited

Although this final special condition was not subject to notice and opportunity for prior public comment, comments are invited on this final special condition. Interested persons are invited to comment by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered. This special condition may be changed in light of comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this special condition must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–ASW–1.'' The postcard will be date and time stamped and returned to the commenter.

Background

On April 7, 1995, MDHS, located in Mesa, Arizona, made application to the FAA to amend Type Certificate (TC) H3WE to include the Model MD–600N helicopter.

Type Certification Basis

Based upon the criteria of 14 CFR part 21 (part 21), Subpart B, § 21.19, the FAA will approve design of the MD–600N model helicopter as an amendment to TC H3WE, and a new TC will not be required. The certification basis for the MD–600N will be part 27, as amended by Amendments 27–1 through 27–30, except as more specifically stated as follows:

Section 27.561 as amended through Amendment 24
Section 27.562 as amended through Amendment 25
Section 27.607 as amended through Amendment 3
Section 27.785 as amended through Amendment 20
Section 27.863 as amended through Amendment 16
Section 27.1325 as amended through Amendment 12

The Model MD–600N will use digital electronics in systems such as the FADEC, which make the rotorcraft vulnerable to HIRF. The existing airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of HIRF external to the helicopter; therefore, a special condition is required; reference FAA Policy Memorandums dated December 5, 1989, January 30, 1990, March 8, 1991, and July 29, 1992.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an aircraft or installation. Special conditions, as appropriate, are issued in accordance with § 11.49 and will become a part of the type certification basis, as provided by § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate (STC) to modify any other model included on the same TC 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).

Discussion

The MDHS Model MD–600N, at the time of application, incorporated one and possibly more electrical/electronic systems, such as FADEC, that will be performing functions critical to the continued safe flight and landing of the helicopter. FADEC is an electronic device that performs the functions of engine control during visual flight rules (VFR) and instrument flight rules (IFR) operations in instrument meteorological conditions. After the MD–600N design is finalized, MDHS will provide the FAA with a hazard analysis that will identify any other critical functions, required for continued safe flight and landing, performed by the electrical/electronic systems.

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform critical functions. These advanced systems are responsive to the transient effects of induced electrical current and voltage caused by HIRF incident on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of the § 27.1309(a) requirement. Higher energy levels radiate from operational transmitters that are currently used for radar, radio, and television. Also, the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electronic systems when they were exposed to electromagnetic radiation.

The combined effects of the technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic

systems required for the continued safe flight and landing of the helicopter. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following primary factors contributed to the current conditions: (1) increased use of sensitive electronics that perform critical functions, (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials; (3) adverse service experience of military aircraft using these technologies, and (4) an increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with the developments in technology and environment and, in 1986, initiated a high priority program to (1) determine and define the electromagnetic energy levels; (2) develop and describe guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards.

The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have identified a level of HIRF environment that a helicopter could be exposed to during IFR operations. While the HIRF requirements are being finalized, the FAA is adopting special conditions for the certification of aircraft that employ electrical/electronic systems performing critical functions. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operations are based on surveys and analysis of existing radio frequency emitters. These external threat levels are believed to represent the worst-case exposure for a helicopter operating under IFR.

The specified HIRF environment is based on many critical assumptions. With the exception of takeoff and landing at an airport, one of these assumptions is that the aircraft would be not less than 500 feet above ground level (AGL). Helicopters operating under visual flight rules (VFR) routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed the defined environment by 100 percent or more.

This special condition will require the systems that perform critical functions, as installed in aircraft, to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests.

The applicant may demonstrate that the operation and operational capabilities of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment. The FAA has determined that the environment defined in Table I is acceptable for critical functions in helicopters operating at or above 500 feet AGL. For critical functions in helicopters operating at altitudes less than 500 feet AGL, additional considerations must be given.The applicant may demonstrate by a laboratory test that the electrical/electronic systems that perform critical functions withstand a peak electromagnetic field strength in a frequency range of 10 KHz to 18 GHz. If a laboratory test is used to show compliance with the HIRF requirements, no credit would be given for signal attenuation due to installation. A level of 100 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are appropriate for critical functions during IFR operations. A level of 200 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are more appropriate for critical functions during VFR operations.

For helicopters, the primary electronic flight displays are critical for IFR operations and a FADEC is an example of a critical functioning system for all operations (both IFR and VFR).

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical/electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis that perform critical functions are the ones that are required to have HIRF protection.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indication. HIRF requirements would only apply to the critical functions.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to the HIRF environmental condition. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be concurrently exposed to the fields.

The modulation should be selected for the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to 400 Hz sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KHz sine wave with 80 percent depth of modulation in the frequency range from 10 KHz to 400 MHz and 1 KHz square wave with greater than 90 percent depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specification may be acceptable but must be independently assessed by the FAA on a case-by-case basis.

TABLE 1.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

As discussed above, this special condition would be applicable to the

Model MD600N helicopter, modified by MDHS. Should MDHS apply at a later date for a STC to modify any other model on TC H3WE to incorporate 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).

Conclusion

This action affects only certain unusual or novel design features on one series of helicopters. It is not a rule of general applicability and will affect only the manufacturer who applied to the FAA for approval of these features on the affected helicopters.

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

List of Subjects in 14 CFR Parts 21 and 27

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 *et seq.*: E.O. 11541; 49 U.S.C. 106(g).

The Final Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the supplemental type certification bases for the McDonnell Douglas Helicopter Systems Model MD–600N helicopter.

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on January 21, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate Aircraft Certification Service.

[FR Doc. 97–2243 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–CE–38–AD; Amendment 39–9908; AD 97–03–02]

RIN 2120–AA64

Airworthiness Directives; Glasflugel Models H301 ''Libelle'', H301B ''Libelle'', Standard ''Libelle'', Standard Libelle 201B, Club Libelle 205, and Kestrel Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Glasflugel Models H301 ''Libelle'', H301B ''Libelle'', Standard ''Libelle'', Standard Libelle 201B, Club Libelle 205, and Kestrel sailplanes. This AD requires measuring and adjusting the control surface weight and static moment, and inserting amendments into the Glasflugel Flight and Service Manual. This AD results from reports of considerable variation of the weight and static moment of the control surface on the affected sailplanes found during repair or repainting of the control surface. The actions specified by this AD are intended to prevent sailplane flutter because the weight and static moment of the control surface are not within certain limits, which could result in flutter and subsequent loss of control of the sailplane.

DATES: Effective March 21, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Glasflugel, c/o Hr. H. Streifeneder, Glasfaser-Flugzeug-Service GmbH, Hofener Weg, D–72582 Grabenstetten, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–38–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Glasflugel Models H301 ''Libelle'', H301B ''Libelle'', Standard ''Libelle'', Standard Libelle 201B, Club Libelle 205, and Kestrel sailplanes was published in the Federal Register on October 15, 1996 (61 FR 53683). The action proposed to require measuring and adjusting the control surface weight and static moment, and inserting the following amendments into the Glasflugel Flight and Service Manual, as applicable:

Sailplane models	Glasflugel Flight and Service Manual amendment page numbers
H301 Libelle and H301B Libelle.	pages 14a and 14b.
Standard Libelle	pages E14a and E14b.
Standard Libelle 201B	pages E15a and E15b.
Club Libelle 205	pages 42a and 42b.
Kestrel	pages 27a and 27b.

Accomplishment of the proposed action as specified in the notice of proposed rulemaking (NPRM) would be in accordance with the instructions in the above-referenced Glasflugel Flight and Service Manual amendments.

The NPRM resulted from reports of considerable variation of the weight and static moment of the control surface on the affected sailplanes found during repair or repainting of the control surface.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed AD or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD

and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The compliance time for this AD is presented in calendar time and whenever the control surface is repaired or repainted (the prevalent one being that which occurs first). The FAA has determined that a calendar time for compliance is desirable because the unsafe condition described by this AD is not directly related to sailplane operation. The control surface weight and static moment could become outside the specified limits after repair or repainting instead of occurring during normal operation of the sailplane. Also, if the sailplane control surface is already scheduled for repair or repainting, then accomplishing this action at the time of repair or repainting will not force the owner/operator to schedule this action at a later time and will allow the action to be accomplished during already-scheduled maintenance.

Cost Impact

The FAA estimates that 174 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per sailplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Material to accomplish the surface control weight and static moment balance costs approximately $10 per sailplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,180. This figure only takes into account the one-time measurement and adjustment of the control surface weight and static moment; it does not reflect the time it would take an owner/operator of an affected sailplane to insert the amendments into the Glasflugel Flight and Service Manual.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–03–02 Glasflugel: Amendment 39–9908; Docket No. 96–CE–38–AD.

Applicability: Models H301 ''Libelle'', H301B ''Libelle'', Standard ''Libelle'', Standard Libelle 201B, Club Libelle 205, and Kestrel sailplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next three calendar months after the effective date of this AD or at the time of any repair to or repainting of the control surface, whichever occurs first, unless already accomplished.

To prevent sailplane flutter because the weight and static moment of the control surface are not within certain limits, which could result loss of control of the sailplane, accomplish the following:

(a) Measure and adjust the control surface weight and static moment in accordance with the Glasflugel Flight and Service Manual amendments referenced in paragraph (b) of this AD.

(b) Insert the following amendments into the sailplane maintenance manual, as applicable:

Sailplane models	Glasflugel Flight and Service Manual amendment page numbers
H301 Libelle and H301B Libelle.	pages 14a and 14b.
Standard Libelle	pages E14a and E14b.
Standard Libelle 201B	pages E15a and E15b.
Club Libelle 205	pages 42a and 42b.
Kestrel	pages 27a and 27b.

(c) Inserting the amendments into the Glasflugel Flight and Service Manual as required by paragraph (b) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) The inspections required by this AD shall be done in accordance with the following Glasflugel Flight and Service Manual amendments, as applicable:

Sailplane models	Glasflugel Flight and Service Manual amendment page numbers	Manual date
11H301 Libelle and H301B Libelle.	pages 14a and 14b.	May 1965.
Standard Libelle.	pages E14a and E14b.	October 1968.
Standard Libelle 201B.	pages E15a and E15b.	July 1972.

Sailplane models	Glasflugel Flight and Service Manual amendment page numbers	Manual date
Club Libelle 205.	pages 42a and 42b.	October 1974.
Kestrel	pages 27a and 27b.	April 1971.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Glasflugel, c/o Hr. H. Streifeneder, Glasfaser-Flugzeug-Service GmbH, Hofener Weg, D–72582 Grabenstetten, Germany. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–9908) becomes effective on March 21, 1997.

Issued in Kansas City, Missouri, on January 21, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–2105 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–ANM–23]

Removal of Class D Airspace and Establishment of Class E Airspace; Coeur d'Alene, Idaho

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class D airspace and establishes Class E airspace at Coeur d'Alene, Idaho. This action is the result of decommissioning the air traffic control tower at Coeur d'Alene Air Terminal, Idaho. This amendment brings publications up-to-date giving continuous information to the aviation public.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–532.2, Federal Aviation Administration, Docket No. 96–ANM–23, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

History

On September 9, 1996, the FAA proposed to amend part 71 of Federal Aviation Regulations (14 CFR part 71) by removing Class D airspace and establishing Class E airspace at Coeur d'Alene, Idaho (61 FR 47465). On December 2, 1996, Supplemental Notice of Proposed Rulemaking was published to correct errors and omissions discovered in the September 9, 1996, publication (61 FR 63764). Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace is published in Paragraph 6002 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 will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations removes Class D airspace, along with the associated Class E4 airspace designation, and establishes Class E airspace at Coeur d'Alene, Idaho. 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. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, 14 CFR part 71 is amended 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 5000 Class D Airspace.

* * * * *

ANM ID D Coeur d'Alene, ID [Remove]

* * * * *

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

* * * * *

ANM ID E4 Coeur d'Alene, ID [Remove]

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Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ANM ID E2 Coeur d'Alene, ID [New]

Coeur d'Alene Air Terminal, ID
(Lat. 47°46′28″N, long 116°49′11″W)
Coeur d'Alene VOR/DME
(Lat. 47°46′25″N, long. 116°49′14″W)

Within a 4.4-mile radius of the Coeur d'Alene Air Terminal, and within 3.5 miles each side of the Coeur d'Alene VOR/DME 251 degree radial extending from the 4.4-mile radius to 6 miles southwest of the airport and within 1.8 miles each side of the Coeur d'Alene VOR/DME 183 degree radial extending from the 4.4-mile radius to 8 miles south of the airport. This Class E airspace is effective during the specific dates and times established in advance by a notice to airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on January 13, 1997.

Glenn A. Adams,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–2090 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ANM–010]

Amendment of Class E Airspace; Holyoke, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Holyoke, Colorado, Class E airspace to accommodate Global Positioning System (GPS) and Nondirectional Beacon (NDB) Standard Instrument Approach Procedures (SIAP) to the Holyoke Airport.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT:

James C. Frala, Operations Branch, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–010, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On November 13, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Holyoke, Colorado, to accommodate a new GPS SIAP and a NDB SIAP to the Holyoke Airport (61 FR 58150).

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E 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 listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E airspace at Holyoke, Colorado. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 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 areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Holyoke, CO [Revised]

Holyoke Airport, CO
(Lat. 40°34′37″ N, long. 102°16′42″ W)

That airspace extending upward from 700 feet above the surface with a 7.5-mile radius of the Holyoke Airport, and within 4.5 miles west and 8 miles east of the 023° bearing from the Holyoke Airport extending from the 7.5-mile radius to 17 miles north, and within 5 miles west and 8 miles east of the 180° bearing from the Holyoke Airport extending from the 7.5-mile radius to 22 miles south.

* * * * *

Issued in Seattle, Washington, on January 13, 1997.

Glenn A. Adam,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–2091 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 96–ASO–31]

RIN 2120–AA66

Change Controlling Agency for Restricted Areas 2905A (R–2905A) and R–2905B, Tyndall Air Force Base (AFB), FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the designated controlling agency for Restricted Areas R–2905A and R–2905B, Tyndall AFB, FL, from ''FAA, Jacksonville ARTCC'' to ''Tyndall Radar Approach Control.''

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

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

SUPPLEMENTARY INFORMATION:

Background

Restricted Areas R–2905A and R–2905B lie within the confines of airspace delegated to Tyndall Radar Approach Control. It is necessary to change the designated controlling agency to reflect current airspace areas of responsibility.

The Amendment

This amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) changes the designated controlling agency for R–2905A and R–2905B, Tyndall AFB, FL, from ''FAA, Jacksonville ARTCC'' to ''Tyndall Radar Approach Control.''

Since this action simply changes the published controlling agency, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.29 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8D dated July 11, 1996.

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

Environmental Review

This action is a minor administrative change amending the published controlling agency for Restricted Areas R–2905A and R–2905B. There are no changes to air traffic control procedures or routes as a result of this action. Also, there are no changes to the dimensions of type of activity conducted in these areas as a result of this action. Therefore, this action is not subject to environmental assessments and procedures under FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,''

and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 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.

§ 73.29 [Amended]

2. Section 73.53 is amended as follows:

R–2905A Tyndall AFB, FL [Amended]

By removing the current controlling agency and substituting the following:

''Controlling agency. Tyndall Radar Approach Control.''

R–2905B Tyndall AFB, FL [Amended]

By removing the current controlling agency and substituting the following:

''Controlling agency. Tyndall Radar Approach Control.''

Issued in Washington, DC, on January 22, 1997.

Jeff Griffith,

Program Director for Air Traffic Airspace Management.

[FR Doc. 97–2241 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 73

[Airspace Docket No. 95–ANM–28]

Amendment to Restricted Area R–2601 Fort Carson, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action subdivides Restricted Area 2601 (R–2601) Fort Carson, CO, into four separate areas to permit more efficient use of the airspace and reduces the time of designation. R–2601A is designated from the surface to but not including 12,500 feet mean sea level (MSL); R–2601B is designated from 12,500 feet MSL to but not including 22,500 feet MSL; R–2601C is designated from 22,500 feet MSL to but not including 35,000 feet MSL; and, R–2601D is designated from 35,000 feet MSL to but not including 60,000 feet MSL. This subdivision of the restricted area utilizes the existing lateral boundaries of R–2601. No new restricted airspace is established by this action.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

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

SUPPLEMENTARY INFORMATION:

Background

As a result of a Department of Army review of restricted area utilization and operational requirements at Fort Carson, CO, the U.S. Army has requested changes in the Fort Carson restricted airspace. These changes affect only the internal boundaries and enhances efficient airspace utilization. The coordinates for this airspace docket are based on North American Datum 83. Section 73.26 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8D dated July 11, 1996.

The Rule

This amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) subdivides R–2601, Fort Carson, CO, into four separate areas to permit more efficient utilization of airspace. Currently, R–2601 extends from the surface to 60,000 feet MSL, with a time of designation of ''continuous'' to 35,000 feet and by a Notice to Airmen (NOTAM) to 60,000 feet. The using agency has determined that the majority of mission activities currently do not require restricted airspace above 12,500 feet MSL. Certain activities, however, still require a ceiling for restricted airspace up to 60,000 feet MSL, but not on a ''continuous'' basis. This amendment will subdivide the existing R–2601 as follows: R–2601A is designated from the surface to but not including 12,500 feet MSL from 0500 to 2400 hours, Monday through Friday; other times by NOTAM one hour in advance. R–2601B is designated from 12,500 feet MSL to but not including 22,500 feet MSL by NOTAM one hour in advance, R–2601C from 22,500 to but not including 35,000 feet MSL, by NOTAM 24 hours in advance and R–2601D from 35,000 MSL to but not including 60,000 feet MSL by NOTAM 24 hours in advance. This change enables the using agency to accomplish its mission while improving the capability to activate only the minimum amount of restricted airspace necessary for that mission. There is no change to the lateral boundaries or activities conducted in the existing area. This action affects only the internal subdivision of an existing restricted area and enhances efficient airspace utilization. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary since this action is a minor amendment in which the public would not be particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Section 73.26 of the Federal Aviation Regulations was published in FAA Order 7400.8D dated July 11, 1996.

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

Environmental Review

This action internally subdivides an existing restricted area and does not affect the lateral boundaries or overall vertical limits of restricted airspace. There are no changes to air traffic control procedures, and routes, or the type of activity conducted within these boundaries as a result of this amendment. Therefore, this action is not subject to environmental assessments and procedures under FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 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.

§ 73.26 [Amended]

2. Section 73.26 is amended as follows:

R–2601 Fort Carson, CO [Removed]

R–2601A Fort Carson, CO [New]

Boundaries. Beginning at lat. 38°38′19″ N., long. 104°52′02″ W.; to lat. 38°42′40″ N., long. 104°49′06″ W.; to lat. 38°41′20″ N., long. 104°47′02″ W.; to lat. 38°40′15″ N., long. 104°46′22″ W.; to lat. 38°40′00″ N., long. 104°45′42″ W.; to lat. 38°32′06″ N., long. 104°45′02″ W.; to lat. 38°25′35″ N., long. 104°45′02″ W.; to lat. 38°25′35″ N., long. 104°49′02″ W.; to lat. 38°26′10″ N., long. 104°49′02″ W.; to lat. 38°26′08″ N., long. 104°57′32″ W.; to lat. 38°29′35″ N., long. 104°57′32″ W.; thence northeast along Colorado Highway 115, to the point of beginning.

Altitudes. Surface to but not including 12,500 feet MSL.

Time of designation. 0500 to 2400 hours local Monday–Friday other times by NOTAM 1 hour in advance.

Controlling agency. FAA, Denver ARTCC.

Using agency. Commanding General, Fort Carson, CO.

R–2601B Fort Carson, CO [New]

Boundaries. Beginning at lat. 38°38′19″ N., long. 104°52′02″ W.; to lat. 38°42′40″ N., long. 104°49′06″ W.; to lat. 38°41′20″ N., long. 104°47′02″ W.; to lat. 38°40′15″ N., long. 104°46′22″ W.; to lat. 38°40′00″ N., long. 104°45′42″ W.; to lat. 38°32′06″ N., long. 104°45′02″ W.; to lat. 38°25′35″ N., long. 104°45′02″ W.; to lat. 38°25′35″ N., long. 104°49′02″ W.; to lat. 38°26′10″ N., long. 104°49′02″ W.; to lat. 38°26′08″ N., long. 104°57′32″ W.; to lat. 38°29′35″ N., long. 104°57′32″ W.; thence northeast along Colorado Highway 115, to the point of beginning.

Altitudes. 12,500 feet MSL to but not including 22,500 feet MSL.

Time of designation. By NOTAM 1 hour in advance.

Controlling agency. FAA, Denver ARTCC.

Using agency. Commanding General, Fort Carson, CO.

R–2601C Fort Carson, CO [New]

Boundaries. Beginning at lat. 38°38′19″ N., long. 104°52′02″ W.; to lat. 38°42′40″ N., long. 104°49′06″ W.; to lat. 38°41′20″ N., long. 104°47′02″ W.; to lat. 38°40′15″ N., long. 104°46′22″ W.; to lat. 38°40′00″ N., long. 104°45′42″ W.; to lat. 38°32′06″ N., long. 104°45′02″ W.; to lat. 38°25′35″ N., long. 104°45′02″ W.; to lat. 38°25′35″ N., long. 104°49′02″ W.; to lat. 38°26′10″ N., long. 104°49′02″ W.; to lat. 38°26′08″ N., long. 104°57′32″ W.; to lat. 38°29′35″ N., long. 104°57′32″ W.; thence northeast along Colorado Highway 115, to the point of beginning.

Altitudes. 22,500 feet MSL to but not including 35,000 MSL.

Time of designation. By NOTAM 24 hours in advance.

Controlling agency. FAA, Denver ARTCC.

Using agency. Commanding General, Fort Carson, CO.

R–2601D Fort Carson, CO [New]

Boundaries. Beginning at lat. 38°38′19″ N., long. 104°52′02″ W.; to lat. 38°42′40″ N., long. 104°49′06″ W.; to lat. 38°41′20″ N., long. 104°47′02″ W.; to lat. 38°40′15″ N., long. 104°46′22″ W.; to lat. 38°40′00″ N., long. 104°45′42″ W.; to lat. 38°32′06″ N., long. 104°45′02″ W.; to lat. 38°25′35″ N., long. 104°45′02″ W.; to lat. 38°25′35″ N., long. 104°49′02″ W.; to lat. 38°26′10″ N., long. 104°49′02″ W.; to lat. 38°26′08″ N., long. 104°57′32″ W.; to lat. 38°29′35″ N., long. 104°57′32″ W.; thence northeast along Colorado Highway 115, to the point of beginning.

Altitudes. 35.000 feet MSL to but not including 60,000 feet MSL.

Time of designation. By NOTAM 24 hours in advance.

Controlling agency. FAA, Denver ARTCC.

Using agency. Commanding General, Fort Carson, CO.

Issued in Washington, DC, on January 22, 1997.

Jeff Griffith,

Program Director for Air Traffic Airspace Management.

[FR Doc. 97–2242 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 401, 402, and 422

RIN 0960–AE24

Privacy and Disclosure of Official Records and Information; Availability of Information and Records to the Public

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: The Social Security Administration (SSA) was formerly an operating division of the Department of Health and Human Services (HHS). Under that organizational structure, SSA followed the HHS regulations on privacy (45 CFR part 5b) as supplemented by regulations specific to SSA included in 20 CFR part 401, ''Disclosure of Official Records and Information'' and the HHS regulations on freedom of information (45 CFR part 5) as supplemented by specific rules on availability of information to the public (20 CFR part 422, subpart E). However, SSA became an independent agency on March 31, 1995. Accordingly, we are promulgating our own regulations on privacy and on availability of information by duplicating much of the HHS regulations on privacy and on freedom of information and merging them with our regulations on disclosure and availability of information. No substantive changes are intended. This will result in a revised part 401 in 20 CFR and a new part 402 in 20 CFR which will include our rules implementing the Privacy Act and our rules on disclosure. These new rules will be independent of HHS regulations, and will enable us to remove our availability regulations from 20 CFR part 422, subpart E.

EFFECTIVE DATE: These regulations are effective January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1762 for information about these rules. For information on eligibility or claiming benefits, call our national toll-free number 1–800–772–1213.

SUPPLEMENTARY INFORMATION: Public Law 103–296, the Social Security Independence and Program Improvements Act of 1994, established SSA as an independent agency apart from HHS. Section 106(b) of that Act provides that all rules and regulations issued for functions which were exercised by the Secretary of Health and Human Services and are now vested in the Commissioner of Social Security continue in effect until modified by the Commissioner.

Disclosure of Official Records and Information

HHS Regulations at 45 CFR part 5b contain rules that SSA follows in administering the Privacy Act. 20 CFR part 401, ''Disclosure of Official Records and Information,'' includes rules specific to SSA which supplement these HHS regulations. Now that SSA is an independent agency, we are publishing regulations which modify HHS regulations to reflect only structural and procedural differences between the two agencies. Thus the new regulations, which are a revised part 401 of 20 CFR, duplicate much of the existing 45 CFR part 5b and 20 CFR part 401.

In this revised part 401, we clarify existing rules in 20 CFR and 45 CFR by replacing the passive voice with the active and by relocating and redesignating some text. Additionally, we have not carried over text in 45 CFR part 5b which does not pertain to SSA.

We have not duplicated 45 CFR 5b.12(c) because it pertains to contracts amended by July 1, 1976 and is therefore obsolete. We have not included Appendix B to part 5b because it is obsolete. As required by the Privacy Act, SSA currently publishes in the Federal Register comprehensive routine use disclosures for each of the systems of records it maintains.

Availability of Information and Records to the Public

Regulations at 45 CFR part 5 contain the rules that HHS follows in handling requests for records under the Freedom of Information Act. These regulations

are supplemented by HHS regulations specific to SSA at 20 CFR part 422, subpart E on the availability of SSA records to the public. We have other regulations, i.e., 20 CFR part 401, which provide rules we follow in deciding whether we can disclose or provide access to personal information in SSA's benefit records.

Now that SSA is an independent agency, we are publishing regulations which modify HHS regulations to reflect only structural and procedural differences between the two agencies. Thus the subject regulations, which are a new part 402 of 20 CFR, duplicate much of the existing 45 CFR part 5 and 20 CFR part 422, subpart E. Since these new regulations adopt all the necessary provisions of subpart E, we are removing that subpart.

In this new part 402, we clarify existing rules in 20 CFR and 45 CFR by replacing the passive voice with the active and by relocating and redesignating some text. Additionally, we have not duplicated text in 45 CFR part 5 which does not pertain to SSA, e.g., 45 CFR 5.3 on the scope of the HHS Freedom of Information regulations.

In the new sections 402.35 and 402.50, we are updating the existing 20 CFR 422.406(a)(4) to indicate that the listing of administrative staff manuals and instructions to staff that affect the public are no longer published in the Social Security Rulings, but are published in the Index of Administrative Staff Manuals and Instructions which is available for inspection at social security offices.

In the new section 402.135, we are not including the current section 422.428 reference to the HHS Regional Office Public Affairs Directors because those individuals are no longer involved in the processing of requests for SSA records.

The existing section 422.444 shows the Director, Office of Public Inquiries as the official who may deny a request for records. Since that official no longer has such responsibility, the new section 402.190 shows the Director, Office of Disclosure Policy as the appropriate official.

Regulatory Procedures

As authorized by 5 U.S.C. 553(d)(3), we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule. As explained above, these regulations do no more than merge existing HHS and SSA regulations and create new rules by merging existing HHS and SSA regulations without any substantive changes. Thus, we find that it is in the public interest to make these regulations effective upon publication.

Justification for Final Rules

When required, we follow the notice of proposed rulemaking and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553. The APA provides exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553 (b)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures in this case. We are duplicating, without substantive change, much of the existing regulations on the Privacy Act, disclosure of official records and information, the Freedom of Information Act and availability of information, and are merging those materials into a revised part and a new CFR part. Therefore, opportunity for prior comment is unnecessary and we are issuing revised part 401 and a new part 402 to 20 CFR as final rules.

Executive Order No. 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires the preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. These regulations restate existing policies and procedures on availability of information to the public and do not contain any new policies or procedures which would impact the public. Therefore, the undersigned hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities in accordance with 5 U.S.C. 605(b). Thus, a regulatory flexibility analysis has not been prepared.

Paperwork Reduction Act

This final rule contains reporting requirements in part 401, §§ 401.40, 401.55, 401.65, and reporting/recordkeeping requirements in § 401.100. There are also reporting requirements in part 402, §§ 402.130 and 402.185. We have submitted these collection requirements to OMB for its review under section 3507(d) of the Paperwork Reduction Act of 1995.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004 Social Security-Survivors Insurance; 96.006 Supplemental Security Income)

List of Subjects

20 CFR Part 401

Administrative practice and procedure, Archives and records, Privacy Act.

20 CFR Part 402

Administrative practice and procedure, Archives and records, Freedom of information.

20 CFR Part 422

Administrative practice and procedure, Freedom of information, Privact Act.

Dated: January 7, 1997.

Shirley Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, 20 CFR chapter III is amended as follows:

1. Part 401 is revised to read as follows:

PART 401—PRIVACY AND DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

Subpart A—General

Sec.
401.5 Purpose.
401.10 Applicability.
401.15 Limitations on scope.
401.20 Scope.
401.25 Terms defined.

Subpart B—The Privacy Act

401.30 Privacy Act responsibilities.
401.35 Your right to request records.
401.40 How to get your own records.
401.45 Verifying your identity.
401.50 Granting notification of or access to a record.
401.55 Special procedures for notification of or access to medical records.
401.60 Access or notification of program records about two or more individuals.
401.65 How to correct your record.
401.70 Appeals of refusals to correct or amend records.
401.75 Rights of parents or legal guardians.
401.80 Accounting for disclosures.
401.85 Exempt systems.
401.90 Contractors.
401.95 Fees.

Subpart C—Disclosure of Official Records and Information

401.100 Disclosure of records with the consent of the subject of the record.
401.105 Disclosure of personal information without the consent of the subject of the record.
401.110 Disclosure of personal information in nonprogram records without the consent of the subject of the record.

401.115 Disclosure of personal information in program records without the consent of the subject of the record.
401.120 Disclosures required by law.
401.125 Disclosures prohibited by law.
401.130 Freedom of Information Act.
401.135 Other laws.
401.140 General principles.
401.145 Safeguards against unauthorized redisclosure or use.
401.150 Compatible purposes.
401.155 Law enforcement purposes.
401.160 Health or safety.
401.165 Statistical and research activities.
401.170 Congress.
401.175 General Accounting Office.
401.180 Courts.
401.185 Other specific recipients.
401.190 Deceased persons.
401.195 Situations not specified in this part.
401.200 Blood donor locator service.

Appendix A to Part 401—Employee Standards of Conduct

Authority: Secs. 205, 702(a)(5), 1106, and 1141 of the Social Security Act (42 U.S.C. 405, 902(a)(5), 1306, and 1320b–11); 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 26 U.S.C. 6103; 30 U.S.C. 923.

Subpart A—General

§ 401.5 Purpose of the regulations.

(a) *General.* The purpose of this part is to describe the Social Security Administration (SSA) policies and procedures for implementing the requirements of the Privacy Act of 1974, 5 U.S.C. 552a and section 1106 of the Social Security Act concerning disclosure of information about individuals, both with and without their consent. This part also complies with other applicable statutes.

(b) *Privacy.* This part implements the Privacy Act by establishing agency policies and procedures for the maintenance of records. This part also establishes agency policies and procedures under which you can ask us whether we maintain records about you or obtain access to your records. Additionally, this part establishes policies and procedures under which you may seek to have your record corrected or amended if you believe that your record is not accurate, timely, complete, or relevant.

(c) *Disclosure.* This part also sets out the general guidelines which we follow in deciding whether to make disclosures. However, we must examine the facts of each case separately to decide if we should disclose the information or keep it confidential.

§ 401.10 Applicability.

(a) *SSA.* All SSA employees and components are governed by this part. SSA employees governed by this part include all regular and special government employees of SSA; experts and consultants whose temporary (not in excess of 1 year) or intermittent services have been procured by SSA by contract pursuant to 5 U.S.C. 3109; volunteers where acceptance of their services are authorized by law; those individuals performing gratuitous services as permitted under conditions prescribed by the Office of Personnel Management; and, participants in work-study or training programs.

(b) *Other entities.* This part also applies to advisory committees and councils within the meaning of the Federal Advisory Committee Act which provide advice to: Any official or component of SSA; or the President and for which SSA has been delegated responsibility for providing services.

§ 401.15 Limitations on scope.

The regulations in this part do not—

(a) Make available to an individual records which are not retrieved by that individual's name or other personal identifier.

(b) Make available to the general public records which are retrieved by an individual's name or other personal identifier or make available to the general public records which would otherwise not be available to the general public under the Freedom of Information Act, 5 U.S.C. 552, and part 402 of this title.

(c) Govern the maintenance or disclosure of, notification about or access to, records in the possession of SSA which are subject to the regulations of another agency, such as personnel records which are part of a system of records administered by the Office of Personnel Management.

(d) Apply to grantees, including State and local governments or subdivisions thereof, administering federally funded programs.

(e) Make available records compiled by SSA in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, rules of discovery, and applicable regulations of the agency.

§ 401.20 Scope.

(a) *Privacy.* Sections 401.30 through 401.95, which set out SSA's rules for implementing the Privacy Act, apply to all agency records accessed by an individual's name or personal identifier subject to the Privacy Act.

(b) *Disclosure*—(1) *Program records.* Regulations that apply to the disclosure of information about an individual contained in SSA's program records are set out in §§ 401.100 through 401.103 and 401.115 through 401.195. These regulations also apply to the disclosure of other Federal program information which SSA maintains. That information includes:

(i) Health insurance records which SSA maintains for the Health Care Financing Administration's (HCFA) programs under title XVIII of the Social Security Act. We will disclose these records to HCFA. HCFA may redisclose these records under the regulations applying to records in HCFA's custody;

(ii) Black lung benefit records which SSA maintains for the administration of the Federal Coal Mine Health and Safety Act; (However, this information is not covered by section 1106 of the Social Security Act.) and

(iii) Records kept by consultants. Information retained by a medical, psychological or vocational professional concerning an examination performed under contract in the social security program shall not be disclosed except as permitted by this part.

(2) *Nonprogram records.* Section 401.110 sets out rules applicable to the disclosure of nonprogram records, e.g., SSA's administrative and personnel records.

§ 401.25 Terms defined.

Access means making a record available to a subject individual.

Act means the Social Security Act.

Agency means the Social Security Administration.

Commissioner means the Commissioner of Social Security.

Disclosure means making a record about an individual available to or releasing it to another party.

FOIA means the Freedom of Information Act.

Individual when used in connection with the Privacy Act or for disclosure of nonprogram records, means a living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. It does not include persons such as sole proprietorships, partnerships, or corporations. A business firm which is identified by the name of one or more persons is not an individual. When used in connection with the rules governing program information, *individual* means a living natural person; this does not include corporations, partnerships, and unincorporated business or professional groups of two or more persons.

Information means information about an individual, and includes, but is not limited to, vital statistics; race, sex, or other physical characteristics; earnings information; professional fees paid to an

individual and other financial information; benefit data or other claims information; the social security number, employer identification number, or other individual identifier; address; phone number; medical information, including psychological or psychiatric information or lay information used in a medical determination; and information about marital and family relationships and other personal relationships.

Maintain means to establish, collect, use, or disseminate when used in connection with the term *record*; and, to have control over or responsibility for a system of records when used in connection with the term *system of records.*

Notification means communication to an individual whether he is a subject individual. (*Subject individual* is defined further on in this section.)

Program Information means personal information and records collected and compiled by SSA in order to discharge its responsibilities under titles I, II, IV part A, X, XI, XIV, XVI and XVIII of the Act and parts B and C of the Federal Coal Mine Health and Safety Act.

Record means any item, collection, or grouping of information about an individual that is maintained by SSA including, but not limited to, information such as an individual's education, financial transactions, medical history, and criminal or employment history that contains the individual's name, or an identifying number, symbol, or any other means by which an individual can be identified. When used in this part, record means only a record which is in a system of records.

Routine use means the disclosure of a record outside SSA, without the consent of the subject individual, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statutes other than the Freedom of Information Act, 5 U.S.C. 552. It does not include disclosures which the Privacy Act otherwise permits without the consent of the subject individual and without regard to whether they are compatible with the purpose for which the information is collected, such as disclosures to the Bureau of the Census, the General Accounting Office, or to Congress.

Social Security Administration (SSA) means (1) that Federal agency which has administrative responsibilities under titles, I, II, X, XI, XIV, XVI, and XVIII of the Act; and (2) units of State governments which make determinations under agreements made under sections 221 and 1633 of the Act.

Social Security program means any program or provision of law which SSA is responsible for administering, including the Freedom of Information Act and Privacy Act. This includes our responsibilities under parts B and C of the Federal Coal Mine Health and Safety Act.

Statistical record means a record maintained for statistical research or reporting purposes only and not maintained to make determinations about a particular subject individual.

Subject individual means the person to whom a record pertains.

System of records means a group of records under our control from which information about an individual is retrieved by the name of the individual or by an identifying number, symbol, or other identifying particular. Single records or groups of records which are not retrieved by a personal identifier are not part of a system of records. Papers maintained by individual Agency employees which are prepared, maintained, or discarded at the discretion of the employee and which are not subject to the Federal Records Act, 44 U.S.C. 2901, are not part of a system of records; provided, that such personal papers are not used by the employee or the Agency to determine any rights, benefits, or privileges of individuals.

We and *our* mean the Social Security Administration.

Subpart B—The Privacy Act

§ 401.30 Privacy Act responsibilities.

(a) *Policy.* Our policy is to protect the privacy of individuals to the fullest extent possible while nonetheless permitting the exchange of records required to fulfill our administrative and program responsibilities, and responsibilities for disclosing records which the general public is entitled to have under the Freedom of Information Act, 5 U.S.C. 552, and 20 CFR part 402.

(b) *Maintenance of Records.* We will maintain no record unless:

(1) It is relevant and necessary to accomplish an SSA function which is required to be accomplished by statute or Executive Order;

(2) We obtain the information in the record, as much as it is practicable, from the subject individual if we may use the record to determine an individual's rights, benefits or privileges under Federal programs;

(3) We inform the individual providing the record to us of the authority for our asking him or her to provide the record (including whether providing the record is mandatory or voluntary, the principal purpose for maintaining the record, the routine uses for the record, and what effect his or her refusal to provide the record may have on him or her). Further, the individual agrees to provide the record, if the individual is not required by statute or Executive Order to do so.

(c) *First Amendment rights.* We will keep no record which describes how an individual exercises rights guaranteed by the First Amendment unless we are expressly authorized:

(1) By statute,

(2) By the subject individual, or

(3) Unless pertinent to and within the scope of an authorized law enforcement activity.

§ 401.35 Your right to request records.

The Privacy Act gives you the right to direct access to most records about yourself that are in our systems of records. Exceptions to this Privacy Act right include—

(a) Special procedures for access to certain medical records (see 5 U.S.C. 552a(f)(3) and § 401.55);

(b) Unavailability of certain criminal law enforcement records (see 5 U.S.C. 552a(k), and § 401.85); and

(c) Unavailability of records compiled in reasonable anticipation of a court action or formal administrative proceeding.

Note to § 401.35: The Freedom of Information Act (see 20 CFR part 402) allows you to request information from SSA whether or not it is in a system of records.

§ 401.40 How to get your own records.

(a) *Your right to notification and access.* Subject to the provisions governing medical records in § 401.55, you may ask for notification of or access to any record about yourself that is in an SSA system of records. If you are a minor, you may get information about yourself under the same rules as for an adult. Under the Privacy Act, if you are the parent or guardian of a minor, or the legal guardian of someone who has been declared legally incompetent, and you are acting on his or her behalf, you may ask for information about that individual. You may be accompanied by another individual of your choice when you request access to a record in person, *provided* that you affirmatively authorize the presence of such other individual during any discussion of a record to which you are requesting access.

(b) *Identifying the records.* At the time of your request, you must specify which systems of records you wish to have searched and the records to which you wish to have access. You may also request copies of all or any such records. Also, we may ask you to

provide sufficient particulars to enable us to distinguish between records on individuals with the same name. The necessary particulars are set forth in the notices of systems of records which are published in the Federal Register.

(c) *Requesting notification or access.* To request notification of or access to a record, you may visit your local social security office or write to the manager of the SSA system of records. The name and address of the manager of the system is part of the notice of systems of records. Every local social security office keeps a copy of the Federal Register containing that notice. That office can also help you get access to your record. You do not need to use any special form to ask for a record about you in our files, but your request must give enough identifying information about the record you want to enable us to find your particular record. This identifying information should include the system of records in which the record is located and the name and social security number (or other identifier) under which the record is filed. We do not honor requests for all records, all information, or similar blanket requests. Before granting notification of or access to a record, we may, if you are making your request in person, require you to put your request in writing if you have not already done so.

§ 401.45 Verifying your identity.

(a) *When required.* Unless you are making a request for notification of or access to a record in person, and you are personally known to the SSA representative, you must verify your identity in accordance with paragraph (b) of this section if:

(1) You make a request for notification of a record and we determine that the mere notice of the existence of the record would be a clearly unwarranted invasion of privacy if disclosed to someone other than the subject individual; or,

(2) You make a request for access to a record which is not required to be disclosed to the general public under the Freedom of Information Act, 5 U.S.C. 552, and part 402 of this chapter.

(b) *Manner of verifying identity*—(1) *Request in person.* If you make a request to us in person, you must provide at least one piece of tangible identification such as a driver's license, passport, alien or voter registration card, or union card to verify your identity. If you do not have identification papers to verify your identity, you must certify in writing that you are the individual who you claim to be and that you understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense.

(2) *Request by telephone.* If you make a request by telephone, you must verify your identity by providing identifying particulars which parallel the record to which notification or access is being sought. If we determine that the particulars provided by telephone are insufficient, you will be required to submit your request in writing or in person. We will not accept telephone requests where an individual is requesting notification of or access to sensitive records such as medical records.

(3) *Requests not in person.* Except as provided in paragraph (b)(2) of this section, if you do not make a request in person, you must submit a notarized request to SSA to verify your identity or you must certify in your request that you are the individual you claim to be and that you understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense.

(4) *Requests on behalf of another.* If you make a request on behalf of a minor or legal incompetent as authorized under § 401.40, you must verify your relationship to the minor or legal incompetent, in addition to verifying your own identity, by providing a copy of the minor's birth certificate, a court order, or other competent evidence of guardianship to SSA; except that you are not required to verify your relationship to the minor or legal incompetent when you are not required to verify your own identity or when evidence of your relationship to the minor or legal incompetent has been previously given to SSA.

(5) *Medical records—additional verification.* You need to further verify your identity if you are requesting notification of or access to sensitive records such as medical records. Any information for further verification must parallel the information in the record to which notification or access is being sought. Such further verification may include such particulars as the date or place of birth, names of parents, name of employer or the specific times the individual received medical treatment.

§ 401.50 Granting notification of or access to a record.

(a) *General.* Subject to the provisions governing medical records in § 401.55 and the provisions governing exempt systems in § 401.85, upon receipt of your request for notification of or access to a record and verification of your identity, we will review your request and grant notification or access to a record, if you are the subject of the record.

(b) *Our delay in responding.* If we determine that we will have to delay responding to your request because of the number of requests we are processing, a breakdown of equipment, shortage of personnel, storage of records in other locations, etc., we will so inform you and tell you when notification or access will be granted.

§ 401.55 Special procedures for notification of or access to medical records.

(a) *General.* In general, you have a right to notification of or access to your medical records, including psychological records, as well as to other records pertaining to you that we maintain. In this section, we set forth special procedures as permitted by the Privacy Act for notification of or access to medical records, including a special procedure for notification of or access to medical records of minors.

(b) *Medical records procedures.*—(1) *Notification of or access to medical records.* (i) You may request notification of or access to a medical record pertaining to you. Unless you are a parent or guardian requesting notification of or access to a minor's medical record, you must make a request for a medical record in accordance with this section and the procedures in §§ 401.45 through 401.50 of this part.

(ii) When you request medical information about yourself, you must also name a representative in writing. The representative may be a physician, other health professional, or other responsible individual who would be willing to review the record and inform you of its contents at your representative's discretion. If you do not designate a representative, we may decline to release the requested information. In some cases, it may be possible to release medical information directly to you rather than to your representative.

(2) *Utilization of the designated representative.* You will be granted direct access to your medical record if we can determine that direct access is not likely to have an adverse effect on you. If we believe that we are not qualified to determine, or if we do determine, that direct access to you is likely to have an adverse effect, the record will be sent to the designated representative. We will inform you in writing that the record has been sent.

(c) *Medical records of minors.*—(1) *Requests by minors; notification of or access to medical records to minors.* A minor may request notification of or

access to a medical record pertaining to him or her in accordance with paragraph (b) of this section.

(2) *Requests on a minor's behalf; notification of or access to medical records to an individual on a minor's behalf.* (i) To protect the privacy of a minor, we will not give to a parent or guardian direct notification of or access to a minor's record, even though the parent or guardian who requests such notification or access is authorized to act on a minor's behalf as provided in § 401.75 of this part.

(ii) A parent or guardian must make all requests for notification of or access to a minor's medical record in accordance with this paragraph and the procedures in §§ 401.45 through 401.50 of this part. A parent or guardian must at the time he or she makes a request designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. If the parent or guardian will not designate a representative, we will decline to release the requested information.

(iii) Where a medical record on the minor exists, we will in all cases send it to the physician or health professional designated by the parent or guardian. If disclosure of the record would constitute an invasion of the minor's privacy, we will bring that fact to the attention of the physician or health professional to whom we send the record. We will ask the physician or health professional to consider the effect that disclosure of the record to the parent or guardian would have on the minor when the physician or health professional determines whether the minor's medical record should be made available to the parent or guardian. We will respond in substantially the following form to the parent or guardian making the request:

We have completed processing your request for notification of or access to _____'s
(Name of minor)
medical records. Please be informed that if any medical record was found pertaining to that individual, it has been sent to your designated physician or health professional.

(iv) In each case where we send a minor's medical record to a physician or health professional, we will make reasonable efforts to inform the minor that we have given the record to the representative.

(d) *Requests on behalf of an incapacitated adult.* If you are the legal guardian of an adult who has been declared legally incompetent, you may receive his or her records directly.

§ 401.60 Access or notification of program records about two or more individuals.

When information about two or more individuals is in one record filed under your social security number, you may receive the information about you and the fact of entitlement and the amount of benefits payable to other persons based on your record. You may receive information about yourself or others, which is filed under someone else's social security number, if that information affects your entitlement to social security benefits or the amount of those benefits.

§ 401.65 How to correct your record.

(a) *How to request a correction.* This section applies to all records kept by SSA (as described in § 401.5) except for records of earnings. (20 CFR 422.125 describes how to request correction of your earnings record.) You may request that your record be corrected or amended if you believe that the record is not accurate, timely, complete, relevant, or necessary to the administration of a social security program. To amend or correct your record, you should write to the manager identified in the notice of systems of records which is published in the Federal Register (see § 401.40(c) on how to locate this information). The staff at any social security office can help you prepare the request. You should submit any available evidence to support your request. Your request should indicate—

(1) The system of records from which the record is retrieved;

(2) The particular record which you want to correct or amend;

(3) Whether you want to add, delete or substitute information in the record; and

(4) Your reasons for believing that your record should be corrected or amended.

(b) *What we will not change.* You cannot use the correction process to alter, delete, or amend information which is part of a determination of fact or which is evidence received in the record of a claim in the administrative appeal process. Disagreements with these determinations are to be resolved through the SSA appeal process. (See subparts I and J of part 404, and subpart N of part 416, of this chapter.) For example, you cannot use the correction process to alter or delete a document showing a birth date used in deciding your social security claim. However, you may submit a statement on why you think certain information should be altered, deleted, or amended, and we will make this statement part of your file.

(c) *Acknowledgment of correction request.* We will acknowledge receipt of a correction request within 10 working days, unless we can review and process the request and give an initial determination of denial or compliance before that time.

(d) *Notice of error.* If the record is wrong, we will correct it promptly. If wrong information was disclosed from the record, we will tell all those of whom we are aware received that information that it was wrong and will give them the correct information. This will not be necessary if the change is not due to an error, e.g., a change of name or address.

(e) *Record found to be correct.* If the record is correct, we will inform you in writing of the reason why we refuse to amend your record and we will also inform you of your right to seek a review of the refusal and the name and address of the official to whom you should send your request for review.

(f) *Record of another government agency.* If you request us to correct or amend a record governed by the regulation of another government agency, e.g., Office of Personnel Management, Federal Bureau of Investigation, we will forward your request to such government agency for processing and we will inform you in writing of the referral.

§ 401.70 Appeals of refusals to correct or amend records.

(a) *Which decisions are covered.* This section describes how to appeal a decision made under the Privacy Act concerning your request for correction of a record or for access to your records, those of your minor child, or those of a person for whom you are the legal guardian. We generally handle a denial of your request for information about another person under the provisions of the FOIA (see part 402 of this chapter). This section applies only to written requests.

(b) *Appeal of refusal to amend or correct a record.* (1) If we deny your request to correct a record, you may request a review of that decision. As discussed in § 401.65(e), our letter denying your request will tell you to whom to write.

(2) We will review your request within 30 working days from the date of receipt. However, for a good reason and with the approval of the Commissioner, or designee, this time limit may be extended up to an additional 30 days. In that case, we will notify you about the delay, the reason for it, and the date when the review is expected to be completed. If, after review, we determine that the record should be

corrected, the record will be corrected. If, after review, we also refuse to amend the record exactly as you requested, we will inform you—

(i) That your request has been refused and the reason;

(ii) That this refusal is SSA's final decision;

(iii) That you have a right to seek court review of this request to amend the record; and

(iv) That you have a right to file a statement of disagreement with the decision. Your statement should include the reason you disagree. We will make your statement available to anyone to whom the record is subsequently disclosed, together with a statement of our reasons for refusing to amend the record. Also, we will provide a copy of your statement to individuals whom we are aware received the record previously.

(c) *Appeals after denial of access.* If, under the Privacy Act, we deny your request for access to your own record, those of your minor child, or those of a person for whom you are the legal guardian, we will advise you in writing of the reason for that denial, the name and title or position of the person responsible for the decision, and your right to appeal that decision. You may appeal the denial decision to the Commissioner of Social Security, 6401 Security Boulevard, Baltimore, MD 21235, within 30 days after you receive the notice denying all or part of your request, or, if later, within 30 days after you receive materials sent to you in partial compliance with your request. If we refuse to release a medical record because you did not designate a representative (§ 401.55) to receive the material, that refusal is not a formal denial of access and, therefore, may not be appealed to the Commissioner. If you file an appeal, either the Commissioner or a designee will review your request and any supporting information submitted and then send you a notice explaining the decision on your appeal. We must make our decision within 20 working days after we receive your appeal. The Commissioner or a designee may extend this time limit up to 10 additional working days if one of the circumstances in 20 CFR 402.140 is met. We will notify you in writing of any extension, the reason for the extension, and the date by which we will decide your appeal. The notice of the decision on your appeal will explain your right to have the matter reviewed in a Federal district court if you disagree with all or part of our decision.

§ 401.75 Rights of parents or legal guardians.

For purposes of this part, a parent or guardian of any minor or the legal guardian of any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction is authorized to act on behalf of a minor or incompetent individual. Except as provided in § 401.45, governing procedures for verifying an individual's identity, and § 401.55(c) governing special procedures for notification of or access to a minor's medical records, if you are authorized to act on behalf of a minor or legal incompetent, you will be viewed as if you were the individual or subject individual.

§ 401.80 Accounting for disclosures.

(a) We will maintain an accounting of all disclosures of a record for five years or for the life of the record, whichever is longer; *except that*, we will not make accounting for:

(1) Disclosures under paragraphs (a) and (b) of § 401.110; and,

(2) Disclosures of your record made with your written consent.

(b) The accounting will include:

(1) The date, nature, and purpose of each disclosure; and

(2) The name and address of the person or entity to whom the disclosure is made.

(c) You may request access to an accounting of disclosures of your record. You must request access to an accounting in accordance with the procedures in § 401.40. You will be granted access to an accounting of the disclosures of your record in accordance with the procedures of this part which govern access to the related record. We may, at our discretion, grant access to an accounting of a disclosure of a record made under paragraph (g) of § 401.110.

§ 401.85 Exempt systems.

(a) *General policy.* The Privacy Act permits certain types of specific systems of records to be exempt from some of its requirements. Our policy is to exercise authority to exempt systems of records only in compelling cases.

(b) *Specific systems of records exempted.* (1) Those systems of records listed in paragraph (b)(2) of this section are exempt from the following provisions of the Act and this part:

(i) 5 U.S.C. 552a(c)(3) and paragraph (c) of § 401.80 of this part which require that you be granted access to an accounting of disclosures of your record.

(ii) 5 U.S.C. 552a (d)(1) through (4) and (f) and §§ 401.35 through 401.75 relating to notification of or access to records and correction or amendment of records.

(iii) 5 U.S.C. 552a(e)(4) (G) and (H) which require that we include information about SSA procedures for notification, access, and correction or amendment of records in the notice for the systems of records.

(iv) 5 U.S.C. 552a(e)(3) and § 401.30 which require that if we ask you to provide a record to us, we must inform you of the authority for our asking you to provide the record (including whether providing the record is mandatory or voluntary, the principal purposes for maintaining the record, the routine uses for the record, and what effect your refusal to provide the record may have on you), and if you are not required by statute or Executive Order to provide the record, that you agree to provide the record. This exemption applies only to an investigatory record compiled by SSA for criminal law enforcement purposes in a system of records exempt under subsection (j)(2) of the Privacy Act to the extent that these requirements would prejudice the conduct of the investigation.

(2) The following systems of records are exempt from those provisions of the Privacy Act and this part listed in paragraph (b)(1) of this section:

(i) Pursuant to subsection (j)(2) of the Privacy Act, the Investigatory Material Compiled for Law Enforcement Purposes System, SSA.

(ii) Pursuant to subsection (k)(2) of the Privacy Act:

(A) The General Criminal Investigation Files, SSA;

(B) The Criminal Investigations File, SSA; and,

(C) The Program Integrity Case Files, SSA.

(D) Civil and Administrative Investigative Files of the Inspector General, SSA/OIG.

(E) Complaint Files and Log. SSA/OGC.

(iii) Pursuant to subsection (k)(5) of the Privacy Act:

(A) The Investigatory Material Compiled for Security and Suitability Purposes System, SSA; and,

(B) The Suitability for Employment Records, SSA.

(iv) Pursuant to subsection (k)(6) of the Privacy Act, the Personnel Research and Merit Promotion Test Records, SSA/DCHR/OPE.

(c) *Notification of or access to records in exempt systems of records.* (1) Where a system of records is exempt as provided in paragraph (b) of this section, you may nonetheless request notification of or access to a record in that system. You should make requests for notification of or access to a record

in an exempt system of records in accordance with the procedures of §§ 401.35 through 401.55.

(2) We will grant you notification of or access to a record in an exempt system but only to the extent such notification or access would not reveal the identity of a source who furnished the record to us under an express promise, and prior to September 27, 1975, an implied promise, that his or her identity would be held in confidence, if:

(i) The record is in a system of records which is exempt under subsection (k)(2) of the Privacy Act and you have been, as a result of the maintenance of the record, denied a right, privilege, or benefit to which you would otherwise be eligible; or,

(ii) The record is in a system of records which is exempt under subsection (k)(5) of the Privacy Act.

(3) If we do not grant you notification of or access to a record in a system of records exempt under subsections (k) (2) and (5) of the Privacy Act in accordance with this paragraph, we will inform you that the identity of a confidential source would be revealed if we granted you notification of or access to the record.

(d) *Discretionary actions by SSA.* Unless disclosure of a record to the general public is otherwise prohibited by law, we may at our discretion grant notification of or access to a record in a system of records which is exempt under paragraph (b) of this section. Discretionary notification of or access to a record in accordance with this paragraph will not be a precedent for discretionary notification of or access to a similar or related record and will not obligate us to exercise discretion to grant notification of or access to any other record in a system of records which is exempt under paragraph (b) of this section.

§ 401.90 Contractors.

(a) All contracts which require a contractor to maintain, or on behalf of SSA to maintain, a system of records to accomplish an SSA function must contain a provision requiring the contractor to comply with the Privacy Act and this part.

(b) A contractor and any employee of such contractor will be considered employees of SSA only for the purposes of the criminal penalties of the Privacy Act, 5 U.S.C. 552a(i), and the employee standards of conduct (see appendix A of this part) where the contract contains a provision requiring the contractor to comply with the Privacy Act and this part.

(c) This section does not apply to systems of records maintained by a contractor as a result of his management discretion, e.g., the contractor's personnel records.

§ 401.95 Fees.

(a) *Policy.* Where applicable, we will charge fees for copying records in accordance with the schedule set forth in this section. We may only charge fees where you request that a copy be made of the record to which you are granted access. We will not charge a fee for searching a system of records, whether the search is manual, mechanical, or electronic. Where we must copy the record in order to provide access to the record (e.g., computer printout where no screen reading is available), we will provide the copy to you without cost. Where we make a medical record available to a representative designated by you or to a physician or health professional designated by a parent or guardian under § 401.55 of this part, we will not charge a fee.

(b) *Fee schedule.* Our Privacy Act fee schedule is as follows:

(1) Copying of records susceptible to photocopying—$.10 per page.

(2) Copying records not susceptible to photocopying (e.g., punch cards or magnetic tapes)—at actual cost to be determined on a case-by-case basis.

(3) We will not charge if the total amount of copying does not exceed $25.

(c) *Other Fees.* We also follow §§ 402.155 through 402.165 of this chapter to determine the amount of fees, if any, we will charge for providing information under the FOIA and Privacy Act.

Subpart C—Disclosure of Official Records and Information

§ 401.100 Disclosure of records with the consent of the subject of the record.

(a) Except as permitted by the Privacy Act and the regulations in this chapter, or if required by the FOIA, we will not disclose your record without your written consent. The consent must specify the individual, organizational unit or class of individuals or organizational units to whom the record may be disclosed, which record may be disclosed and, where applicable, during which time frame the record may be disclosed (e.g., during the school year, while the subject individual is out of the country, whenever the subject individual is receiving specific services). We will not honor a blanket consent to disclose all your records to unspecified individuals or organizational units. We will verify your identity and, where applicable (e.g., where you consent to disclosure of a record to a specific individual), the identity of the individual to whom the record is to be disclosed.

(b) A parent or guardian of a minor is not authorized to give consent to a disclosure of the minor's medical record. See § 401.55(c) for the procedures for disclosures of or access to the medical records of minors.

§ 401.105 Disclosure of personal information without the consent of the subject of the record.

(a) SSA maintains two categories of records which contain personal information:

(1) Nonprogram records, primarily administrative and personnel records which contain information about SSA's activities as a government agency and employer, and

(2) Program records which contain information about SSA's clients that it keeps to administer benefit programs under Federal law.

(b) We apply different levels of confidentiality to disclosures of information in the categories in paragraphs (a) (1) and (2) of this section. For administrative and personnel records, we apply the Privacy Act restrictions on disclosure. For program records, we apply somewhat more strict confidentiality standards than those found in the Privacy Act. The reason for this difference in treatment is that our program records include information about a much greater number of persons than our administrative records, the information we must collect for program purposes is often very sensitive, and claimants are required by statute and regulation to provide us with the information in order to establish entitlement for benefits.

§ 401.110 Disclosure of personal information in nonprogram records without the consent of the subject of the record.

The disclosures listed in this section may be made from our nonprogram records, e.g., administrative and personnel records, without your consent. Such disclosures are those:

(a) To officers and employees of SSA who have a need for the record in the performance of their duties. The SSA official who is responsible for the record may upon request of any officer or employee, or on his own initiative, determine what constitutes legitimate need.

(b) Required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, and 20 CFR part 402.

(c) For a routine use as defined in § 401.25 of this part. Routine uses will be listed in any notice of a system of records. SSA publishes notices of systems of records, including all

pertinent routine uses, in the Federal Register.

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 U.S.C.

(e) To a recipient who has provided us with advance written assurance that the record will be used solely as a statistical research or reporting record; *Provided,* that, the record is transferred in a form that does not identify the subject individual.

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value.

(g) To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of such government agency or instrumentality has submitted a written request to us, specifying the record desired and the law enforcement activity for which the record is sought.

(h) To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject individual.

(i) To either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee.

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office.

(k) Pursuant to the order of a court of competent jurisdiction.

§ 401.115 Disclosure of personal information in program records without the consent of the subject of the record.

This section describes how various laws control the disclosure or confidentiality of personal information which we keep. We must consider these laws in the following order:

(a) Some laws require us to disclose information (§ 401.120); some laws require us to withhold information (§ 401.125). These laws control whenever they apply.

(b) If no law of this type applies in a given case, then we must look to FOIA principles. See § 401.130.

(c) When FOIA principles do not require disclosure, we may disclose information if both the Privacy Act and section 1106 of the Social Security Act permit the disclosure.

§ 401.120 Disclosures required by law.

We disclose information when a law specifically requires it. The Social Security Act requires us to disclose information for certain program purposes. These include disclosures to the SSA Office of Inspector General, the Federal Parent Locator Service, and to States pursuant to an arrangement regarding use of the Blood Donor Locator Service. Also, there are other laws which require that we furnish other agencies information which they need for their programs. These agencies include the Department of Veterans Affairs for its benefit programs, the Immigration and Naturalization Service to carry out its duties regarding aliens, the Railroad Retirement Board for its benefit programs, and to Federal, State, and local agencies administering Aid to Families with Dependent Children, Medicaid, unemployment compensation, food stamps, and other programs.

§ 401.125 Disclosures prohibited by law.

We do not disclose information when a law specifically prohibits it. The Internal Revenue Code generally prohibits us from disclosing tax return information which we receive to maintain individual earnings records. This includes, for example, amounts of wages and contributions from employers. Other laws restrict our disclosure of certain information about drug and alcohol abuse which we collect to determine eligibility for social security benefits.

§ 401.130 Freedom of Information Act.

The FOIA requires us to disclose any information in our records upon request from the public, unless one of several exemptions in the FOIA applies. When the FOIA requires disclosure (see part 402 of this chapter), the Privacy Act permits it. *The public* does not include Federal agencies, courts, or the Congress, but does include State agencies, individuals, corporations, and most other parties. The FOIA does not apply to requests that are not from *the public* (e.g., from a Federal agency). However, we apply FOIA principles to requests from these other sources for disclosure of program information.

§ 401.135 Other laws.

When the FOIA does not apply, we may not disclose any personal information unless both the Privacy Act and section 1106 of the Social Security Act permit the disclosure. Section 1106 of the Social Security Act requires that disclosures which may be made must be set out in statute or regulations; therefore, any disclosure permitted by this part is permitted by section 1106.

§ 401.140 General principles.

When no law specifically requiring or prohibiting disclosure applies to a question of whether to disclose information, we follow FOIA principles to resolve that question. We do this to insure uniform treatment in all situations. The FOIA principle which most often applies to SSA disclosure questions is whether the disclosure would result in a ''clearly unwarranted invasion of personal privacy.'' To decide whether a disclosure would be a clearly unwarranted invasion of personal privacy we consider—

(a) The sensitivity of the information (e.g., whether individuals would suffer harm or embarrassment as a result of the disclosure);

(b) The public interest in the disclosure;

(c) The rights and expectations of individuals to have their personal information kept confidential;

(d) The public's interest in maintaining general standards of confidentiality of personal information; and

(e) The existence of safeguards against unauthorized redisclosure or use.

§ 401.145 Safeguards against unauthorized redisclosure or use.

(a) The FOIA does not authorize us to impose any restrictions on how information is used after we disclose it under that law. In applying FOIA principles, we consider whether the information will be adequately safeguarded against improper use or redisclosure. We must consider all the ways in which the recipient might use the information and how likely the recipient is to redisclose the information to other parties. Thus, before we disclose personal information we may consider such factors as—

(1) Whether only those individuals who have a need to know the information will obtain it;

(2) Whether appropriate measures to safeguard the information to avoid unwarranted use or misuse will be taken; and

(3) Whether we would be permitted to conduct on-site inspections to see whether the safeguards are being met.

(b) We feel that there is a strong public interest in sharing information with other agencies with programs having the same or similar purposes, so

we generally share information with those agencies. However, since there is usually little or no public interest in disclosing information for disputes between two private parties or for other private or commercial purposes, we generally do not share information for these purposes.

§ 401.150 Compatible purposes.

(a) *General.* The Privacy Act allows us to disclose information, without the consent of the individual, to any other party for routine uses.

(b) *Routine use.* We publish notices of systems of records in the Federal Register which contain a list of all *routine use* disclosures.

(c) *Determining compatibility.* We disclose information for routine uses where necessary to carry out SSA's programs. It is also our policy to disclose information for use in other programs which have the same purposes as SSA programs if the information concerns eligibility, benefit amounts, or other matters of benefit status in a social security program and is relevant to determining the same matters in the other program. For example, we disclose information to the Railroad Retirement Board for pension and unemployment compensation programs, to the Veterans Administration for its benefit program, to worker's compensation programs, to State general assistance programs, and to other income maintenance programs at all levels of government; we also disclose for health-maintenance programs like Medicare and Medicaid, and in appropriate cases, for epidemiological and similar research.

§ 401.155 Law enforcement purposes.

(a) *General.* The Privacy Act allows us to disclose information for law enforcement purposes under certain conditions. Much of the information in our files is especially sensitive or very personal. Furthermore, participation in social security programs is mandatory, so people cannot limit what information is given to us. Therefore, we generally disclose information for law enforcement purposes only in limited situations. Paragraphs (b) and (c) of this section discuss the disclosures we generally make for these purposes.

(b) *Serious crimes.* SSA may disclose information for criminal law enforcement purposes where a violent crime such as murder or kidnapping has been committed and the individual about whom the information is being sought has been indicted or convicted of that crime. The Privacy Act allows us to disclose if the head of the law enforcement agency makes a written request giving enough information to show that these conditions are met, what information is needed, and why it is needed.

(c) *Criminal activity involving the social security program or another program with the same purposes.* We disclose information when necessary to investigate or prosecute fraud or other criminal activity involving the social security program. We may also disclose information for investigation or prosecution of criminal activity in other income-maintenance or health-maintenance programs (e.g., other governmental pension programs, unemployment compensation, general assistance, Medicare or Medicaid) if the information concerns eligibility, benefit amounts, or other matters of benefit status in a social security program and is relevant to determining the same matters in the other program.

§ 401.160 Health or safety.

The Privacy Act allows us to disclose information in compelling circumstances where an individual's health or safety is affected. For example, if we learn that someone has been exposed to an excessive amount of radiation, we may notify that person and appropriate health officials. If we learn that someone has made a threat against someone else, we may notify that other person and law enforcement officials. When we make these disclosures, the Privacy Act requires us to send a notice of the disclosure to the last known address of the person whose record was disclosed.

§ 401.165 Statistical and research activities.

(a) *General.* Statistical and research activities often do not require information in a format that identifies specific individuals. Therefore, whenever possible, we release information for statistical or research purposes only in the form of aggregates or individual data that cannot be associated with a particular individual. The Privacy Act allows us to release records if there are safeguards that the record will be used solely as a statistical or research record and the individual cannot be identified from any information in the record.

(b) *Safeguards for disclosure with identifiers.* The Privacy Act also allows us to disclose data for statistical and research purposes in a form allowing individual identification, pursuant to published routine use, when the purpose is compatible with the purpose for which the record was collected. We will disclose personally identifiable information for statistical and research purposes if—

(1) We determine that the requestor needs the information in an identifiable form for a statistical or research activity, will use the information only for that purpose, and will protect individuals from unreasonable and unwanted contacts;

(2) The activity is designed to increase knowledge about present or alternative social security programs or other Federal or State income-maintenance or health-maintenance programs, or consists of epidemiological or similar research; and

(3) The recipient will keep the information as a system of statistical records, will follow appropriate safeguards, and agrees to our on-site inspection of those safeguards so we can be sure the information is used or redisclosed only for statistical or research purposes. No redisclosure of the information may be made without SSA's approval.

(c) *Statistical record.* A statistical record is a record in a system of records which is maintained only for statistical and research purposes, and which is not used to make any determination about an individual. We maintain and use statistical records only for statistical and research purposes. We may disclose a statistical record if the conditions in paragraph (b) of this section are met.

(d) *Compiling of records.* Where a request for information for statistical and research purposes would require us to compile records, and doing that would be administratively burdensome to ongoing SSA operations, we may decline to furnish the information.

§ 401.170 Congress.

(a) We disclose information to either House of Congress. We also disclose information to any committee or subcommittee of either House, or to any joint committee of Congress or subcommittee of that committee, if the information is on a matter within the committee's or subcommittee's jurisdiction.

(b) We disclose to any member of Congress the information needed to respond to constituents' requests for information about themselves (including requests from parents of minors, or legal guardians). However, these disclosures are subject to the restrictions in §§ 401.35 through 401.60.

§ 401.175 General Accounting Office.

We disclose information to the General Accounting Office when that agency needs the information to carry out its duties.

§ 401.180 Courts.

(a) *General.* The Privacy Act allows us to disclose information when we receive

an order from a court of competent jurisdiction. However, much of our information is especially sensitive. Participation in social security programs is mandatory, and so people cannot limit what information is given to SSA. When information is used in a court proceeding, it usually becomes part of a public record, and its confidentiality cannot be protected. Therefore, we treat subpoenas or other court orders for information under the rules in paragraph (b) of this section.

(b) *Subpoena.* We generally disclose information in response to a subpoena or other court order if—

(1) Another section of this part would specifically allow the release; or

(2) The Commissioner of SSA is a party to the proceeding; or

(3) The information is necessary for due process in a criminal proceeding. In other cases, we try to satisfy the needs of courts while preserving the confidentiality of information.

§ 401.185 Other specific recipients.

In addition to disclosures we make under the routine use provision, we also release information to—

(a) The Bureau of the Census for purposes of planning or carrying out a census, survey, or related activity; and

(b) The National Archives of the United States if the record has sufficient historical or other value to warrant its continued preservation by the United States Government. We also disclose a record to the Administrator of General Services for a determination of whether the record has such a value.

§ 401.190 Deceased persons.

We do not consider the disclosure of information about a deceased person to be a clearly unwarranted invasion of that person's privacy. However, in disclosing information about a deceased person, we follow the principles in § 401.115 to insure that the privacy rights of a living person are not violated.

§ 401.195 Situations not specified in this part.

If no other provision in this part specifically allows SSA to disclose information, the Commissioner or designee may disclose this information if not prohibited by Federal law. For example, the Commissioner or designee may disclose information necessary to respond to life threatening situations.

§ 401.200 Blood donor locator service.

(a) *General.* We will enter into arrangements with State agencies under which we will furnish to them at their request the last known personal mailing addresses (residence or post office box) of blood donors whose blood donations show that they are or may be infected with the human immunodeficiency virus which causes acquired immune deficiency syndrome. The State agency or other authorized person, as defined in paragraph (b) of this section, will then inform the donors that they may need medical care and treatment. The safeguards that must be used by authorized persons as a condition to receiving address information from the Blood Donor Locator Service are in paragraph (g) of this section, and the requirements for a request for address information are in paragraph (d) of this section.

(b) *Definitions. State* means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of Northern Marianas, and the Trust Territory of the Pacific Islands.

Authorized person means—

(1) Any agency of a State (or of a political subdivision of a State) which has duties or authority under State law relating to the public health or otherwise has the duty or authority under State law to regulate blood donations; and

(2) Any entity engaged in the acceptance of blood donations which is licensed or registered by the Food and Drug Administration in connection with the acceptance of such blood donations, and which provides for—

(i) The confidentiality of any address information received pursuant to the rules in this part and section 1141 of the Social Security Act and related blood donor records;

(ii) Blood donor notification procedures for individuals with respect to whom such information is requested and a finding has been made that they are or may be infected with the human immunodeficiency virus; and

(iii) Counseling services for such individuals who have been found to have such virus. New counseling programs are not required, and an entity may use existing counseling programs or referrals to provide these services.

Related blood donor records means any record, list, or compilation established in connection with a request for address information which indicates, directly or indirectly, the identity of any individual with respect to whom a request for address information has been made pursuant to the rules in this part.

(c) *Use of social security number for identification.* A State or an authorized person in the State may require a blood donor to furnish his or her social security number when donating blood. The number may then be used by an authorized person to identify and locate a donor whose blood donation indicates that he or she is or may be infected with the human immunodeficiency virus.

(d) *Request for address of blood donor.* An authorized person who has been unable to locate a blood donor at the address he or she may have given at the time of the blood donation may request assistance from the State agency which has arranged with us to participate in the Blood Donor Locator Service. The request to the Blood Donor Locator Service must—

(1) Be in writing;

(2) Be from a participating State agency either on its own behalf as an authorized person or on behalf of another authorized person;

(3) Indicate that the authorized person meets the confidentiality safeguards of paragraph (g) of this section; and

(4) Include the donor's name and social security number, the addresses at which the authorized person attempted without success to contact the donor, the date of the blood donation if available, a statement that the donor has tested positive for the human immunodeficiency virus according to the latest Food and Drug Administration standards or that the history of the subsequent use of the donated blood or blood products indicates that the donor has or may have the human immunodeficiency virus, and the name and address of the requesting blood donation facility.

(e) *SSA response to request for address.* After receiving a request that meets the requirements of paragraph (d) of this section, we will search our records for the donor's latest personal mailing address. If we do not find a current address, we will request that the Internal Revenue Service search its tax records and furnish us any personal mailing address information from its files, as required under section 6103(m)(6) of the Internal Revenue Code. After completing these searches, we will provide to the requesting State agency either the latest mailing address available for the donor or a response stating that we do not have this information. We will then destroy the records or delete all identifying donor information related to the request and maintain only the information that we will need to monitor the compliance of authorized persons with the confidentiality safeguards contained in paragraph (g) of this section.

(f) *SSA refusal to furnish address.* If we determine that an authorized person has not met the requirements of paragraphs (d) and (g) of this section, we will not furnish address information to the State agency. In that case, we will notify the State agency of our

determination, explain the reasons for our determination, and explain that the State agency may request administrative review of our determination. The Commissioner of Social Security or a delegate of the Commissioner will conduct this review. The review will be based on the information of record and there will not be an opportunity for an oral hearing. A request for administrative review, which may be submitted only by a State agency, must be in writing. The State agency must send its request for administrative review to the Commissioner of Social Security, 6401 Security Boulevard, Baltimore, MD 21235, within 60 days after receiving our notice refusing to give the donor's address. The request for review must include supporting information or evidence that the requirements of the rules in this part have been met. If we do not furnish address information because an authorized person failed to comply with the confidentiality safeguards of paragraph (g) of this section, the State agency will have an opportunity to submit evidence that the authorized person is now in compliance. If we then determine, based on our review of the request for administrative review and the supporting evidence, that the authorized person meets the requirements of the rules in this part, we will respond to the address request as provided in paragraph (e) of this section. If we determine on administrative review that the requirements have not been met, we will notify the State agency in writing of our decision. We will make our determination within 30 days after receiving the request for administrative review, unless we notify the State agency within this 30-day time period that we will need additional time. Our determination on the request for administrative review will give the findings of fact, the reasons for the decision, and what actions the State agency should take to ensure that it or the blood donation facility is in compliance with the rules in this part.

(g) *Safeguards to ensure confidentiality of blood donor records.* We will require assurance that authorized persons have established and continue to maintain adequate safeguards to protect the confidentiality of both address information received from the Blood Donor Locator Service and related blood donor records. The authorized person must, to the satisfaction of the Secretary—

(1) Establish and maintain a system for standardizing records which includes the reasons for requesting the addresses of blood donors, dates of the requests, and any disclosures of address information;

(2) Store blood donors' addresses received from the Blood Donor Locator Service and all related blood donor records in a secure area or place that is physically safe from access by persons other than those whose duties and responsibilities require access;

(3) Restrict access to these records to authorized employees and officials who need them to perform their official duties related to notifying blood donors who are or may be infected with the human immunodeficiency virus that they may need medical care and treatment;

(4) Advise all personnel who will have access to the records of the confidential nature of the information, the safeguards required to protect the information, and the civil and criminal sanctions for unauthorized use or disclosure of the information;

(5) Destroy the address information received from the Blood Donor Locator Service, as well as any records established in connection with the request which indicate directly or indirectly the identity of the individual, after notifying or attempting to notify the donor at the address obtained from the Blood Donor Locator Service; and

(6) Upon request, report to us the procedures established and utilized to ensure the confidentiality of address information and related blood donor records. We reserve the right to make onsite inspections to ensure that these procedures are adequate and are being followed and to request such information as we may need to ensure that the safeguards required in this section are being met.

(h) *Unauthorized disclosure.* Any official or employee of the Federal Government, a State, or a blood donation facility who discloses blood donor information, except as provided for in this section or under a provision of law, will be subject to the same criminal penalty as provided in section 7213(a) of the Internal Revenue Code of 1986 for the unauthorized disclosure of tax information.

Appendix A to Part 401—Employee Standards of Conduct

(a) *General.* All SSA employees are required to be aware of their responsibilities under the Privacy Act of 1974, 5 U.S.C. 552a. Regulations implementing the Privacy Act are set forth in this part. Instruction on the requirements of the Act and regulation shall be provided to all new employees of SSA. In addition, supervisors shall be responsible for assuring that employees who are working with systems of records or who undertake new duties which require the use of systems of records are informed of their responsibilities. Supervisors shall also be responsible for assuring that all employees who work with such systems of records are periodically reminded of the requirements of the Privacy Act and are advised of any new provisions or interpretations of the Act.

(b) *Penalties.* (1) All employees must guard against improper disclosure of records which are governed by the Privacy Act. Because of the serious consequences of improper invasions of personal privacy, employees may be subject to disciplinary action and criminal prosecution for knowing and willful violations of the Privacy Act and regulation. In addition, employees may also be subject to disciplinary action for unknowing or unwillful violations, where the employee had notice of the provisions of the Privacy Act and regulations and failed to inform himself or herself sufficiently or to conduct himself or herself in accordance with the requirements to avoid violations.

(2) SSA may be subjected to civil liability for the following actions undertaken by its employees:

(a) Making a determination under the Privacy Act and §§ 401.65 and 401.70 not to amend an individual's record in accordance with his or her request, or failing to make such review in conformity with those provisions;

(b) Refusing to comply with an individual's request for notification of or access to a record pertaining to him or her;

(c) Failing to maintain any record pertaining to any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such a record, and consequently makes a determination which is adverse to the individual; or

(d) Failing to comply with any other provision of the Act or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

(3) An employee may be personally subject to criminal liability as set forth below and in 5 U.S.C. 552a (i):

(a) *Willful disclosure.* Any officer or employee of SSA, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by the Privacy Act or by rules or regulations established thereunder, and who, knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and may be fined not more than $5,000.

(b) *Notice requirements.* Any officer or employee of SSA who willfully maintains a system of records without meeting the notice requirements [of the Privacy Act] shall be guilty of a misdemeanor and may be fined not more than $5,000.

(c) *Rules governing employees not working with systems of records.* Employees whose duties do not involve working with systems of records will not generally disclose to any

one, without specific authorization from their supervisors, records pertaining to employees or other individuals which by reason of their official duties are available to them. Notwithstanding the above, the following records concerning Federal employees are a matter of public record and no further authorization is necessary for disclosure:

(1) Name and title of individual.

(2) Grade classification or equivalent and annual rate of salary.

(3) Position description.

(4) Location of duty station, including room number and telephone number.

In addition, employees shall disclose records which are listed in SSA's Freedom of Information Regulation as being available to the public. Requests for other records will be referred to the responsible SSA Freedom of Information Officer. This does not preclude employees from discussing matters which are known to them personally, and without resort to a record, to official investigators of Federal agencies for official purposes such as suitability checks, Equal Employment Opportunity investigations, adverse action proceedings, grievance proceedings, etc.

(d) *Rules governing employees whose duties require use or reference to systems of records.* Employees whose official duties require that they refer to, maintain, service, or otherwise deal with systems of records (hereinafter referred to as ''Systems Employees'') are governed by the general provisions. In addition, extra precautions are required and systems employees are held to higher standards of conduct.

(1) Systems Employees shall:

(a) Be informed with respect to their responsibilities under the Privacy Act;

(b) Be alert to possible misuses of the system and report to their supervisors any potential or actual use of the system which they believe is not in compliance with the Privacy Act and regulation;

(c) Disclose records within SSA only to an employee who has a legitimate need to know the record in the course of his or her official duties;

(d) Maintain records as accurately as practicable.

(e) Consult with a supervisor prior to taking any action where they are in doubt whether such action is in conformance with the Act and regulation.

(2) Systems employees shall not:

(a) Disclose in any form records from a system of records except (1) with the consent or at the request of the subject individual; or (2) where its disclosure is permitted under § 401.110.

(b) Permit unauthorized individuals to be present in controlled areas. Any unauthorized individuals observed in controlled areas shall be reported to a supervisor or to the guard force.

(c) Knowingly or willfully take action which might subject SSA to civil liability.

(d) Make any arrangements for the design, development, or operation of any system of records without making reasonable effort to provide that the system can be maintained in accordance with the Act and regulation.

(e) *Contracting officers.* In addition to any applicable provisions set forth above, those employees whose official duties involve entering into contracts on behalf of SSA shall also be governed by the following provisions:

(1) *Contracts for design, or development of systems and equipment.* The contracting officer shall not enter into any contract for the design or development of a system of records, or for equipment to store, service or maintain a system of records unless the contracting officer has made reasonable effort to ensure that the product to be purchased is capable of being used without violation of the Privacy Act or the regulations in this part. He shall give special attention to provision of physical safeguards.

(2) *Contracts for the operation of systems of records.* The Contracting Officer, in conjunction with other officials whom he feels appropriate, shall review all proposed contracts providing for the operation of systems of records prior to execution of the contracts to determine whether operation of the system of records is for the purpose of accomplishing a Department function. If it is determined that the operation of the system is to accomplish an SSA function, the contracting officer shall be responsible for including in the contract appropriate provisions to apply the provisions of the Privacy Act and regulation to the system, including prohibitions against improper release by the contractor, his employees, agents, or subcontractors.

(3) *Other service contracts.* Contracting officers entering into general service contracts shall be responsible for determining the appropriateness of including provisions in the contract to prevent potential misuse (inadvertent or otherwise) by employees, agents, or subcontractors of the contractor.

(f) *Rules governing SSA officials responsible for managing systems of records.* In addition to the requirements for Systems Employees, SSA officials responsible for managing systems of records as described in § 401.40(c) (system managers) shall:

(1) Respond to all requests for notification of or access, disclosure, or amendment of records in a timely fashion in accordance with the Privacy Act and regulation;

(2) Make any amendment of records accurately and in a timely fashion;

(3) Inform all persons whom the accounting records show have received copies of the record prior to the amendments of the correction; and

(4) Associate any statement of disagreement with the disputed record, and

(a) Transmit a copy of the statement to all persons whom the accounting records show have received a copy of the disputed record, and

(b) Transmit that statement with any future disclosure.

2. Part 402 is added to read as follows:

PART 402—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

Sec.

402.5 Scope and purpose.
402.10 Policy.
402.15 Relationship between the FOIA and the Privacy Act of 1974.
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402.75 Exemption one for withholding records: National defense and foreign policy.
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402.85 Exemption three for withholding records: Records exempted by other statutes.
402.90 Exemption four for withholding records: Trade secrets and confidential commercial or financial information.
402.95 Exemption five for withholding records: Internal memoranda.
402.100 Exemption six for withholding records: Clearly unwarranted invasion of personal privacy.
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402.115 Deletion of identifying details.
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402.125 Who may release a record.
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402.165 Fee schedule.
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402.175 Fees for providing information and related services for non-program purposes.
402.180 Procedure on assessing and collecting fees for providing records.
402.185 Waiver or reduction of fees in the public interest.
402.190 Officials who may deny a request for records under FOIA.
402.195 How a request is denied.
402.200 How to appeal a decision denying all or part of a request.
402.205 U.S. District Court action.

Authority: Secs. 205, 702(a)(5), and 1106 of the Social Security Act; (42 U.S.C. 405, 902(a)(5), and 1306); Section 413(b) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 923b), 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 18 U.S.C. 1905; 26 U.S.C. 6103; 31 U.S.C.. 9701; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

§ 402.5 Scope and purpose.

The rules in this part relate to the availability to the public, pursuant to the Freedom of Information Act (FOIA) 5 U.S.C. 552, of records of the Social Security Administration (SSA). They describe how to make a FOIA request; who can release records and who can decide not to release; how much time it should take to make a determination regarding release; what fees may be charged; what records are available for public inspection; why some records are not released; and your right to appeal and then go to court if we refuse to release records. The rules in this part do not revoke, modify, or supersede the regulations of SSA relating to disclosure of information in part 401 of this chapter.

§ 402.10 Policy.

As a general policy, SSA follows a balanced approach in administering FOIA. We not only recognize the right of public access to information in the possession of SSA, but also protect the integrity of internal processes. In addition, we recognize the legitimate interests of organizations or persons who have submitted records to SSA or who would otherwise be affected by release of records. For example, we have no discretion to release certain records, such as trade secrets and confidential commercial information, prohibited from release by law. This policy calls for the fullest responsible disclosure consistent with those requirements of administrative necessity and confidentiality which are recognized in the FOIA.

§ 402.15 Relationship between the FOIA and the Privacy Act of 1974.

(a) *Coverage.* The FOIA and the rules in this part apply to all SSA records. The Privacy Act, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records. ''Individuals'' and ''system of records'' are defined in the Privacy Act and in 20 CFR 401.25.

(b) *Requesting your own records.* If you are an individual and request records, then to the extent you are requesting your own records in a system of records, we will handle your request under the Privacy Act. If there is any record that we need not release to you under those provisions, we will also consider your request under the FOIA and this rule, and we will release the record to you if the FOIA requires it.

(c) *Requesting another individual's record.* Whether or not you are an individual, if you request records that are about an individual (other than yourself) and that are in a system of records, we will handle your request under the FOIA and the rules in this part. However, if our disclosure in response to your request would be permitted by the Privacy Act's disclosure provision, (5 U.S.C. 552a(b)), for reasons other than the requirements of the FOIA, and if we decide to make the disclosure, then we will not handle your request under the FOIA and the rules in this part. For example, when we make routine use disclosures pursuant to requests, we do not handle them under the FOIA and the rules in this part. (''Routine use'' is defined in the Privacy Act and in 20 CFR 401.25.) If we handle your request under the FOIA and the rules in this part and the FOIA does not require releasing the record to you, then the Privacy Act may prohibit the release and remove our discretion to release.

§ 402.20 Requests not handled under the FOIA.

(a) We will not handle your request under the FOIA and the regulations in this part to the extent it asks for records that are currently available, either from SSA or from another part of the Federal Government, under a separate statute that provides specific activity for charging fees for those records. For example, we will not handle your request under the FOIA and the regulations in this part to the extent it asks for detailed earnings statements under the Social Security program.

(b) We will not handle your request under the FOIA and the regulations in this part if you are seeking a record that is distributed by SSA as part of its regular program activity, for example, public information leaflets distributed by SSA.

§ 402.25 Referral of requests outside of SSA.

If you request records that were created by, or provided to us by, another Federal agency, and if that agency asserts control over the records, we may refer the records and your request to that agency. We may likewise refer requests for classified records to the agency that classified them. In these cases, the other agency will process and respond to your request, to the extent it concerns those records, under that agency's regulation, and you need not make a separate request to that agency. We will notify you when we refer your request to another agency.

§ 402.30 Definitions.

As used in this part,

Agency means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. A private organization is not an agency even if it is performing work under contract with the Government or is receiving Federal financial assistance. Grantee and contractor records are not subject to the FOIA unless they are in the possession or under the control of SSA or its agents. Solely for the purpose of disclosure under the FOIA, we consider records of individual beneficiaries located in the State Disability Determination Services (DDS) to be agency records.

Commercial use means, when referring to a request, that the request is from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put. The identity of the requester (individual, non-profit corporation, for-profit corporation) and the nature of the records, while in some cases indicative of that purpose or use, are not necessarily determinative. When a request is from a representative of the news media, a purpose or use supporting the requester's news dissemination function is not a commercial use.

Duplication means the process of making a copy of a record and sending it to the requester, to the extent necessary to respond to the request. Such copies include paper copy, microfilm, audio-visual materials, and magnetic tapes, cards, and discs.

Educational institution means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program of scholarly research.

Freedom of Information Act or *FOIA* means 5 U.S.C. 552.

Freedom of Information Officer means an SSA official who has been delegated the authority to authorize disclosure of or withhold records and assess, waive, or reduce fees in response to FOIA requests.

Non-commercial scientific institution means an institution that is not operated substantially for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research whose results are not intended to promote any particular product or industry.

Records means any handwritten, typed, or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as punchcards; magnetic tapes, cards, or discs; paper tapes; audio or video recordings; maps; photographs; slides; microfilm; and motion pictures). It does not include objects or articles such as exhibits, models, equipment, and duplication machines or audiovisual processing materials. Nor does it include books, magazines, pamphlets, or other reference material in formally organized and officially designated SSA libraries, where such materials are available under the rules of the particular library.

Representative of the news media means a person actively gathering information for an entity organized and operated to publish or broadcast news to the public. News media entities include television and radio broadcasters, publishers of periodicals who distribute their products to the general public or who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media (e.g., electronic dissemination of text). We will treat freelance journalists as representatives of a news media entity if they can show a likelihood of publication through such an entity. A publication contract is such a basis, and the requester's past publication record may show such a basis.

Request means asking for records, whether or not you refer specifically to the FOIA. Requests from Federal agencies and court orders for documents are not included within this definition. Subpoenas are requests only to the extent provided by 45 CFR 2.

Review means, when used in connection with processing records for a commercial use request, examining the records to determine what portions, if any, may be withheld, and any other processing that is necessary to prepare the records for release. It includes only the examining and processing that are done the first time we analyze whether a specific exemption applies to a particular record or portion of a record. It does not include examination done in the appeal stage with respect to an exemption that was applied at the initial request stage. However, if we initially withhold a record under one exemption, and on appeal we determine that that exemption does not apply, then examining the record in the appeal stage for the purpose of determining whether a different exemption applies is included in *review*. It does not include the process of researching or resolving general legal or policy issues regarding exemptions.

Search means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also page-by-page and line-by-line examination to identify responsive portions of a document. However, it does not include line-by-line examination where merely duplicating the entire page would be a less expensive and quicker way to comply with the request.

§ 402.35 Publication.

(a) *Methods of publication.* Materials we are required to publish pursuant to the provisions of 5 U.S.C. 552(a)(1) and (a)(2), we publish in one of the following ways:

(1) By publication in the Federal Register of Social Security Administration regulations, and by their subsequent inclusion in the Code of Federal Regulations;

(2) By publication in the Federal Register of appropriate general notices;

(3) By other forms of publication, when incorporated by reference in the Federal Register with the approval of the Director of the Federal Register; and

(4) By publication in the ''Social Security Rulings'' of indexes of precedential social security orders and opinions issued in the adjudication of claims, statements of policy and interpretations which have been adopted but have not been published in the Federal Register. The ''Social Security Rulings'' may be purchased through the Government Printing Office (See § 402.40).

(b) *Publication of rulings.* Although not required pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we publish the following rulings in the Federal Register as well as by other forms of publication:

(1) We publish Social Security Rulings in the Federal Register under the authority of the Commissioner of Social Security. They are binding on all components of the Social Security Administration. These rulings represent precedent final opinions and orders and statements of policy and interpretations that we have adopted.

(2) We publish Social Security Acquiescence Rulings in the Federal Register under the authority of the Commissioner of Social Security. They are binding on all components of the Social Security Administration, except with respect to claims subject to the relitigation procedures established in 20 CFR 404.984 (c) and (d), 410.610c (c) and (d), and 416.1484 (c) and (d). For a description of Social Security Acquiescence Rulings, see 20 CFR 404.984(b), 410.610c(b), and 416.1484(b) of this title.

(c) *Availability for inspection.* To the extent practicable and to further assist the public, we make available for inspection at the address specified in § 402.135 those materials which are published in the Federal Register pursuant to 5 U.S.C. 552(a)(1).

§ 402.40 Publications for sale.

The following publications containing information pertaining to the program, organization, functions, and procedures of the Social Security Administration may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402:

(a) Title 20, parts 400–499 of the Code of Federal Regulations.

(b) Federal Register issues.

(c) Compilation of the Social Security Laws.

(d) Social Security Rulings.

(e) Social Security Handbook. The information in the

Handbook is not of precedent or interpretative force.

(f) Social Security Bulletin.

(g) Social Security Acquiescence Rulings.

§ 402.45 Availability of records.

(a) *What records are available.* 5 U.S.C. 552, also known as the FOIA, permits any person to see, and get a copy of, any Federal agency's records unless the material is exempt from mandatory disclosure as described in § 402.70 of this part.

(b) *FOIA.* Under the FOIA, we are also required to make available to the public the instructional manuals issued to our employees, general statements of policy, and other materials which are used in processing claims and which are not published in the Federal Register, and an index of these manuals and materials.

(c) *Record citation as precedent.* We will not use or cite any record described in paragraph (b) of this section as a precedent for an action against a person unless we have indexed the record and published it or made it available, or unless the person has timely notice of the record.

§ 402.50 Availability of administrative staff manuals.

All administrative staff manuals of the Social Security Administration and instructions to staff personnel which contain policies, procedures, or interpretations that affect the public are available for inspection and copying. A complete listing of such materials is published in the Index of

Administrative Staff Manuals and Instructions. These manuals are generally not printed in a sufficient quantity to permit sale or other general distribution to the public. Selected material is maintained at district offices and field offices and may be inspected there. See §§ 402.55 and 402.60 for a listing of this material.

§ 402.55 Materials available at district offices and branch offices.

(a) *Materials available for inspection.* The following are available or will be made available for inspection at the district offices and branch offices:

(1) Compilation of the Social Security Laws.

(2) Social Security Administration regulations under the retirement, survivors, disability, and supplemental security income programs, i.e., 20 CFR parts 401, 402, 404, 416, and 422; and the Social Security Administration's regulations under part B of title IV (Black Lung Benefits) of the Federal Coal Mine Health and Safety Act of 1969, 20 CFR part 410.

(3) Social Security Rulings.

(4) Social Security Handbook.

(5) Social Security Acquiescence Rulings.

(b) *Materials available for inspection and copying.* The following materials are available or will be made available for inspection and copying at the district offices and branch offices (fees may be applicable per §§ 402.155 through 402.185):

(1) SSA Program Operations Manual System.

(2) SSA Organization Manual.

(3) Handbook for State Social Security Administrators.

(4) Indexes to the materials listed in paragraph (a) of this section and in this paragraph (b) and an index to the Hearings, Appeals and Litigation Law (HALLEX) manual.

(5) Index of Administrative Staff Manuals and Instructions.

§ 402.60 Materials in field offices of the Office of Hearings and Appeals.

(a) *Materials available for inspection.* The following materials are available for inspection in the field offices of the Office of Hearings and Appeals:

(1) Regulations of the Social Security Administration (see § 402.55(a)(2)).

(2) Title 5, United States Code.

(3) Compilation of the Social Security Laws.

(4) Social Security Rulings.

(5) Social Security Handbook.

(6) Social Security Acquiescence Rulings.

(b) The Hearings, Appeals and Litigation Law (HALLEX) manual is available for inspection and copying in the field offices of the Office of Hearings and Appeals (fees may be applicable per §§ 402.155 through 402.185).

§ 402.65 Health care information.

We have some information about health care programs under titles XVIII and XIX (Medicare and Medicaid) of the Social Security Act. We follow the rules in 42 CFR part 401 in determining whether to provide any portion of it to a requester.

§ 402.70 Reasons for withholding some records.

Section 552(b) of the Freedom of Information Act contains nine exemptions to the mandatory disclosure of records. We describe these exemptions in §§ 402.75 through 402.110 of this part and explain how we apply them to disclosure determinations. (In some cases more than one exemption may apply to the same document.) Information obtained by the agency from any individual or organization, furnished in reliance on a provision for confidentiality authorized by applicable statute or regulation, will not be disclosed, to the extent it can be withheld under one of these exemptions. This section does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the agency.

§ 402.75 Exemption one for withholding records: National defense and foreign policy.

We are not required to release records that, as provided by FOIA, are ''(a) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (b) are in fact properly classified pursuant to such Executive Order.'' Executive Order No. 12958 (1995) (3 CFR, 1987 Comp., p. 235) provides for such classification. When the release of certain records may adversely affect U.S. relations with foreign countries, we usually consult with officials of those countries or officials of the Department of State. Also, we may on occasion have in our possession records classified by some other agency. We may refer your request for such records to the agency that classified them and notify you that we have done so.

§ 402.80 Exemption two for withholding records: Internal personnel rules and practices.

We are not required to release records that are ''related solely to the internal personnel rules and practices of an agency.'' Under this exemption, we may withhold routine internal agency practices and procedures. For example, we may withhold guard schedules and rules governing parking facilities or lunch periods. Also under this exemption, we may withhold internal records whose release would help some persons circumvent the law or agency regulations. For example, we ordinarily do not disclose manuals that instruct our investigators or auditors how to investigate possible violations of law, to the extent that this release would help some persons circumvent the law.

§ 402.85 Exemption three for withholding records: Records exempted by other statutes.

We are not required to release records if another statute specifically allows or requires us to withhold them. We may use another statute to justify withholding only if it absolutely prohibits disclosure or if it sets forth criteria to guide our decision on releasing or identifies particular types of material to be withheld. We often use this exemption to withhold information regarding a worker's earnings which is tax return information under section 6103 of the Internal Revenue Code.

§ 402.90 Exemption four for withholding records: Trade secrets and confidential commercial or financial information.

We will withhold trade secrets and commercial or financial information that is obtained from a person and is privileged or confidential.

(a) *Trade secrets.* A trade secret is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process.

(b) *Commercial or financial information.* We will not disclose records whose information is ''commercial or financial,'' is obtained from a person, and is ''privileged or confidential.''

(1) Information is ''commercial or financial'' if it relates to businesses, commerce, trade, employment, profits, or finances (including personal finances). We interpret this category broadly.

(2) Information is ''obtained from a person'' if SSA or another agency has obtained it from someone outside the Federal Government or from someone within the Government who has a commercial or financial interest in the information. ''Person'' includes an individual, partnership, corporation, association, state or foreign government,

or other organization. Information is not ''obtained from a person'' if it is generated by SSA or another Federal agency. However, information is ''obtained from a person'' if it is provided by someone, including but not limited to an agency employee, who retains a commercial or financial interest in the information.

(3) Information is ''privileged'' if it would ordinarily be protected from disclosure in civil discovery by a recognized evidentiary privilege, such as the attorney-client privilege or the work product privilege. Information may be privileged for this purpose under a privilege belonging to a person outside the government, unless the providing of the information to the government rendered the information no longer protectable in civil discovery.

(4) Information is ''confidential'' if it meets one of the following tests:

(i) Disclosure may impair the government's ability to obtain necessary information in the future;

(ii) Disclosure would substantially harm the competitive position of the person who submitted the information;

(iii) Disclosure would impair other government interests, such as program effectiveness and compliance; or

(iv) Disclosure would impair other private interests, such as an interest in controlling availability of intrinsically valuable records, which are sold in the market by their owner.

(c) *Analysis under tests in this section.* The following questions may be relevant in analyzing whether a record meets one or more of the above tests:

(1) Is the information of a type customarily held in strict confidence and not disclosed to the public by the person to whom it belongs?

(2) What is the general custom or usage with respect to such information in the relevant occupation or business?

(3) How many, and what types of, individuals have access to the information?

(4) What kind and degree of financial injury can be expected if the information is disclosed?

(d) *Designation of certain confidential information.* A person who submits records to the government may designate part or all of the information in such records as exempt from disclosure under Exemption 4 of the FOIA. The person may make this designation either at the time the records are submitted to the government or within a reasonable time thereafter. The designation must be in writing. Where a legend is required by a request for proposals or request for quotations, pursuant to 48 CFR 352.215–12, then that legend is necessary for this purpose. Any such designation will expire ten years after the records were submitted to the government.

(e) *Predisclosure notification.* The procedures in this paragraph apply to records on which the submitter has designated information as provided in paragraph (d) of this section. They also apply to records that were submitted to the government where we have substantial reason to believe that information in the records could reasonably be considered exempt under Exemption 4. Certain exceptions to these procedures are stated in paragraph (f) of this section.

(1) When we receive a request for such records, and we determine that we may be required to disclose them, we will make reasonable efforts to notify the submitter about these facts. The notice will include a copy of the request, and it will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If we must notify a large number of submitters, we may do this by posting or publishing a notice in a place where the submitters are reasonably likely to become aware of it.

(2) The submitter has five working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for its objections.

(3) We will give consideration to all bases that have been timely stated by the submitter. If we decide to disclose the records, we will notify the submitter in writing. This notice will briefly explain why we did not sustain its objections. We will include with the notice a copy of the records about which the submitter objected, as we propose to disclose them. The notice will state that we intend to disclose the records five working days after the submitter receives the notice unless we are ordered by a United States District Court not to release them.

(4) When a requester files suit under the FOIA to obtain records covered by this paragraph, we will promptly notify the submitter.

(5) Whenever we send a notice to a submitter under paragraph (e)(1) of this section, we will notify the requester that we are giving the submitter a notice and an opportunity to object. Whenever we send a notice to a submitter under paragraph (e)(3) of this section, we will notify the requester of this fact.

(f) *Exceptions to predisclosure notification.* The notice requirements in paragraph (e) of this section do not apply in the following situations:

(1) We decided not to disclose the records;

(2) The information has previously been published or made generally available;

(3) Disclosure is required by a regulation, issued after notice and opportunity for public comment, that specifies narrow categories of records that are to be disclosed under the FOIA, but in this case a submitter may still designate records as described in paragraph (d) of this section, and in exceptional cases, we may, at our discretion, follow the notice procedures in paragraph (e) of this section; or

(4) The designation appears to be obviously frivolous, but in this case we will still give the submitter the written notice required by paragraph (e)(3) of this section (although this notice need not explain our decision or include a copy of the records), and we will notify the requester as described in paragraph (e)(5) of this section.

§ 402.95 Exemption five for withholding records: Internal memoranda.

This exemption covers internal government communications and notes that fall within a generally recognized evidentiary privilege. Internal government communications include an agency's communications with an outside consultant or other outside person, with a court, or with Congress, when those communications are for a purpose similar to the purpose of privileged intra-agency communications. Some of the most-commonly applicable privileges are described in the following paragraphs:

(a) *Deliberative process privilege.* This privilege protects predecisional deliberative communications. A communication is protected under this privilege if it was made before a final decision was reached on some question of policy and if it expressed recommendations or opinions on that question. The purpose of the privilege is to prevent injury to the quality of the agency decisionmaking process by encouraging open and frank internal policy discussions, by avoiding premature disclosure of policies not yet adopted, and by avoiding the public confusion that might result from disclosing reasons that were not in fact the ultimate grounds for an agency's decision. Purely factual material in a deliberative document is within this privilege only if it is inextricably intertwined with the deliberative portions so that it cannot reasonably be segregated, if it would reveal the nature of the deliberative portions, or if its disclosure would in some other way make possible an intrusion into the decisionmaking process. We will release purely factual material in a deliberative

document unless that material is otherwise exempt. The privilege continues to protect predecisional documents even after a decision is made.

(b) *Attorney work product privilege.* This privilege protects documents prepared by or for an agency, or by or for its representative (typically, our attorneys) in anticipation of litigation or for trial. It includes documents prepared for purposes of administrative adjudications as well as court litigation. It includes documents prepared by program offices as well as by attorneys. It includes factual material in such documents as well as material revealing opinions and tactics. Finally, the privilege continues to protect the documents even after the litigation is closed.

(c) *Attorney-client communication privilege.* This privilege protects confidential communications between a lawyer and an employee or agent of the Government where there is an attorney-client relationship between them (typically, where the lawyer is acting as attorney for the agency and the employee is communicating on behalf of the agency) and where the employee has communicated information to the attorney in confidence in order to obtain legal advice or assistance.

§ 402.100 Exemption six for withholding records: Clearly unwarranted invasion of personal privacy.

(a) *Documents affected.* We may withhold records about individuals if disclosure would constitute a clearly unwarranted invasion of their personal privacy.

(b) *Balancing test.* In deciding whether to release records to you that contain personal or private information about someone else, we weigh the foreseeable harm of invading that person's privacy against the public benefit that would result from the release. If you were seeking information for a purely commercial venture, for example, we might not think that disclosure would primarily benefit the public and we would deny your request. On the other hand, we would be more inclined to release information if you were working on a research project that gave promise of providing valuable information to a wide audience. However, in our evaluation of requests for records we attempt to guard against the release of information that might involve a violation of personal privacy because of a requester being able to ''read between the lines'' or piece together items that would constitute information that normally would be exempt from mandatory disclosure under Exemption Six.

(c) *Examples.* Some of the information that we frequently withhold under Exemption Six is: Home addresses, ages, and minority group status of our employees or former employees; social security numbers; medical information about individuals who have filed a claim for disability benefits; names and addresses of individual beneficiaries of our programs, or benefits such individuals receive; earnings records, claim files, and other personal information SSA maintains.

§ 402.110 Exemption seven for withholding records: Law enforcement.

We are not required to disclose information or records that the government has compiled for law enforcement purposes. The records may apply to actual or potential violations of either criminal or civil laws or regulations. We can withhold these records only to the extent that releasing them would cause harm in at least one of the following situations:

(a) *Enforcement proceedings.* We may withhold information whose release could reasonably be expected to interfere with prospective or ongoing law enforcement proceedings. Investigations of fraud and mismanagement, employee misconduct, and civil rights violations may fall into this category. In certain cases—such as when a fraud investigation is likely—we may refuse to confirm or deny the existence of records that relate to the violations in order not to disclose that an investigation is in progress, or may be conducted.

(b) *Fair trial or impartial adjudication.* We may withhold records whose release would deprive a person of a fair trial or an impartial adjudication because of prejudicial publicity.

(c) *Personal privacy.* We are careful not to disclose information that could reasonably be expected to constitute an unwarranted invasion of personal privacy. When a name surfaces in an investigation, that person is likely to be vulnerable to innuendo, rumor, harassment, and retaliation.

(d) *Confidential sources and information.* We may withhold records whose release could reasonably be expected to disclose the identity of a confidential source of information. A confidential source may be an individual; a state, local, or foreign government agency; or any private organization. The exemption applies whether the source provides information under an express promise of confidentiality or under circumstances from which such an assurance could be reasonably inferred. Also, where the record, or information in it, has been compiled by a law enforcement authority conducting a criminal investigation, or by an agency conducting a lawful national security investigation, the exemption also protects all information supplied by a confidential source. Also protected from mandatory disclosure is any information which, if disclosed, could reasonably be expected to jeopardize the system of confidentiality that assures a flow of information from sources to investigatory agencies.

(e) *Techniques and procedures.* We may withhold records reflecting special techniques or procedures of investigation or prosecution, not otherwise generally known to the public. In some cases, it is not possible to describe even in general terms those techniques without disclosing the very material to be withheld. We may also withhold records whose release would disclose guidelines for law enforcement investigations or prosecutions if this disclosure could reasonably be expected to create a risk that someone could circumvent requirements of law or of regulation.

(f) *Life and physical safety.* We may withhold records whose disclosure could reasonably be expected to endanger the life or physical safety of any individual. This protection extends to threats and harassment as well as to physical violence.

§ 402.110 Exemptions eight and nine for withholding records: Records on financial institutions; records on wells.

Exemption eight permits us to withhold records about regulation or supervision of financial institutions. Exemption nine permits the withholding of geological and geophysical information and data, including maps, concerning wells.

§ 402.115 Deletion of identifying details.

When SSA publishes or otherwise makes available an opinion or order, statement of policy, or other record which relates to a private party or parties, the name or names or other identifying details may be deleted.

§ 402.120 Creation of records.

We are not required to create new records merely to satisfy a request. For example, we are not required to program computers to provide data in a particular form or to compile selected items from records, provide statistical data, ratios, proportions, percentages, etc. If these data have already been compiled and are available, we will

supply the record when appropriate fees are paid, as provided in §§ 402.160 and 402.165. This does not mean that we will never help you get information that does not already exist in our records. However, diverting staff and equipment from other responsibilities may not always be possible.

§ 402.125 Who may release a record.

Except as otherwise provided by regulation, only the Director, Office of Disclosure Policy, SSA, or her or his designee may determine whether to release any record in SSA's control and possession. This official is SSA's Freedom of Information Officer. Sections 402.40, 402.55, and 402.60 list some of the materials which we have determined may be released.

§ 402.130 How to request a record.

You may request a record in person, by telephone, or by mail. (However, see §§ 402.180 through 402.195 for an explanation of your appeal rights.) Any request should reasonably describe the record you want. If you have detailed information which would assist us in identifying that record, please submit it with your request. You should mark the outside of any envelope used to submit your request as a ''Freedom of Information Request'', no matter how your request may be categorized for fee purposes. (Sections 402.145 through 402.175 explain our fees.) The staff at any Social Security office can help you prepare this request.

§ 402.135 Where to send a request.

You may send your request for a record to: The Director, Office of Disclosure Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

§ 402.140 How a request for a record is processed.

(a) Within 10 working days from the date a request is received by the appropriate official (see § 402.135), we will make a determination as to whether the requested record will be provided. This 10-day period may be extended by written notice up to 10 additional working days when one or more of the following situations exist:

(1) The office processing the request needs to locate and then obtain the record from another facility;

(2) We need to locate, obtain, and appropriately examine a large number of records which are requested in a single request; or

(3) The office processing the request needs to consult with another agency which has a substantial interest in the subject matter of the request. This consultation shall be conducted with all practicable speed.

(b) If an extension is made, we will notify you, explain why the additional time is needed, and tell you the date by which we expect to make a decision on your request.

§ 402.145 Responding to your request.

(a) *Retrieving records.* We are required to furnish copies of records only when they are in our possession or we can retrieve them from storage. If we have stored the records you want in the National Archives or another storage center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes it is impossible to fill requests. Various laws, regulations, and manuals give the time periods for keeping records before they may be destroyed. For example, there is information about retention of records in the Records Disposal Act of 1944, 44 U.S.C. 3301 through 3314; the Federal Property Management Regulations, 41 CFR 101–1.104; and the General Records Schedules of the National Archives and Records Administration.

(b) *Furnishing records.* The requirement is that we furnish copies only of records that we have or can retrieve. We are not compelled to create new records. For example, we are not required to write a new program so that a computer will print information in the format you prefer. However, if the requested information is maintained in computerized form, but we can, with minimal computer instructions, produce the information on paper, we will do this if it is the only way to respond to a request. Nor are we required to perform research for you. On the other hand, we may decide to conserve Government resources and at the same time supply the records you need by consolidating information from various records rather than copying them all. Moreover, we are required to furnish only one copy of a record and usually impose that limit. If information exists in different forms, we will provide the record in the form that best conserves government resources. For example, if it requires less time and expense to provide a computer record as a paper printout rather than in an electronic medium, we will provide the printout.

§ 402.150 Release of records.

(a) *Records previously released.* If we have released a record, or a part of a record, to others in the past, we will ordinarily release it to you also. However, we will not release it to you if a statute forbids this disclosure, and we will not necessarily release it to you if an exemption applies in your situation and did not apply, or applied differently, in the previous situations.

(b) *Unauthorized disclosure.* The principle stated in paragraph (a) of this section does not apply if the previous release was unauthorized.

(c) *Poor copy.* If we cannot make a legible copy of a record to be released, we do not attempt to reconstruct it. Instead, we furnish the best copy possible and note its poor quality in our reply.

§ 402.155 Fees to be charged—categories of requests.

Paragraphs (a) through (c) of this section state, for each category of request, the type of fees that we will generally charge. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given below or for other reasons.

(a) *Commercial use request.* If your request is for a commercial use, we will charge you the costs of search, review, and duplication.

(b) *Educational and scientific institutions and news media.* If you are an educational institution or a non-commercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and your request is not for a commercial use, we will charge you only for the duplication of documents. Also, we will not charge you the copying costs for the first 100 pages of duplication.

(c) *Other requesters.* If your request is not the kind described by paragraph (a) or (b) of this section, then we will charge you only for the search and the duplication. Also, we will not charge you for the first two hours of search time or for the copying costs of the first 100 pages of duplication.

§ 402.160 Fees to be charged—general provisions.

(a) We may charge search fees even if the records we find are exempt from disclosure, or even if we do not find any records at all.

(b) If we are not charging you for the first two hours of search time, under § 402.145(c), and those two hours are spent on a computer search, then the two free hours are the first two hours of the operator's own operation. If the operator spends less than two hours on the search, we will reduce the total search fees by the average hourly rate for the operator's time, multiplied by two.

(c) If we are not charging you for the first 100 pages of duplication, under § 402.145 (b) or (c), then those 100 pages

are the first 100 pages of photocopies of standard size pages, or the first 100 pages of computer printout. If we cannot use this method to calculate the fee reduction, then we will reduce your total duplication fee by the normal charge for photocopying a standard size page, multiplied by 100.

(d) We will charge interest on unpaid bills beginning on the 31st day following the day the bill was sent.

§ 402.165 Fee schedule.

The following is our fee schedule for providing records and related services under the FOIA:

(a) *Manual searching for or reviewing of records.* When the search or review is performed by employees at grade GS–1 through GS–8, we will charge an hourly rate based on the salary of a GS–5, step 7, employee; when done by a GS–9 through GS–14, an hourly rate based on the salary of a GS–12, step 4, employee; and when done by a GS–15 or above, an hourly rate based on the salary of a GS–15, step 7, employee. In each case, we will compute the hourly rate by taking the current hourly rate for the specified grade and step, adding 16% of that rate to cover benefits, and rounding to the nearest whole dollar. As of January 5, 1997, these rates were $14, $28, and $50 respectively. These rates are adjusted as Federal salaries change. When a search involves employees at more than one of these levels, we will charge the rate appropriate for each.

(b) *Computer searching and printing.* We will charge the actual cost of operating the computer plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.

(c) *Photocopying standard size pages.* We will charge $0.10 per page. The Freedom of Information (FOI) Officer may charge lower fees for particular documents where—

(1) The document has already been printed in large numbers;

(2) The program office determines that using existing stock to answer this request, and any other anticipated FOI requests, will not interfere with program requirements; and

(3) The FOI Officer determines that the lower fee is adequate to recover the prorated share of the original printing costs.

(d) *Photocopying odd-size documents.* For photocopying documents such as punchcards or blueprints, or reproducing other records such as tapes, we will charge the actual costs of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.

(e) *Certifying that records are true copies.* This service is not required by the FOIA. If we agree to provide it, we will charge $10 per certification.

(f) *Sending records by express mail, certified mail, or other special methods.* This service is not required by the FOIA. If we agree to provide it, we will charge our actual costs.

(g) *Other special services.* For performing any other special service that you request and we agree to, we will charge the actual costs of operating any machinery, plus actual cost of any materials used, plus charges for the time of our employees, at the rates given in paragraph (a) of this section.

(h) *Billing exceeds cost of service.* Generally we will not charge you a fee when the cost of the service is less than the cost of sending you a bill. However, where an individual, organization, or governmental unit makes multiple separate requests, we will total the costs incurred and periodically bill the requester for the services rendered.

(i) *Fee for copies of printed materials.* When extra copies of printed material are available, the charge is generally 1 cent per page. If the material may be purchased from the Superintendent of Documents, the charge is that set by the Superintendent. The Superintendent's address is in § 402.40.

(j) *When not applicable.* This fee schedule does not apply to requests for records of Social Security number holders, wage earners, employers, and claimants when the requests are governed by section 1106 of the Social Security Act and by §§ Sections 402.170 and 402.175.

§ 402.170 Fees for providing records and related services for program purposes pursuant to section 1106 of the Social Security Act.

(a) *Program purposes described.* (1) We consider a request to be program related if the information must be disclosed under the Social Security Act. For example, section 205(c)(2)(A) of the Act (42 U.S.C. 405(c)(2)(A)) requires that we provide certain information upon request to a worker, her or his legal representative, her or his survivor, or the legal representative of the worker's estate. That information is the amounts of the worker's wages and self-employment income and the periods during which they were paid or derived, as shown by our records.

(2) We also consider a request to be program related if the requester indicates the needed information will be used for a purpose which is directly related to the administration of a program under the Social Security Act.

(i) The major criteria we consider in deciding whether a proposed use is so related are:

(A) Is the information needed to pursue some benefit under the Act?

(B) Is the information needed solely to verify the accuracy of information obtained in connection with a program administered under the Act?

(C) Is the information needed in connection with an activity which has been authorized under the Act?

(D) Is the information needed by an employer to carry out her or his taxpaying responsibilities under the Federal Insurance Contributions Act or section 218 of the Act?

(ii) We will consider on a case by case basis those requests which do not meet these criteria but are claimed to be program related.

(b) *When we charge.* If we determine the request for information is program related, we may or may not charge for the information. For example, as stated in paragraph (a) of this section, we generally will not charge you for information needed to assure the accuracy of our records on which your present or future Social Security benefits depend. In addition, we generally will not charge for furnishing information under section 205(c)(2)(A) of the Act. However, if we do charge for a program related request (for example, if more detailed information or special services are requested) we will use the fee schedule in § 402.165 if information is being disclosed under the FOIA and the fee schedule in 20 CFR 401.95 if access to the information is being granted under the Privacy Act. (Exception: If the request is for purposes of administering employee benefits covered by the Employee Retirement Income Security Act of 1974 (ERISA), even if the request is covered by section 205(c)(2)(A) of the Act, we will charge under § 402.175.)

§ 402.175 Fees for providing information and related services for non-program purposes.

(a) *General.* Section 1106(c) of the Social Security Act permits the Commissioner to require requesters of information to pay the full cost of supplying the information where the information is requested to comply with the ERISA, or ''* * * for any other purpose not directly related to the administration of the program or programs under * * *'' the Social Security Act. This may be done notwithstanding the fee provisions of the FOIA and the Privacy Act or any

other provision of law. As used in this section—

(1) Full cost includes the direct and indirect costs to SSA (including costs of duplication) of providing information and related services under section 1106(c) of the Act; and

(2) Full cost of an employee's time includes fringe benefits and overhead costs such as rent and utilities.

(b) *Non-program related requests.* We consider a request for information which does not meet or equal any of the criteria in § 402.170 to be non-program related. (Whether a request for information about an individual is made by that individual or by someone else is not a factor.) In responding to these requests, or requests for ERISA purposes, we will charge the full cost of our services as described in paragraph (c) of this section.

(c) *Fee schedule.* Our fee schedule for non-program related requests is:

(1) *Manual searching for records.* Full cost of the employee's time.

(2) *Photocopying, or reproducing records such as magnetic tapes or punch cards.* Full cost of the operator's time plus the full cost of the machine time and the materials used.

(3) *Use of electronic data processing equipment to obtain records.* Our full cost for the service, including computer search time, computer runs and printouts, and the time of computer programmers and operators and other employees.

(4) *Certification or authentication of records.* Full cost of certification or authentication.

(5) *Forwarding materials to destination.* If you request special arrangements for forwarding the material, we will charge you the full cost of this service (e.g., you request express mail or a commercial delivery service). If no special forwarding arrangements are requested, we will charge you the full cost of the service, including the U.S. Postal Service cost.

(6) *Performing other special services.* If we agree to provide any special services you request, we will charge you the full cost of the time of the employee who performs the service, plus the full cost of any machine time and materials that the employee uses.

(7) *Billing exceeds cost of service.* Generally we will not charge you a fee when the cost of the service is less than the cost of sending you a bill. However, where an individual, organization, or governmental unit makes multiple separate requests, we will total the costs incurred and bill the requester for the services rendered.

(d) *Fee for copies of printed materials.* When extra copies of printed material are available, the charge is generally 1 cent per page. If the material may be purchased from the Superintendent of Documents, the charge is that set by the Superintendent. The Superintendent's address is in § 402.40.

(e) *Charging when requested record not found.* We may charge you for search time, even though we fail to find the records. We may also charge you for search time if the records we locate are exempt from disclosure.

§ 402.180 Procedure on assessing and collecting fees for providing records.

(a) We will generally assume that when you send us a request, you agree to pay for the services needed to locate and send that record to you. You may specify in your request a limit on the amount you are willing to spend. If you do that or include with your request a payment that does not cover our fee, we will notify you if it appears that the fee will exceed that amount and ask whether you want us to continue to process your request. Also, before we start work on your request under § 402.120, we will generally notify you of our exact or estimated charge for the information, unless it is clear that you have a reasonable idea of the cost.

(b) If you have failed to pay previous bills in a timely fashion, or if our initial review of your request indicates that we will charge you fees exceeding $250, we will require you to pay your past due fees and/or the estimated fees, or a deposit, before we start searching for the records you want. If so, we will let you know promptly upon receiving your request. In such cases, administrative time limits (i.e., ten working days from receipt of initial requests and 20 working days from receipt of appeals from initial denials, plus permissible extensions of these time limits) will begin only after we come to an agreement with you over payment of fees, or decide that fee waiver or reduction is appropriate.

(c) We will normally require you to pay all fees before we furnish the records to you. We may, at our discretion, send you a bill along with or following the furnishing of the records. For example, we may do this if you have a history of prompt payment. We may also, at our discretion, aggregate the charges for certain time periods in order to avoid sending numerous small bills to frequent requesters, or to businesses or agents representing requesters. For example, we might send a bill to such a requester once a month. Fees should be paid in accordance with the instructions furnished by the person who responds to your requests.

(d) Payment of fees will be made by check or money order payable to ''Social Security Administration''.

§ 402.185 Waiver or reduction of fees in the public interest.

(a) *Standard.* We will waive or reduce the fees we would otherwise charge if disclosure of the information meets both tests which are explained in paragraphs (b) and (c) of this section:

(1) It is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(2) It is not primarily in the commercial interest of the requester.

(b) *Public interest.* The disclosure passes the first test only if it furthers the specific public interest of being likely to contribute significantly to public understanding of government operations or activities, regardless of any other public interest it may further. In analyzing this question, we will consider the following factors:

(1) How, if at all, do the records to be disclosed pertain to the operations or activities of the Federal Government?

(2) Would disclosure of the records reveal any meaningful information about government operations or activities? Can one learn from these records anything about such operations that is not already public knowledge?

(3) Will the disclosure advance the understanding of the general public as distinguished from a narrow segment of interested persons? Under this factor we may consider whether the requester is in a position to contribute to public understanding. For example, we may consider whether the requester has such knowledge or expertise as may be necessary to understand the information, and whether the requester's intended use of the information would be likely to disseminate the information among the public. An unsupported claim to be doing research for a book or article does not demonstrate that likelihood, while such a claim by a representative of the news media is better evidence.

(4) Will the contribution to public understanding be a significant one? Will the public's understanding of the government's operations be substantially greater as a result of the disclosure?

(c) *Not primarily in the requester's commercial interest.* If the disclosure passes the test of furthering the specific public interest described in paragraph (b) of this section, we will determine whether it also furthers the requester's commercial interest and, if so, whether this effect outweighs the advancement of that public interest. In applying this

second test, we will consider the following factors:

(1) Would the disclosure further a commercial interest of the requester, or of someone on whose behalf the requester is acting? ''Commercial interests'' include interests relating to business, trade, and profit. Not only profit-making corporations have commercial interests—so do nonprofit corporations, individuals, unions, and other associations. The interest of a representative of the news media in using the information for news dissemination purposes will not be considered a commercial interest.

(2) If disclosure would further a commercial interest of the requester, would that effect outweigh the advancement of the public interest defined in paragraph (b) of this section? Which effect is primary?

(d) *Deciding between waiver and reduction.* If the disclosure passes both tests, we will normally waive fees. However, in some cases we may decide only to reduce the fees. For example, we may do this when disclosure of some but not all of the requested records passes the tests.

(e) *Procedure for requesting a waiver or reduction.* You must make your request for a waiver or reduction at the same time you make your request for records. You should explain why you believe a waiver or reduction is proper under the analysis in paragraphs (a) through (d) of this section. Only FOI Officers may make the decision whether to waive, or reduce, the fees. If we do not completely grant your request for a waiver or reduction, the denial letter will designate a review official. You may appeal the denial to that official. In your appeal letter, you should discuss whatever reasons are given in our denial letter. The process prescribed in § 402.190 of this part will also apply to these appeals.

§ 402.190 Officials who may deny a request for records under FOIA.

Only the Director, Office of Disclosure Policy, SSA, or her or his designee is authorized to deny a written request to obtain, inspect, or copy any social security record.

§ 402.195 How a request is denied.

(a) *Oral requests.* If we cannot comply with your oral request because the Director of the Office of Disclosure Policy (or designee) has not previously made a determination to release the record you want, we will tell you that fact. If you still wish to pursue your request, you must put your request in writing.

(b) *Written requests.* If you make a written request and the information or record you requested will not be released, we will send you an official denial in writing. We will explain why the request was denied (for example, the reasons why the requested document is subject to one or more clearly described exemptions), will include the name and title or position of the person who made the decision, and what your appeal rights are.

(c) *Unproductive searches.* We make a diligent search for records to satisfy your request. Nevertheless, we may not be able always to find the records you want using the information you provided, or they may not exist. If we advise you that we have been unable to find the records despite a diligent search, this does not constitute a denial of your request.

§ 402.200 How to appeal a decision denying all or part of a request.

(a) *How to appeal.* If all or part of your written request was denied, you may request that the Commissioner of Social Security, 6401 Security Boulevard, Baltimore, MD 21235 review that determination. Your request for review:

(1) Must be in writing;

(2) Must be mailed within 30 days after you received notification that all or part of your request was denied or, if later, 30 days after you received materials in partial compliance with your request; and

(3) May include additional information or evidence to support your request.

(b) *How the review is made.* After reviewing the prior decision and after considering anything else you have submitted, the Commissioner or his or her designee will affirm or revise all or part of the prior decision. The Commissioner (or a designee) will affirm a denial only after consulting with the appropriate SSA official(s), including legal counsel. The decision must be made within 20 working days after your appeal is received. The Commissioner or a designee may extend this time limit up to 10 additional working days if one of the situations in § 402.140(a) exists, provided that, if a prior extension was used to process this request, the sum of the extensions may not exceed 10 working days. You will be notified in writing of any extension, the reason for the extension, and the date by which your appeal will be decided.

(c) *How you are notified of the Commissioner's decision.* The Commissioner or a designee will send you a written notice of the decision explaining the basis of the decision (for example, the reasons why an exemption applies) which will include the name and title or position of the person who made the decision. The notice will tell you that if any part of your request remains unsatisfied, you have the right to seek court review.

§ 402.205 U.S. District Court action.

If the Commissioner or a designee, upon review, affirms the denial of your request for records, in whole or in part, you may ask a U.S. District Court to review that denial. See 5 U.S.C. 552(a)(4)(B). If we fail to act on your request for a record or for review of a denial of such a request within the time limits in § 402.140(a) or in § 402.190(b), you may ask a U.S. District Court to treat this as if the Commissioner had denied your request.

PART 422—ORGANIZATION AND PROCEDURES

Subpart E of Part 422—[Removed]

3. Under the authority of section 106(b) of Pub. L. 103–296, Social Security Independence and Program Improvements Act of 1994, subpart E of part 422, is removed and reserved.

[FR Doc. 97–1271 Filed 1–28–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Tripelennamine Hydrochloride Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to more clearly reflect the currently approved conditions of use of a new animal drug application (NADA) held by Solvay Animal Health, Inc. The NADA provides for use of tripelennamine hydrochloride injection for antihistaminic therapy in horses and cattle. The amendment provides for tolerances for drug residues in edible cattle tissues and in milk and the corresponding drug withdrawal and milk discard periods. When the NADA was reviewed under the National Academy of Sciences/National Research Council Drug Study Implementation Program and the results of the review finalized in 1983, this information was inadvertently omitted from the regulations.

EFFECTIVE DATE: January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Solvay Animal Health, Inc., 1201 Northland Dr., Mendota Heights, MN 55120, is sponsor of NADA 6–417. The application provides for intravenous or intramuscular use of tripelennamine hydrochloride injection in cattle and intramuscular use in horses for treating conditions in which antihistaminic therapy may be expected to lead to alleviation of some signs of disease. FDA is amending the regulations to reflect additional limitations currently in the approved drug labeling and publishing tolerances for drug residues in cattle tissues and in milk. The product is for veterinary prescription use only. The regulations are amended in 21 CFR 522.2615(c) to reflect the required withdrawal period and milk discard time and in 21 CFR part 556 to reflect the tolerance for residues in cattle tissues and in milk.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

2. Section 522.2615 is amended by redesignating paragraph (c) as paragraph (d), adding new paragraph (c), and revising newly redesignated paragraph (d)(3) to read as follows:

§ 522.2615 Tripelennamine hydrochloride injection.

* * * * *

(c) *Related tolerances.* See § 556.741 of this chapter.

(d) * * *

(3) *Limitations.* Do not use in horses intended for food purposes. Treated cattle must not be slaughtered for food during treatment and for 4 days following the last treatment. Milk that has been taken during treatment and for 24 hours (two milkings) after the last treatment must not be used for food. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. New § 556.741 is added to read as follows:

§ 556.741 Tripelennamine.

A tolerance of 200 parts per billion (ppb) is established for residues of tripelennamine in uncooked edible tissues of cattle and 20 ppb in milk.

Dated: January 7, 1997.

Robert C. Livingston,

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

[FR Doc. 97–2140 Filed 1–28–97; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 812 and 813

[Docket No. 91N–0292]

Investigational Device Exemptions; Intraocular Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to remove the regulations on investigational device exemptions (IDE's) for intraocular lenses (IOL's). An IOL is an implant intended to surgically replace the natural lens of the human eye. FDA believes it is no longer necessary to maintain particularized regulations on IOL investigations because approved IOL's are now widely available and investigations of IOL's can be conducted under the investigational device regulations applicable to medical devices generally. This action is intended to eliminate confusion within the clinical research community and to provide uniformity to investigational device studies.

EFFECTIVE DATE: March 31, 1997.

FOR FURTHER INFORMATION CONTACT: Joanne R. Less, Center for Devices and Radiological Health (HFZ–403), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has two regulations on investigational use of medical devices. Part 812 (21 CFR part 812) covers investigational devices generally, and part 813 (21 CFR part 813) applies only to IOL's. The existence of a separate regulation for investigational use of IOL's is due to provisions of the Medical Device Amendments of 1976 (1976 amendments) (Pub. L. 94–295) that addressed IOL's and to particular issues surrounding IOL products at that time.

FDA has determined that maintaining two closely related sets of investigational device regulations is no longer necessary. Thus, FDA has reexamined the need to retain part 813, and the agency has concluded that maintaining a regulatory distinction between IOL studies and studies of other medical devices is no longer justified. Therefore, in order to eliminate confusion within the clinical research community and to provide uniformity to investigational device studies, FDA is removing the IOL regulations in their entirety and removing § 812.2(c)(8) to exempt IOL's from part 812 when the IOL's are the subject of an approved premarket approval application under section 515 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e).

In the Federal Register of October 6, 1993 (58 FR 52142), FDA published a proposed rule to remove the regulations on IOL's. In that same issue, FDA also proposed procedures for disqualification of clinical investigators for inclusion in the current general investigational device regulations. FDA provided an opportunity for interested persons to submit comments on the proposed removal of the IOL regulations by December 6, 1993. Subsequently, in the Federal Register of December 6, 1993 (58 FR 64209), FDA extended the comment period to January 5, 1994. In a future issue of the Federal Register, FDA will issue final procedures for disqualification of clinical investigators as part of the current general investigational device regulations in part 812.

II. Comments

The agency received two comments in response to the proposal of October 6, 1993, with respect to IOL's. One of the comments was submitted by a trade association. The other comment was submitted by a manufacturer. A

summary of the comments and the agency's response to them is provided below:

(1) One comment concurred with FDA's proposal to remove the separate regulation on IDE's for IOL's contained in part 813. However, because part 813 contains some provisions that are not reflected in part 812, the comment suggested that FDA identify what, if any, additional information FDA would require IDE submissions for IOL's to include.

Under the final rule, any requirements unique to part 813 would no longer apply. The content of IDE submissions for IOL's only need to include information required in IDE submissions for investigational devices generally. For example, with respect to institutional review boards (IRB's) (referred to in part 813 as institutional review committees), the sponsor will only be required to submit the information required by § 812.20(b)(6) and not that required by § 813.20(b)(7).

(2) Both comments recommended that FDA provide in the final rule a mechanism for IOL clinical investigations that are in progress before the final rule becomes effective to continue under part 813 until those investigations are completed or terminated. One comment also noted that, because investigators have not signed statements agreeing to conform to part 812, application of the requirements of part 812 to ongoing IOL studies would create confusion and add to the cost of the ongoing studies.

FDA does not believe that the continuation of part 813 requirements for existing studies is necessary. The differences between parts 812 and 813 are relatively minor. Investigators who are in compliance with part 813 will also generally be in compliance with part 812. Sponsors may seek a waiver under part 812, if there are any difficulties as a result of the change from part 813 to part 812. FDA, however does not anticipate any difficulties.

(3) Both comments emphasized that part 812 has certain requirements that are not included in part 813. For example, § 812.150(b)(4) requires the sponsor to submit a semi-annual investigator list to FDA; § 812.150(b)(5) requires the sponsor to submit annual progress reports to all reviewing IRB's; and § 812.150(b)(8) requires the sponsor to submit to FDA a copy of any report by an investigator under § 812.150(a)(5) within 5 working days of receipt. Both comments requested that these additional rules not be imposed on IOL studies conducted under part 812.

FDA does not believe that maintaining this type of distinction is necessary. Experience over the past 15 years has shown that the requirements of part 812 are reasonable and that sponsors of investigations under part 812 have not had undue difficulty complying with these provisions. As noted in section II (2) of this document, part 812 contains a waiver provision that can be utilized on a case-by-case basis, if needed.

(4) One comment asked how IRB's would be notified of the new rule.

FDA will send letters to sponsors of all active IOL IDE investigations, and the agency will request that sponsors inform investigators and IRB's of the change. Additionally, FDA will publicize the new rule at the regional IRB meetings and at other appropriate forums.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule removes existing regulations on investigational studies of IOL's and requires such investigations to be conducted under the IDE regulations in part 812 applicable to medical devices generally, the agency certifies that the final rule will not impose any significant new burdens on sponsors and investigators of IOL's and will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 813

Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, chapter I of title 21 of the Code of Federal Regulations is amended in 21 CFR parts 812 and 813 as follows:

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

1. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: Secs. 301, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 702, 704, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n).

§ 812.2 [Amended]

2. Section 812.2 *Applicability* is amended by removing paragraph (c)(8).

PART 813—INVESTIGATIONAL EXEMPTIONS FOR INTRAOCULAR LENSES

Part 813 [Removed and Reserved]

3. Part 813, consisting of §§ 813.1 through 813.170, is removed and reserved.

Dated: January 22, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–2169 Filed 1–28–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1880–AA61

Direct Grant Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Department's regulations on direct grant programs to expand the basis for selecting applications for new grants to include a recipient's previous

performance under any Department grant program as well as its failure to submit a final performance report or submission of a report of unacceptable quality. The Secretary has decided not to amend the regulations to change the date by which applications are considered received by the Department of Education. These amendments to the final regulations are part of the Department's continuing effort to improve the discretionary grantmaking process.

EFFECTIVE DATE: These regulations take effect February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Ronelle Holloman, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3636, ROB–3, Washington, D.C. 20202–4248. Telephone: (202) 205–3501. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On September 20, 1995, the Secretary published in the Federal Register (60 FR 48844) a notice of proposed rulemaking (NPRM) proposing to revise sections in the Education Department General Administrative Regulations (EDGAR) regarding the deadline date for applications and how the Secretary selects applications for new grants. These proposed amendments were expected to reduce the processing time for discretionary grants, improve the quality of the final performance report and increase the ability of the Department to ensure that qualified applicants receive grants.

The significant difference between the NPRM and this final regulation is the deletion of the amendment that would have changed the requirement for meeting the deadline date for a competition from the postmarked date to the date the application is actually received. Most commenters opposed this change for one or both of the following reasons: (1) those applicants closest in proximity to the Washington, D.C. metropolitan area would have an unfair advantage; and (2) the change would cause additional cost burdens to recipients. Although the Department did receive several responses in support of the change, from commenters who felt that the change would not cause additional hardship and would be fair if ED allowed for reasonable exceptions to the rule, the Secretary decided not to implement this proposed change at this time.

The final regulation changes how the Secretary selects applications for new grants (34 CFR 75.217). The regulation expands the basis for selection to include a recipient's prior performance under any Department program, including use of funds and the applicant's failure to submit a final performance report or the submission of a report of unacceptable quality. The Department's motivation for this change is to promote accountability and good stewardship. The change will require a stronger commitment from a recipient to submit a final performance report and allow ED the opportunity to inform the general public and the educational community of successful project outcomes. The majority of commenters who responded agreed with the change and felt that this change would set a precedent for sound performance and accountability. Further details of the comments received are discussed below.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 44 parties submitted comments on the proposed regulations. An analysis of the comments and of the resulting changes in the regulations since the publication of the NPRM follows. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 75.217 How the Secretary selects applications for new grants.

Comments: The Department received a total of 11 comments on this section. The majority of commenters agreed with this change and felt that an institution that received grant funds should be held accountable for meeting the objectives of the grant.

Discussion: The Secretary agrees. Accountability is important to ensure progress and success. The submission of a final report provides opportunity for the general public to know that their tax dollars were spent wisely and provides the educational community with the opportunity to replicate a successful project. The failure to meet all of the obligations in a previous grant would alert the Department that something could be seriously wrong and ED would conduct a further review before funds could be granted in the future.

Changes: None

Comments: One commenter disagreed with the proposed change because the commenter thought it was unfair to penalize an entity for the acts of one individual and that ED does not have standards for report quality.

Discussion: This amendment broadened the range of information the Secretary could consider in selecting new grants. The criteria for selection of new grants are established in regulations of the Department. The Secretary does not agree that there need to be separate criteria for reports. In fact, the Secretary has avoided any effort to narrowly circumscribe final reports. This is consistent with the Department's new reengineered grants process that encourages a partnership with its recipients and supports flexibility in the administration of their projects. In filing an interim or final report the grantee must demonstrate that it is making substantial progress toward meeting the objectives of the grant or that it has met the objectives of the grant. A report will be considered substandard if it fails to address how the recipient met the objectives of a grant or, if it failed to meet any objectives, how it will take steps to improve the project and meet the objectives.

Changes: None

Comments: Several commenters agreed with the proposed change but expressed two similar concerns: (1) How long will a recipient's past poor performance be considered by the Department? (2) What mechanism will be used to allow applicants to receive further funding?

Discussion: Generally, in most cases where poor performance has been an issue, the Department relied on the high-risk procedures authorized under §§ 74.14 and 80.12 of the Education Department General Administrative Regulations (EDGAR). Under the high-risk regulations, ED may impose additional conditions on a recipient to help ensure proper performance. However, there are rare cases where an applicant poses such a risk of misuse of Federal funds that no award should be made. This regulation is intended to be used in those rare cases. ED is aware that recipients face unexpected challenges, some of which can cause a recipient to perform poorly on a grant; therefore, when making future funding decisions, ED will consider any extenuating circumstances on a case-by-case basis.

Paperwork Reduction Act of 1995

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would

require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 75

Education Department, Discretionary grant programs—education, Continuation funding, Grant administration, Incorporation by reference, Reporting and recordkeeping requirements, Performance reports, Unobligated funds.

Dated: January 23, 1997.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary amends Part 75 of Title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. Section 75.217 is amended by revising paragraph (d)(3) to read as follows:

§ 75.217 How the Secretary selects applications for new grants.

* * * * *

(d) * * *

(3) Any other information—

(i) Relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants;

(ii) Concerning the applicant's performance and use of funds under a previous award under any Department program; and

(iii) Concerning the applicant's failure under any Department program to submit a performance report or its submission of a performance report of unacceptable quality.

* * * * *

[FR Doc. 97–2196 Filed 1–28–97; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 055–4038; FRL–5653–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of a NO_X RACT Determination for International Paper Company—Hammermill Papers Division—Lockhaven

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires reasonably available control technology (RACT) on International Paper Company—Hammermill Papers Division, a major source of nitrogen oxide (NO_X) emissions. Additionally, it limits the volatile organic compound (VOC) emissions at this facility to no more than 50 tons per year; thereby making this facility a synthetic minor VOC source. The intended effect of this action is to approve a source-specific operating permit for the emission units at International Paper—Hammermill Division—Lockhaven, located in Clinton County, Pennsylvania. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule is effective on February 28, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 566–2180, at the EPA Region III office or via e-mail at stahl.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On April 9, 1996 (61 FR 15709), EPA published a direct final rulemaking notice and the accompanying notice of proposed rulemaking (NPR) (61 FR 15744) for the Commonwealth of Pennsylvania pertaining to the VOC and NO_X RACT determinations for 21 sources. One of these sources was International Paper Company—Hammermill Papers Division—Lockhaven (IP—Lockhaven), located in Clinton County, Pennsylvania. On June 28, 1996, adverse comments were submitted to EPA by the New York Department of Environmental Conservation (NYDEC) pertaining to the RACT determination for IP—Lockhaven. The formal SIP revision for IP—Lockhaven was submitted by Pennsylvania on April 19, 1995. Pennsylvania Department of Environmental Protection (PADEP) also submitted comments to EPA on the IP—Lockhaven RACT determination.

NYDEC Comments

New York Department of Environmental Conservation commented that while they agreed with EPA's determination that RACT for the two 350 mmBTU/hr coal-fired stoker boilers was the operation and maintenance of the boilers in accordance with manufacturer's specifications and good air pollution control practices, they disagreed with the accompanying emission limit of 0.7 lbs NO_X/mmBTU, averaged over a 30 day period, that was also determined to be RACT for these boilers. NYDEC stated that since the AP–42 emission factor estimates NO_X emissions for this type of unit at 0.56 lbs/mmBTU, the limit of 0.7 lbs/mmBTU was too high. NYDEC concludes that in the absence of supporting data, the AP–42 emission rate should become the SIP emission rate for these boilers.

Pennsylvania Comments

Pennsylvania Department of Environmental Protection submitted comments to EPA on July 16, 1996 stating that the proposed RACT emission limits of 0.7 lbs NO_X/mmBTU for the two boilers at IP—Lockhaven were established based on actual emissions data. The 30 day average CEM data recorded for boiler #1 was 0.61 lbs/mmBTU with the range as 0.52 to 0.67 lbs/mmBTU. The 30 day average CEM data recorded for boiler #2 was 0.58 lbs/mmBTU with the range as 0.53 to 0.60 lbs/mmBTU. Since a year's worth of certified data was not available at the time that DEP issued the permit to IP—Lockhaven (December 1995, OP 18–0005), DEP established the limit of 0.7 lbs/mmBTU to allow a buffer to account for the limited emission data. DEP also states that condition #6 of the IP permit allows the Department to revise the NO_X emission limits based on future CEM data. Furthermore, DEP states that since the permit was issued, the IP boilers have recorded exceedances and were

required to make adjustment to meet the 0.7 lbs/mmBTU permit limit; indicating to DEP that the 0.7 lbs/mmBTU limit is appropriate for these boilers.

EPA Response to Comments

The AP–42 emission factors are generally used where there is no other available data. These factors come from the EPA document ''Compilation of Air Pollution Emission Factors'' (AP–42) now in its fifth edition (January 1995). These emission factors represent an estimate of expected emissions and are compiled by EPA for a variety of industrial sources and cover NO_X as well as other pollutants. The two boilers whose RACT determinations are at issue here are coal-fired stoker boilers and the AP–42 emission factor is given as 13.7 lbs NO_X/ton of coal burned. In order to convert this emission factor to units compatible with the proposed RACT emission limits (lbs NO_X/mmBTU), the heating value of the coal used needs to be known or estimated. Generally the heating value of coal varies from 12,500 BTU to 13,500 BTU per ton of coal. Using the lower end of this range is the more environmentally conservative part of this range, producing a slightly higher estimate of emissions. The heating value of 12,500 BTU/ton coal is also more realistic for this part of the country. Therefore, the conversion of the 13.7 lbs NO_X/ton coal emission factor is as follows:

$$13.7 \text{ lbs } NO_X/\text{ton coal} \times 1 \text{ ton coal}/2000 \text{ lbs} \times \text{lb coal}/12{,}500 \text{ BTU} \times 10^6 = 0.55 \text{ lbs } NO_X/\text{mmBTU}$$

This is approximately the 0.56 lbs NO_X/mmBTU emission factor that NYDEC cites as the AP–42 emission factor for the boilers at IP—Lockhaven.

EPA believes that RACT for the two 350 mmBTU/hr stoker boilers at IP—Lockhaven should not require the installation of add-on emission controls. NYDEC agrees with this assessment. Consequently, the RACT emission limit would reflect emissions achievable without controls. International Paper—Lockhaven has been required to operate and maintain continuous emission monitors (CEMs) to monitor NO_X at these two boilers since 1994. Using the CEM data available for these boilers, beginning with the first quarter in 1994 through the second quarter in 1996, the NO_X emissions from boiler #1, on a quarterly average, were 0.74 lbs/mmBTU, 0.66 lbs/mmBTU, 0.59 lbs/mmBTU, 0.61 lbs/mmBTU, 0.63 lbs/mmBTU, 0.64 lbs/mmBTU, 0.60 lbs/mmBTU, 0.54 lbs/mmBTU, 0.54 lbs/mmBTU, and 0.53 lbs/mmBTU. The NO_X CEM data for boiler #2, beginning with the first quarter in 1994 through the second quarter in 1996, were 0.57 lbs/mmBTU, 0.58 lbs/mmBTU, 0.63 lbs/mmBTU, 0.66 lbs/mmBTU, 0.70 lbs/mmBTU, 0.72 lbs/mmBTU, 0.67 lbs/mmBTU, 0.60 lbs/mmBTU, 0.60 lbs/mmBTU, and 0.641 lbs/mmBTU. These data are quarterly averages. CEM data for both running 30 day averages and daily averages are available for each of the two IP boilers. The running 30 day averages in the period first quarter 1994 through the second quarter 1996 range from a low of 0.515 lbs/mmBTU to a high of 0.70 lbs/mmBTU for boiler #1 and from a low of 0.529 lbs/mmBTU to a high of 0.779 lbs/mmBTU for boiler #2. The daily averages in the same period range from 0.32 lbs/mmBTU to 0.76 lbs/mmBTU for boiler #1 and from 0.47 lbs/mmBTU to 0.82 lbs/mmBTU for boiler #2. The longer the averaging period, the easier it is to comply with the same numerical emission limit. For example, a 0.7 lbs/mmBTU limit on a quarterly average is a less stringent emission limitation (easier for a source to comply with) than a 0.7 lbs/mmBTU limit on a 30 day rolling average, which is less stringent than complying with a 0.7 lbs/mmBTU limit on a daily average. The proposed RACT emission limit for each of the two 350 mmBTU/hr boilers at IP—Lockhaven is 0.7 lbs NO_X/mmBTU on a 30 day rolling average.

EPA's concern with setting a RACT emission limitation for International Paper is that the limitation should be stringent enough to require that IP operate the boilers to minimize NO_X emissions. However, since RACT in this case has been determined to be no add-on emission controls, the RACT emission limitation should not be so stringent as to make it impossible for IP to meet the limit with its current operation, provided it is operated in accordance with good air pollution control practices. Therefore, after considering all the submitted comments and the CEM data for the two 350 mmBTU/hr stoker boilers, EPA believes that the emission limitation of 0.7 lbs NO_X/mmBTU, together with the other conditions in the IP—Lockhaven operating permit (OP 18–0005), constitute RACT for these emission units.

The IP—Lockhaven operating permit also contains a provision applicable to the 165 mmBTU/hr boiler that requires it to have ceased operations by May 31, 1995. EPA agrees that RACT for this boiler is its shutdown by no later than May 31, 1995. Furthermore, the IP—Lockhaven operating permit contains a provision that restricts its VOC emissions to less than 50 tons per year so as to avoid the major source VOC RACT requirement. A source may agree to federally enforceable requirements to limit its potential emissions and become a synthetic minor source for that pollutant. Additional information about the emission units and RACT requirements at this facility is available in the technical support document that was made available with the April 9, 1996 Federal Register notice.

Final Action

EPA has considered the comments submitted by NYDEC and PADEP and other relevant information and has decided to approve the operating permit, OP 18–0005, for International Paper Company—Hammermill Division—Lockhaven as RACT and incorporate it as a revision to the Pennsylvania SIP. Pursuant to section 182(b)(2) and 182(f) of the Clean Air Act, EPA is determining that the requirements in OP 18–0005 constitute RACT for the applicable emission units at the IP—Lockhaven facility.

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

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.

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 E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities

with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action pertaining to the NO_X RACT approval for International Paper Company—Hammermill Division—Lockhaven (Clinton County) must be filed in the United States Court of Appeals for the appropriate circuit by March 31, 1997. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 7, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(115) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(115) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to VOC and NO_X RACT, submitted on January 6, 1995 by the Pennsylvania Department of Environmental Protection:

(i) Incorporation by reference.

(A) One letter dated January 6, 1995 from the Pennsylvania Department of Environmental Protection transmitting source specific VOC and/or NO_X RACT determinations in the form of plan approvals or operating permits for International Paper Company—Hammermill Papers Division—Lockhaven.

(B) Operating permit (OP):

(*1*) International Paper Company—Hammermill Papers Division—Lockhaven—OP 18–0005, effective December 27, 1994, except the expiration date of the operating permit.

[FR Doc. 97–2076 Filed 1–28–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 22

[DA 96–459]

Elimination of the Review Board

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In light of the many demands currently imposed on the Commission concerning nonhearing matters, the Commission has concluded that the proper dispatch of its business and the public interest will be best served by expanding the authority delegated to the General Counsel regarding hearing matters. These amendments change the Commission's Rules to reflect the elimination of the Review Board. These amendments also incorporate nonsubstantive, editorial changes in the Rules to reflect current circumstances.

EFFECTIVE DATE: January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Office of Public Affairs, (202) 418–0500.

SUPPLEMENTARY INFORMATION:

[Adopted: April 29, 1996; Released: April 30, 1996]

1. By its Order, FCC 96–4, released January 23, 1996, the Commission eliminated the Review Board, effective April 24, 1996, and delegated authority to the Managing Director to make conforming rule modifications. In accordance with the Commission's action, this Order makes necessary changes, together with other nonsubstantive, editorial revisions, in Parts 0, 1, 19 and 22 of the Commission's Rules.

2. Authority for the adoption of the amendments adopted herein is contained in Sections 4(i), 4(j), 5(b), 5(c), and 303(r) of the Communications Act of 1934, as amended. 47 U.S.C. §§ 154(i), 154(j), 155(b), 155(c) and 303(r). Because these amendments pertain to agency organization, practice and procedure, the notice and comment and effective date provisions of the Administrative Procedure Act, 5 U.S.C. §§ 553(b)(A) and 553(d), are inapplicable.

3. *Accordingly, it is ordered,* That, pursuant to the authority delegated by the Commission's Order, FCC 96–4, released January 23, 1996, and 47 CFR § 0.231(b), and effective upon publication in the Federal Register, Parts 0, 1, and 22 of the Rules and Regulations ARE AMENDED as set forth below.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 22

Communications common carriers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 0, 1, and 22 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Section 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

§ 0.5 [Amended]

2. Section 0.5 is amended by removing paragraph (a)(8) and redesignating paragraphs (a)(9) through (a)(15) as paragraphs (a)(8) through (a)(14) respectively, removing the words ''Sections 0.11 through 0.161.'' in paragraph (b) and adding in their place ''Sections 0.11 through 0.151.'', removing the words ''section 5(d)'' in the first sentence of paragraph (c) and adding in their place ''section 5(c)'' and by removing the last sentence of paragraph (c) to read as follows:

§§ 0.31, 0.41 and 0.91 [Amended]

3. Sections 0.31(m), 0.41(h) and 0.91(d) are amended by removing the words ''section 5(d)'' and adding in their place ''section 5(c).''

§§ 0.61 and 0.101 [Amended]

4. Sections 0.61(c) and 0.101(g) are amended by removing the phrase '', the Review Board''.

§ 0.161 [Removed]

5. Section 0.161 is removed.

6. Section 0.201 is amended by removing the words ''section 5(d)'' and adding in their place ''section 5(c)'' in paragraph (a) introductory text, by revising paragraph (a)(2) and the accompanying Note and by removing the phrase ''or to the Review Board'' in paragraph (a)(3) to read as follows:

§ 0.201 General provisions.

(a) * * *

(2) *Delegations to rule on interlocutory matters in hearing proceedings.* Delegations in this category are made to the Chief Administrative Law Judge.

NOTE to paragraph (a)(2): Interlocutory matters which are not delegated to the Chief Administrative Law Judge are ruled on by the presiding officer by virtue of the authority vested in him to control the course and conduct of the hearing. This authority stems from section 7 of the Administrative Procedure Act and section 409 of the Communications Act rather than from delegations of authority made pursuant to section 5(c) of the Communications Act. (See §§ 0.218 and 0.341.).

* * * * *

§ 0.204 [Amended]

7. Section 0.204 is amended by removing paragraph (c)(1) and redesignating paragraphs (c)(2) through (c)(6) as paragraphs (c)(1) through (c)(5).

8.–9. Section 0.341(c) is revised to read as follows:

§ 0.341 Authority of administrative law judge.

* * * * *

(c) Any question which would be acted upon by the Chief Administrative Law Judge or the Commission, if it were raised by the parties, may be certified by the administrative law judge, on his own motion, to the Chief Administrative Law Judge, or the Commission, as the case may be.

* * * * *

§§ 0.361, 0.362, 0.363, 0.365 and 0.367 [Removed]

10. Sections 0.361, 0.362, 0.363, 0.365, and 0.367 are removed.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

§ 1.4 [Amended]

2. Section 1.4(b) introductory text is amended by removing the phrase ''Review Board,''.

§ 1.28 [Amended]

3. Section 1.28(c)(3)(ii) is amended by removing the phrase ''a member of the Review Board,''.

§ 1.51 [Amended]

4. Section 1.51 is amended by removing paragraph (a)(2) and redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3).

§ 1.101 [Amended]

5. Section 1.101 is amended by removing the words ''section 5(d)'' and adding in their place the words ''section 5(c)'' wherever they occur.

§ 1.102 [Amended]

6. Section 1.102(a)(1) is amended by removing the phrase ''the Review Board,''.

7. Section 1.104(a) is amended by revising the first sentence to read as follows:

§ 1.104 Preserving the right of review; deferred consideration of application for review.

* * * * *

(a) The provisions of this section apply to all final actions taken pursuant to delegated authority, including final actions taken by members of the Commission's staff on nonhearing matters. * * *

* * * * *

§ 1.106 [Amended]

8. Section 1.106(a)(1) is amended by removing the second sentence.

9. Section 1.115 is amended by removing paragraph (b)(5), and the last sentence of paragraph (e)(1) and revising paragraphs (d), (e)(3) and (f) to read as follows:

§ 1.115 Application for review of action taken pursuant to delegated authority.

* * * * *

(d) Except as provided in paragraph (e) of this section, the application for review and any supplemental thereto shall be filed within 30 days of public notice of such action, as that date is defined in section 1.4(b). Opposition to the application shall be filed within 15 days after the application for review is filed. Except as provided in paragraph (e)(3) of this section, replies to oppositions shall be filed within 10 days after the opposition is filed and shall be limited to matters raised in the opposition.

(e) * * *

(3) Applications for review of a hearing designation order issued under delegated authority shall be deferred until exceptions to the initial decision in the case are filed, unless the presiding Administrative Law Judge certifies such an application for review to the Commission. A matter shall be certified to the Commission only if the presiding Administrative Law Judge determines that the matter involves a controlling question of law as to which there is substantial ground for difference of opinion and that immediate consideration of the question would materially expedite the ultimate resolution of the litigation. A ruling refusing to certify a matter to the Commission is not appealable. In addition, the Commission may dismiss,

without stating reasons, an application for review that has been certified, and direct that the objections to the hearing designation order be deferred and raised when exceptions in the initial decision in the case are filed. A request to certify a matter to the Commission shall be filed with the presiding Administrative Law Judge within 5 days after the designation order is released. Any application for review authorized by the Administrative Law Judge shall be filed within 5 days after the order certifying the matter to the Commission is released or such a ruling is made. Oppositions shall be filed within 5 days after the application for review is filed. Replies to oppositions shall be filed only if they are requested by the Commission. Replies (if allowed) shall be filed within 5 days after they are requested.

(f) Applications for review, oppositions, and replies shall conform to the requirements of §§ 1.49, 1.51, and 1.52, and shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554. Except as provided below, applications for review and oppositions thereto shall not exceed 25 double-space typewritten pages. Applications for review of interlocutory actions in hearing proceedings (including designation orders) and oppositions thereto shall not exceed 5 double-spaced typewritten pages. When permitted (see paragraph (e)(3) of this section), reply pleadings shall not exceed 5 double-spaced typewritten pages. The application for review shall be served upon the parties to the proceeding. Oppositions to the application for review shall be served on the person seeking review and on parties to the proceeding. When permitted (see paragraph (e)(3) of this section), replies to the opposition(s) to the application for review shall be served on the person(s) opposing the application for review and on parties to the proceeding.

* * * * *

§ 1.209 [Amended]

10. Section 1.209 is amended by removing the phrase ''the Review Board,''.

§ 1.229 [Amended]

11. Section 1.229(f) is amended by removing the phrase '', the Review Board''.

12. Section 1.244 is amended by removing the phrase ''the Review Board or'' in paragraph (c)(4) and revising paragraph (d) to read as follows:

§ 1.244 Designation of a settlement judge.

* * * * *

(d) The settlement judge shall have the authority to require applicants to submit their Standardized Integration Statements and/or their written direct cases for review. The settlement judge may also meet with the applicants and/or their counsel, individually and/or at joint conferences, to discuss their cases and the cases of their competitors. All such meetings will be off-the-record, and the settlement judge may express an opinion as to the relative comparative standing of the applicants and recommend possible means to resolve the proceeding by settlement. The proceedings before the settlement judge shall be subject to the confidentiality provisions of 5 U.S.C. 574. Moreover, no statements, offers of settlement, representations or concessions of the parties or opinions expressed by the settlement judge will be admissible as evidence in any Commission licensing proceeding.

§ 1.245 [Amended]

13. Section 1.245 is amended by removing the phrase ''Review Board'' and ''Board'' and adding in their place the word ''Commission'' in paragraph (b)(4), removing the word ''Board'' and adding in its place the word ''Commission'' in paragraph (b)(5), and removing the word ''Board'' and adding in its place the word ''Commission'' in paragraph (b)(6).

14. Section 1.271 is revised to read as follows:

§ 1.271 Delegation of review function.

The Commission may direct, by order or rule, that its review function in a case or category of cases be performed by a commissioner, or a panel of commissioners, in which event the commissioner or panel shall exercise the authority and perform the functions which would otherwise have been performed by the Commission under §§ 1.273 through 1.282.

Note: To provide for an orderly completion of cases, exceptions and related pleadings filed after March 1, 1996, shall be directed to the Commission and will not be acted upon by the Review Board.

§ 1.273 [Amended]

15. Section 1.273 is amended by removing the phrase ''or by the Review Board,''.

§ 1.277 [Amended]

16. Section 1.277 is amended by removing the phrase ''or member of the Review Board'' in paragraph (f).

17. Section 1.291 is amended by removing paragraph (a)(2) and redesignating paragraphs (a)(3) through (a)(5) as paragraphs (a)(2) through (a)(4) and revising new redesignated paragraph (a)(4), by removing the phrase ''the Review Board,'' in paragraph (c)(3), and revising paragraph (d) and the authority to read as follows:

§ 1.291 General provisions.

(a) * * *

(4) Each interlocutory pleading shall indicate in its caption whether the pleading is to be acted upon by the Commission, the Chief Administrative Law Judge, or the presiding officer. If the pleading is to be acted upon by the presiding officer, he shall be identified by name.

* * * * *

(d) No initial decision shall become effective under § 1.276(e) until all interlocutory matters pending before the Commission in the proceeding at the time the initial decision is issued have been disposed of and the time allowed for appeal from interlocutory rulings of the presiding officer has expired.

(Secs. 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended; 47 CFR 0.61 and 0.283)

18. The authority following § 1.296 is revised to read as follows:

§ 1.296 Service.

* * * * *

(Secs. 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended; 47 CFR 0.61 and 0.283)

§ 1.301 [Amended]

19. Section 1.301(c)(6) is amended by removing the words ''Review Board'' and adding in their place the word ''Commission''.

20. Section 1.302 is amended by removing the phrase ''or the Review Board'' in paragraph (b) wherever it occurs and revising paragraph (f) to read as follows:

§ 1.302 Appeal from presiding officer's final ruling; effective date of ruling.

* * * * *

(f) The Commission will act on the appeal.

* * * * *

§ 1.311 [Amended]

21. Section 1.311(d) is amended by removing the phrase ''the Review Board,''.

§ 1.1319 [Amended]

22. Section 1.1319(a)(2) is amended by removing the phrase ''the Review Board and/or''.

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for Part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.935(f)(5) is revised to read as follows:

§ 22.935 Procedures for comparative renewal proceedings.

* * * * *

(f) * * *

(5) Parties will have 30 days in which to file exceptions to the Initial Decision.

[FR Doc. 97–1699 Filed 1–28–97; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Two Plants and Threatened Status for Four Plants From Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status for *Astragalus brauntonii* (Braunton's milk-vetch) and *Pentachaeta lyonii* (Lyon's pentachaeta) and threatened status for *Dudleya abramsii* ssp. *parva* (Conejo dudleya), *Dudleya cymosa* ssp. *marcescens* (marcescent dudleya), *Dudleya cymosa* ssp. *ovatifolia* (Santa Monica Mountains dudleya), and *Dudleya verityi* (Verity's dudleya). These taxa occur in grassland, chaparral, or coastal sage scrub habitats in the mountains surrounding the Los Angeles basin, California. The six plants are threatened by one or more of the following—urban development, recreational activities, alteration of fire cycles and fire suppression activities, overcollecting, habitat fragmentation and degradation, and competition from invasive weeds. Several of the plants are also threatened by naturally occurring events by virtue of their small numbers and population sizes. This rule implements the protection and recovery provisions provided by the Endangered Species Act (Act) for these plants.

EFFECTIVE DATE: February 28, 1997.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours at the Ventura Field Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Ventura Field Office (see ADDRESSES section) (telephone: 805/644–1766; facsimile: 805/644–3458).

SUPPLEMENTARY INFORMATION:

Background

Astragalus brauntonii (Braunton's milk-vetch), *Pentachaeta lyonii* (Lyon's pentachaeta), *Dudleya abramsii* ssp. *parva* (Conejo dudleya), *Dudleya cymosa* ssp. *marcescens* (marcescent dudleya), *Dudleya cymosa* ssp. *ovatifolia* (Santa Monica Mountains dudleya), and *Dudleya verityi* (Verity's dudleya) are located around the Los Angeles basin, California. The lowland plains are bounded by mountains and hills that expose Mesozoic or older basement rocks and sedimentary and igneous rocks of late Cretaceous to late Pleistocene age. The southern portion of the Transverse Ranges forms the northern and western boundary of the basin and includes the San Gabriel Mountains, the Santa Monica Mountains, and the Simi Hills. The Santa Ana Mountains at the northern end of the Peninsular Ranges border the southern region of the basin.

Strong substrate preferences are exhibited by all of the taxa included in this rule. Populations of *Astragalus brauntonii* are only known to occur on small limestone outcrops. *Pentachaeta lyonii* is found on clay soils in ecotonal areas between grasslands and shrublands. All of the dudleyas occur on volcanic or sandstone rock outcrops with specific microhabitat characteristics. *Dudleya verityi* and *Dudleya abramsii* ssp. *parva* occur exclusively on the outcrops and soils derived from the Miocene Conejo volcanics at the western end of the Simi Hills and the Santa Monica Mountains. *Dudleya cymosa* ssp. *marcescens* occupies the lower slopes of volcanic cliffs in canyons that have perennial moisture. *Dudleya cymosa* ssp. *ovatifolia* is found on rock outcrops with forms specific to sedimentary conglomerate or volcanic breccia (Nakai 1987, Natural Diversity Data Base (NDDB) 1994).

Most of the major habitat types in which these rare plants occur are considered sensitive by the botanical community in California. Large scale loss of habitat, fragmentation, and alteration of natural ecosystem processes have resulted from development, fire suppression activities, cattle grazing, and vegetation type conversion by agricultural practices (Schoenherr 1989). *Astragalus brauntonii* is associated with the fire-dependent chaparral habitat dominated by *Adenostoma fasciculatum* (chamise), *Yucca whipplei* (yucca), and the rare *Cupressus forbesii* (Tecate cypress). *Dudleya abramsii* ssp. *parva* commonly occurs in a cactus-dominated coastal sage scrub, which provides nesting habitat for the rare Bell's sage sparrow (*Amphispiza belli belli*) and rufous-crowned sparrow (*Amophila ruficeps*). Most of the coastal sage scrub where *Dudleya verityi* occurs is dominated by *Artemisia californica* (coastal sagebrush), *Eriogonum fasciculatum* (wild buckwheat), *Salvia leucophylla* (purple sage), and occasionally *Coreopsis gigantea* (giant coreopsis). *Dudleya verityi* is associated with the rare *Eriogonum crocatum* (Conejo buckwheat) and *Dudleya blochmaniae* ssp. *blochmaniae* (Blochman's dudleya). A unique lichen flora of over 70 species is associated with *Dudleya verityi* and coastal sage scrub habitat on Conejo Mountain (Riefner 1992). The grassland habitat in which *Pentachaeta lyonii* occurs is largely dominated by introduced old world grass and herb genera such as *Avena*, *Brassica*, *Bromus*, *Centaurea*, and *Erodium*. Several native plant species are present in these grasslands, including the bunch grass *Nassella pulchra*.

Discussion of the Six Plant Taxa

Astragalus brauntonii was first collected in 1901 by Ernest Braunton near Sherman (now called West Hollywood), Los Angeles County. Samuel B. Parish described it two years later as *Astragalus brauntonii*. In 1929, Per Axel Rydberg published the name *Brachyphragma brauntonii* in his revision of the genus; however, this name was not recognized by most botanists. Rupert Barneby recognized the name *Astragalus brauntonii* in his *Atlas of North American Astragalus* (Barneby 1964). *Astragalus brauntonii* is included in the current edition of *The Jepson Manual* (Spellenberg 1993).

Astragalus brauntonii is a robust, short-lived perennial in the pea family (Fabaceae). It is one of the tallest members of the genus, reaching a height of 15 decimeters (dm) (60 inches (in.)) and is covered with woolly hairs. A thick taproot and woody basal stem gives rise to several to many stems. The 4 to 16 centimeter (cm) (1.5 to 6.5 in.) long leaves are pinnately compound with 25 to 33 oblong-ovate, abruptly pointed leaflets. The light purple flowers are clustered in 35- to 60-flowered racemes 4 to 14 cm (1.5 to 5.5 in.) long. The beaked, slightly curved pods are oblong-ovoid and 6.5 to 9 millimeters (mm) (2.5 to 3.5 in.) long. *Astragalus brauntonii* is readily distinguished from the only other perennial species of *Astragalus* in the

area, *A. trichopodus*, by being woolly as opposed to strigose (covered with sharp, stiff-appressed hairs) or glabrous (without hairs), and by having two-chambered rather than one-chambered pods (Barneby 1964).

Astragalus brauntonii is considered a limestone endemic; the only populations not found on limestone are on down-wash sites (seed drift following a fire event), an occurrence along the edge of a fire road in Monrovia, and at a location in Chino Hills (Sampson 1985) where the substrate type is unknown. Surveys for *A. brauntonii* during post-fire floristic inventories within its known distribution on substrates other than limestone have, to date, failed to indicate its presence on non-limestone soils. The potential occurrence of *A. brauntonii* on non-limestone soils should not be discounted; however, it is quite conspicuous and would be easily detected. Limestone outcrops are extremely rare within the limits of the known distribution of *A. brauntonii.*

Fire is a natural requirement for the survival of this species. The natural frequency of fire in the habitat of *Astragalus brauntonii* is unknown, but estimates range between 20 to over 100 years with an average of 70-year intervals (Minnich 1989, O'Leary 1990). Higher fire frequencies have resulted from increasing human populations in southern California, mostly in the form of arson-caused fires. This species has a life span of 2 to 3 years, and depending on fire interval, a given population is visible only once in 20 to 50 or more years.

Astragalus brauntonii is currently known from four general areas in Ventura, Los Angeles, and Orange counties. One population is found along the south slope of the Simi Hills of eastern Ventura and western Los Angeles counties. Two occurrences (one population) are known from Santa Ynez Canyon in the Santa Monica Mountains, Los Angeles County, which probably represents the type locality from above Sherman (now West Hollywood). Two occurrences (one population) are known from Coal and Gypsum Canyons in the Santa Ana Mountains, Orange County (NDDB 1994). Eight individuals were reported during the preparation of the Cloverleaf Canyon Specific Plan for the area in 1983 (J. Bitterly, biologist, Planning Consortium, *in litt.*, 1992) near where historical collections were made south of Clamshell Canyon, north of Monrovia in Los Angeles County.

Because reproduction of *Astragalus brauntonii* is stimulated by fire events, the total number of individuals varies with current fire cycles. The largest known population ever recorded was approximately 400 individuals (Orange County) in 1985 following a fire in 1982. No plants remain there today. Nearby habitat for *A. brauntonii* in the Cleveland National Forest was surveyed by endangered plant specialists from the Rancho Santa Ana Botanic Garden, but no plants were found (Mistretta 1992). The remaining populations contain no more than approximately 20 to 30 individuals and the current total number of individuals is estimated to be fewer than 100. The seed bank for *A. brauntonii* may have the capability of generating approximately 1,000 individuals in 4 highly subdivided populations.

Most of the habitat of *Astragalus brauntonii* is on private land in areas with expanding development. Four public agencies, the California Department of Parks and Recreation (DPR), the Conejo Open Space Conservation Agency (COSCA), the Rancho Simi Parks and Recreation District, and the National Park Service (NPS), have small colonies within their jurisdictions that may not be viable. All of the protected habitat occurs in the immediate vicinity of urban development. *Astragalus brauntonii* is threatened by direct loss from urban development, fragmentation of habitat and reduced capabilities for sustained ecologic processes, fragmented ownership of single populations resulting in different landscape treatments, alteration in fire cycles, and extinction from naturally occurring events due to small population sizes and low numbers of individuals (Mistretta 1992, NDDB 1994).

The name *Pentachaeta lyonii* (Lyon's pentachaeta) was first published by Asa Gray in 1886 (Van Horn 1973) based on a plant collected by William Lyon ''near Palos Verdes Mountain'' in Los Angeles County. David Keck (1958) renamed the plant *Chaetopappa lyonii*, which was subsequently recognized by Munz (1959). *Pentachaeta* is recognized as the accepted genus name based on a monograph on the taxonomic status of *Pentachaeta* and *Chaetopappa*, in which comparisons of morphology, anatomy, and breeding systems demonstrated that the two genera are not closely related (Van Horn 1973).

Pentachaeta lyonii is a 6 to 48 cm (2.4 to 18.9 in.) tall annual in the aster family (Asteraceae) with yellow flowers that bloom in late spring (April to June). It is distinguished from other members of the genus by its hairy phyllaries, larger numbers of pappus bristles, and its reddish branches originating from the upper portion of the plant. The corollas of the ray flowers are typically curled and the leaves are narrowly linear with ciliate margins (Van Horn 1973). There are no other members of the genus in the region.

Pentachaeta lyonii occupies pocket grassland sites that intergrade with shrublands, and the edges of roads and trails. Species typically associated with *P. lyonii* include *Chorizanthe staticoides* (turkish rugging), *Calochortus catalinae* (Catalina mariposa lily), *Nassella pulchra* (purple needle-grass), and annual members of the phlox family (Polemoniaceae) (Thomas and Danielsen 1984). Habitat of P. lyonii is characterized by a low percentage of total plant cover and exposed soils with a microbiotic crust (Belnap 1990), partially assisting in reducing competition with other species. Rodents (*Perognathus* spp. and *Peromyscus* spp.) and harvester ant colonies (*Pogonomyrex* spp.) also control the density of associated vegetation (Thomas and Wishner 1988).

There are very few collections of *Pentachaeta lyonii;* the majority were made around the turn of the century and from locations where the species has been extirpated, including Palos Verdes Peninsula and Santa Catalina Island.

The first record from the Santa Monica Mountains dates from 1926 from an unknown location in the Malibu Hills (NDDB 1994). It was not until 1964, when Peter Raven was collecting for the 1966 *Flora of the Santa Monica Mountains* that *P. lyonii* was again documented from the Santa Monica Mountains (P. Raven, *in litt.*, 1964). That population has since been extirpated by conversion to agriculture (NDDB 1994). David Verity discovered the easternmost population of *P. lyonii* in the Santa Monica Mountains at Stunt Ranch in 1977 (NDDB 1994).

Pentachaeta lyonii is currently known from five population units in the Santa Monica Mountains and the western Simi Hills, a distance of approximately 32 kilometers (km) (20 miles (mi)), distributed in a highly fragmented landscape. The East unit consists of 1 occurrence with 4,000 individuals; the Mulholland crest unit has 3 occurrences with 1,200 individuals; the Central unit has 7 occurrences with 28,000 individuals; the Conejo Ridge unit has 7 occurrences with 2,900 individuals; and the North unit has 4 occurrences with 1,000 individuals. Five of these occurrences are known to exist on public lands managed by the NPS, the Las Virgenes Municipal Water District, and COSCA. Since publication of the proposed rule, three occurrences on public lands (Stunt Ranch, Malibu Creek State Park, and Arroyo Sequit) appear to have become extirpated

(NDDB 1994). The remaining locations are on privately owned land, most with active primary and secondary threats from existing or proposed development. Primary threats include those that eliminate populations during construction. Secondary threats include the influence of the project on the surrounding environment in the form of local disturbance facilitating the introduction of competitive weeds and alteration of ecosystem processes. Other sites containing potential habitat for *P. lyonii* are limited, reducing the likelihood of finding additional unthreatened and viable populations of this species.

In southern California, dudleyas or live-forevers (*Dudleya*) are succulent, rosette-forming perennial plants in the stonecrop family (Crassulaceae). Members of this genus frequently inhabit rocky soils or rock outcrops, both along the coast and in interior mountain ranges. The Santa Monica Mountains represent one of the most diverse concentrations of the genus. Because of the patchy and limited distribution of such habitats within other plant community types, many species of *Dudleya* tend to be highly localized in their distribution.

Dudleya abramsii ssp. *parva* (Conejo dudleya) was first described in 1923 as *D. parva* by Joseph Rose and Anstruther Davidson (Moran 1948) based on a cultivated collection made a year earlier by Mrs. J. H. Bullard from the Conejo Grade in Ventura County. No further mention was made of the plant in other regional floras for several decades, although Munz listed *D. parva* as a synonym of *Echeveria lanceolata* in 1935 (Moran 1948). In 1960, Reid Moran recognized *D. parva* in his treatment of the genus (Moran in Jacobsen 1960), and it was subsequently also recognized by Munz in his *Flora of Southern California* (1974). Jim Bartel (1991) published the combination *D. abramsii* ssp. *parva,* based on similar floral features between *D. parva* and *D. abramsii.*

Dudleya abramsii ssp. *parva* forms a rosette of oblanceolate leaves that are 1.5 to 4 cm (0.6 to 1.6 in.) long, 3 to 6 mm (1.2 to 2.4 in.) wide, and that, unlike most taxa in the subsection *Dudleya,* wither by early summer. The inflorescence is 5 to 18 cm (2 to 7.1 in.) long, tipped with pale yellow flowers that are often flecked with red on the keel. The roots are constricted at irregular intervals (Munz 1974). *Dudleya abramsii* ssp. *parva* is distinguished from other local *Dudleya* taxa by its flower color, root constrictions and withering leaves.

Dudleya abramsii ssp. *parva* is known only from the western terminus of the Simi Hills west along the Montclef Ridge to the Conejo Grade, a distance of approximately 16 km (10 mi). There are only 11 reported populations, with numbers of individuals varying from a few thousand at one population to as few as 25. The majority of the populations number in the hundreds of individuals. *Dudleya abramsii* ssp. *parva* grows at the base of scattered rock outcrops of the Conejo volcanics in grassland and coastal sage scrub habitats. A portion of the plant's habitat is on lands designated as ''open space'' by COSCA; the remaining habitat is privately owned. Threats to this taxon include recreational activity (hiking and equestrian use), urban development, fire management and suppression activities, and collection (NDDB 1994, Skinner and Pavlik 1994).

Dudleya cymosa was first described by Charles Antoine Lemaire in 1858 as *Echeveria cymosa* based on a collection sent to him by the Belgian horticulturalist Louis de Smet; however, the type locality is unknown and the type specimen has been lost (Moran 1951, Nakai 1987). In 1903, Britton and Rose renamed the taxon *Dudleya cymosa* (Moran 1951). *Dudleya cymosa* includes seven subspecies that range throughout California in the Sierra Nevada, Coast Ranges, Transverse Ranges, and the northern portion of the Peninsular Ranges; however, the two subspecies discussed in this rule have restricted distributions.

Dudleya cymosa ssp. *marcescens* (marcescent dudleya) was first observed by Charlotte Hoak in 1932 in Little Sycamore Canyon in the Santa Monica Mountains (Rooksby 1936). However, the plant was not described until 1951 by Moran, based on a specimen that he collected in 1948 at the same location (Moran 1951, 1957).

Dudleya cymosa ssp. *marcescens* is distinguished from other subspecies of *D. cymosa* by the habit of the rosette leaves withering in the summer. The rosette leaves are 1.5 to 4 cm (0.6 to 1.6 in.) long and 5 to 12 mm (2.0 to 4.7 in.) wide; the caudex is 2 to 7 mm (0.8 to 2.8 in.) thick; floral stems are 4 to 10 cm (1.6 to 4 in.) tall; corollas are bright yellow to yellow with red markings to bright red (Munz 1974). This subspecies typically occurs on the lower reaches of sheer volcanic rock surfaces and canyon walls adjacent to perennial streams. In most locations, the topographic relief has precluded soil formation; therefore, this taxon may be the only vascular plant in a microhabitat otherwise dominated by mosses and lichens (NDDB 1994).

Dudleya cymosa ssp. *marcescens* is known from seven occurrences in the Santa Monica Mountains, from Hidden Valley to Malibu Creek State Park, a distance of 24 km (15 mi). Estimates of the number of individuals at each occurrence are between 50 and 200 plants; the total number of individuals is estimated to be less than 1,000. The microhabitat requirements of the plant limit the possibility that any additional large populations will be found. Half of the populations occur on lands owned and managed by the DPR; two locations are managed by the NPS—one on an administrative easement where the landowner has drastically altered the native vegetation (pine plantings in a cleared oak grove), and another in an area that receives unsupervised recreational use (boulder hopping and rock climbing). The remaining populations are on lands in private ownership, several of which are threatened by development (Skinner and Pavlik 1994, NDDB 1994). On DPR and NPS lands, the plant is threatened by recreational use, particularly rock climbing, foot traffic, collection, and fire (Skinner and Pavlik 1994, NDDB 1994).

The distinct variation in *Dudleya cymosa* ssp. *marcescens* between sites has been commented upon (Mark Dodero, graduate student, San Diego State University, pers. comm., 1992). Nakai believes that a small population at Rattlesnake Canyon in Santa Barbara County shares characteristics with this subspecies (Kei Nakai, pers. comm., 1992). Bartel (*in litt.*, 1992b) has made a tentative determination of *D. cymosa* ssp. *marcescens* for a population in the Santa Ana Mountains, Orange County. Daryl Koutnik, who has also studied the systematics of these taxa, questions these determinations (J. Schwarze, *in litt.*, 1993). If these additional populations prove to be *D. cymosa* ssp. *marcescens,* they are unlikely to alter the status of this subspecies due to the threats and limited population numbers in the Santa Monica Mountains.

Dudleya cymosa ssp. *ovatifolia* (Santa Monica Mountains dudleya) was first described as *D. ovatifolia* by Britton in 1903 based on a collection made by H.M. Hall the previous year. The type locality is listed as ''Sierra Santa Monica,'' thought to be Topanga Canyon in Los Angeles County (Moran 1951). The species was subsequently recognized as *Cotyledon ovatifolia* and *Echeveria ovatifolia* (Fedde 1904 and Berger 1930 respectively in Moran 1951) when broad generic concepts were applied to the family Crassulaceae. Moran published the new combination *Dudleya cymosa* ssp. *ovatifolia* in 1957.

In 1983, Nakai considered the plants he found near Agoura, Los Angeles County, to be one of ''two somewhat distinct races'' of *Dudleya cymosa* ssp. *ovatifolia.* The ovate leaves with a maroon underside distinguish the ''Topanga'' race of *D. cymosa* ssp. *ovatifolia* from other *Dudleya,* while the glaucous leaves and lemon-yellow flowers separate the ''Agoura'' race of *D. cymosa* ssp. *ovatifolia* from other local species. Four years later, however, Nakai (1987) published the new combination *D. cymosa* ssp. *agourensis* to refer to ''Agoura'' material. Nakai distinguished the new subspecies from *D. cymosa* ssp. *ovatifolia* by the number and shape of rosette leaves, pedicel length, and degree of spreading in petal apices. Bartel (*in litt.*, 1992a) concluded that these characters were insufficient to warrant taxonomic recognition as a subspecies of *D. cymosa.* As a result, Bartel (1993) lumped *D. cymosa* ssp. *agourensis* with *D. cymosa* ssp. *ovatifolia* in his revision of the genus for *The Jepson Manual.* For the purposes of this rule, *Dudleya cymosa* ssp. *ovatifolia* includes *D. cymosa* ssp. *agourensis* as described by Nakai.

Like many *Dudleya* taxa, *D. cymosa* ssp. *ovatifolia* has rosette leaves that are evergreen rather than withering in the summer. Leaves are 2 to 5 cm (0.8 to 2 in.) long and 1.5 to 2.5 cm (0.6 to 1 in.) wide; floral stems are 4 to 15 cm (1.6 to 6.0 in.) tall; corollas are pale yellow (Munz 1974). *Dudleya cymosa* ssp. *ovatifolia* is found scattered along exposed north-facing slopes of the Santa Monica Mountains from near Westlake Village to Agoura, and in deep canyon bottoms along lower Malibu Creek and Topanga Creek. Less than ten occurrences have been reported, each consisting of no more than several hundred individuals. While future surveys may locate additional occurrences of the ''Agoura'' form along the northern slopes of the Santa Monica Mountains, the limited amount of habitat available makes it unlikely that the total number of individuals will exceed several thousand (NDDB 1994).

Material collected by David Verity (pers. comm., 1992) from Modjeska Canyon on the western flank of the Santa Ana Mountains, Orange County, in 1951 was included by Uhl and Moran (1953) in their cytotaxonomic article on *Dudleya* as *D. ovatifolia.* These populations, which are not threatened (U.S. Fish and Wildlife Service (USFWS), *in litt.*, 1996), represent a range disjunction of approximately 100 km (60 mi) to the southeast of the Santa Monica Mountains. Boyd *et al.* (1995) reported that the subspecies in the Santa Ana Mountains was ''[l]ocally common on north-facing cliffs in chaparral, central Santiago Canyon near Fleming Peak to near the summit of the west slope of Modjeska Peak.'' Co-author Fred Roberts indicated that ''local and restricted, but common where found'' would better describe the distribution (Fred Roberts, USFWS, pers. comm., 1996).

Populations of *Dudleya cymosa* ssp. *ovatifolia* in Malibu and Topanga Canyons occur largely on lands owned and managed by the DPR. One of these populations is relatively inaccessible, however, another occurrence is directly adjacent to private property that has been bulldozed for development access (Suzanne Goode, Resource Ecologist, DPR, Santa Monica Mountains, pers. comm., 1992). Two occurrences are on lands designated as open space by COSCA, while the remaining occurrences in the Santa Monica Mountains are on several privately owned properties zoned for commercial and residential development along the north slope of Ladyface Mountain. A cumulative impacts analysis from an area project proposal shows at least 74 projected proposed or under construction within 6.4 km (4 mi) of the Santa Monica Mountains populations (County of Los Angeles, *in litt.*, 1996). This density of development threatens the habitat of *D. c.* ssp. *ovatifolia.*

Dudleya verityi (Verity's dudleya) was originally collected in 1944 by Moran, who treated it as *D. caespitosa.* In their 1966 *Flora of the Santa Monica Mountains,* Peter Raven and Henry Thompson treated it as *D. farinosa.* In 1983, Nakai described it as *Dudleya verityi* (Nakai 1983).

Dudleya verityi is unique among *Dudleya* taxa in this rule in that it forms multiple rosettes, as many as 100 to a colony. Rosette leaves are 2 to 5 cm (0.8 to 2 in.) long and 5 to 8 mm (0.2 to 0.4 in.) wide; floral stems are 5 to 15 cm (2 to 5.9 in.) tall; corollas are lemon-yellow with petal tips recurved up to 90 degrees. Nakai (1983) distinguished *D. verityi* from *D. caespitosa* by its much shorter leaves and flowering stems. He separated *D. verityi* from *D. cymosa* ssp. *ovatifolia* by its more elongated caudex, multiple dichotomously branched rosettes, and paler flowers (Nakai 1983, 1987).

Dudleya verityi is limited to three populations occurring in a narrow band 6.4 km (4 mi) in length along the lower slopes of Conejo Mountain, from Long Grade Canyon to U.S. highway 101. The northernmost population consists of over a thousand individuals and another is considered abundant in the limited habitat it occupies (Envicom 1992, NDDB 1994). Historically, the lower slopes of Conejo Mountain have been the site for quarrying of construction-grade rock. The land is zoned for mineral extraction and there are abandoned, active, and proposed quarry operations within the distribution of *D. verityi.* The majority of the distribution of *D. verityi* is privately owned in a region with rapidly increasing development. Only a small portion of habitat is owned by a public agency (Ventura County Flood Control District).

Previous Federal Action

Federal government action on these six plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, and presented to Congress on January 9, 1975, recommended *Astragalus brauntonii* and *Dudleya abramsii* ssp. *parva* (as *Dudleya parva*) for threatened status, and *Dudleya cymosa* ssp. *marcescens* and *Pentachaeta lyonii* for endangered status. The Service published a notice in the July 1, 1975, Federal Register (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act, and of the Service's intention thereby to review the status of the plant taxa named therein. The above four taxa were included in the July 1, 1975, notice. The Service published a proposal in the June 16, 1976, Federal Register (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Dudleya cymosa* ssp. *marcescens* and *Pentachaeta lyonii* were included in the June 16, 1976, Federal Register.

General comments received in regard to the 1976 proposal were summarized in the April 26, 1978, Federal Register (43 FR 17909). The Endangered Species Act amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, Federal Register (44 FR 70796), the Service published a notice of withdrawal of the June 6, 1976, proposal along with four other proposals that had expired.

The Service published an updated notice of review for plants in the December 15, 1980, Federal Register (45 FR 82480). This notice included *Astragalus brauntonii, Dudleya cymosa* ssp. *marcescens, D. parva,* and *Pentachaeta lyonii* as category 1 candidate species (species for which

data in the Service's possession are sufficient to support proposals for listing). On November 28, 1983, the Service published in the Federal Register a supplement to the Notice of Review (48 FR 39526); the plant notice was again revised on September 27, 1985 (50 FR 6184). *Dudleya abramsii* ssp. *parva* (as *D. parva*) was included in the 1983 supplement and the 1985 revision as a category 1 candidate species. *Astragalus brauntonii, D. cymosa* ssp. *marcescens,* and *Pentachaeta lyonii* were included in both of these revisions as category 2 species (species for which data in the Service's possession indicate listing may be appropriate, but for which additional biological information is needed to support a proposed rule). *Dudleya verityi* was included for the first time in the 1983 supplement, and again in the 1985 revision, as a category 2 species. On February 21, 1990 (55 FR 6184), the plant notice was again revised, and *Dudleya parva* and *Pentachaeta lyonii* were included as category 1 taxa, while *Astragalus brauntonii, D. cymosa* ssp. *marcescens,* and *D. verityi* were included as category 2 taxa. *Dudleya cymosa* ssp. *ovatifolia* did not appear in a notice of review. Data gathered during the request for information period were sufficient to determine that proposed listing was warranted. The proposed rule constituted the first Federal action on *D. cymosa* ssp. *ovatifolia.*

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Astragalus brauntonii, Dudleya abramsii* ssp. *parva* (as *D. parva*), *D. cymosa* ssp. *marcescens,* and *Pentachaeta lyonii* because the 1975 Smithsonian report was accepted as a petition. Annually in October of 1983 through 1991, the Service found that the petitioned listing of these taxa was warranted, but that their listing was precluded by other higher priority listing actions. The publication of the proposed rule constituted a warranted finding for these taxa, as well as for *D. verityi* and *D. cymosa* ssp. *ovatifolia.*

On November 30, 1992, the Service published a proposed rule in the Federal Register (57 FR 56541) to list *Astragalus brauntonii* and *Pentachaeta lyonii* as endangered and *Dudleya abramsii* ssp. *parva, Dudleya cymosa* ssp. *marcescens, Dudleya cymosa* ssp. *ovatifolia,* and *Dudleya verityi* as threatened.

The processing of this final rule follows the Service's listing priority guidance published in the Federal Register on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings following two related events: (1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This final rule falls under Tier 2. At this time there are no pending Tier 1 actions. The Ventura Field Office has confirmed that the overall status of the taxa in this final rule has not improved since publication of the proposed rule.

Summary of Comments and Recommendations

In the November 30, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. A newspaper notice inviting public comment was published in the *Los Angeles Times* on December 11, 1992. The comment period closed on January 29, 1993. Appropriate Federal agencies, State agencies, local governments, scientific organizations, and other interested parties were contacted and requested to comment.

The Service received 17 letters concerning the proposed rule during the comment period, including those of 1 Federal agency, 1 State agency, and 15 individuals or groups. Twelve respondents expressed support for the listing proposal, three opposed it, and two were neutral. Several commenters provided additional information; this information and other clarifications have been incorporated into the final rule. Opposing and technical comments on the rule have been organized into specific issues. These issues and the Service's response to each issue are summarized as follows:

Issue 1

One commenter, citing data from the Natural Diversity Data Base (NDDB), asserted that the proposed rule did not include substantial information to justify the listing of *Pentachaeta lyonii.*

Response

Under section 4(b)(1)(A) of the Act, the Service must use the best scientific and commercial information available when determining whether a species is endangered or threatened. This listing is based on the best available scientific and commercial information, including literature records, Service fieldwork, communication with field biologists familiar with the species and its threats, local lead agencies, landowners, and NDDB data. Most of the respondent's comments referred only to NDDB information. The Service had access to the data used to enter information into NDDB records and communicated with the field biologists who supplied the data to the NDDB. The Service believes that sufficient evidence of threats to *Pentachaeta lyonii* and the other five taxa is presented in this rule to warrant their protection under the Act. (See ''Summary of Factors Affecting the Species'' below.) The Service maintains that the final decision to list *Pentachaeta lyonii* is based on the best available scientific and commercial information.

Issue 2

One commenter referred to the NDDB's use of the global and state ranking system, stating that *Pentachaeta lyonii* was incorrectly ranked and is actually not rare enough to be considered endangered.

Response

The Service did not base this listing on the global and state rarity ranking systems used by the NDDB. The evaluation of rarity by the NDDB for the global and state ranking system counts what the NDDB considers to be viable occurrences of species. The ranking system contained only two and possibly four occurrences of *Pentachaeta lyonii* (Susan Cochrane, Division Chief, Natural Heritage Division, California Department of Fish and Game (CDFG), *in litt.*, 1993). The majority of these occurrences are actually small, declining, damaged, and/or experiencing a high level of threat from habitat loss and therefore are not viable in the view of the Service.

Issue 3

One commenter suggested that the NDDB data for *Pentachaeta lyonii* illustrated the fact that there are numerous populations, the population sizes are large, and the status of the species is improving.

Response

The NDDB often includes more than one occurrence number to record a biological population. A single occurrence may encompass multiple property ownerships, resulting in several records of occurrence for a single population. This method of recording a population may provide an artificially high record for the number of biological populations. The text of the rule has been amended to define the distribution of *Pentachaeta lyonii* as occurring in five population units (landscape units or metapopulations), each comprising several colonies. The Service acknowledges that new populations have been discovered in the last two decades; however, the implication that the species' status has improved is in error. The commenter indicated having knowledge of four additional occurrences; however, no information was submitted to the Service to substantiate those claims. The majority of new information on the distribution of *P. lyonii* is a result of early compliance surveys for development proposals. The subsequent project redesigns have been inadequate to protect the habitat for this species, and mitigation measures approved by various local lead agencies have proven inadequate for long-term population viability (C. Wishner, biologist, Envicom Corp., pers. comm., 1994). The majority of information available indicates that populations have declined. Disruptive events, such as direct loss of colonies to development and secondary impacts of disturbance including displacement by non-native weeds, have also resulted in a declining population trend. It is typical for an annual plant species to occur locally in large numbers, where hundreds of thousands of individuals constitute viable populations. The total aggregate number of individuals of *P. lyonii* is less than 50,000; however, the majority of the occurrences each have less than 1,000 individuals. Extinction from naturally occurring events is possible even for the largest known populations of *P. lyonii*. The Service therefore concludes that populations are neither large nor numerous and that the status of the species is declining.

Issue 4

One commenter asserted that the distribution of *Pentachaeta lyonii* is extensive and may still include the Palos Verdes Peninsula and Santa Catalina Island.

Response

The Service does not believe that the distribution of this species is extensive. *Pentachaeta lyonii* is a narrowly localized endemic with a highly fragmented and discontinuous distribution in the Santa Monica Mountains and the western Simi Hills. The Service has reviewed the records of historical distribution for the Palos Verdes Peninsula and Santa Catalina Island. The Service has consulted field botanists specifically searching for *P. lyonii* in those locations and determined that the species has been extirpated from those localities (CDFG 1989). The vast majority of habitat in the region of Palos Verdes has been developed, and the open space on Santa Catalina Island has been severely overgrazed and altered by the introduction of non-native animals and plants.

Issue 5

One commenter questioned the need to federally list *Pentachaeta lyonii*, stating that the California State Endangered Species Act protects the species.

Response

The failure of existing regulatory mechanisms, including the California Endangered Species Act, to adequately protect the plant is addressed under Factor D in the ''Summary of Factors Affecting the Species'' section (see below).

Issue 6

Two commenters expressed opinions regarding the ecological function of fire and its importance to the integrity of viable habitat for *Pentachaeta lyonii* and *Astragalus brauntonii.* One commenter stated that prescribed fire is not and will never be a feasible management tool in the Santa Monica Mountains due to the danger to personal property. One commenter questioned the Service's statement that the 15 m (50 ft) buffer zone for rare plant reserves currently required as mitigation for impacts caused by development is inadequate and, therefore, that proposed development constitutes a threat.

Response

The placement of development adjacent to fire-prone habitats will necessarily require fuels modification. Although the development might not actually remove sensitive plant species during construction, a 15 m (50 ft) buffer falls within the 30 to 60 m (100 to 200 ft) fuels modification zone. The removal of vegetation in the fuels modification zone adversely changes the basic ecological processes that are part of the required habitat of these two species. More information on fire management is presented under Factor A in the ''Summary of Factors Affecting the Species'' section (see below). Prescribed burns are currently conducted by the fire departments of Los Angeles and Ventura counties within the Santa Monica Mountains and the Simi Hills. A dual purpose plan designed to use prescribed fire for fuels reduction and *Pentachaeta lyonii* habitat management by establishing a fire-safe buffer distance could reduce or eliminate the local threats of habitat modification by local development.

Issue 7

Two commenters thought that human-caused disturbance of the soil in the habitats of *Astragalus brauntonii* and *Pentachaeta lyonii* was not a threat to viable populations.

Response

Although some populations of *Astragalus brauntonii* and *Pentachaeta lyonii* occur within anthropogenically disturbed areas, no experimental data exist on the response of these two species to soil disturbance. However, human-induced disturbance causes the destruction and modification of the integrity of natural habitats and in the process facilitates the establishment of competitive non-native weeds. *Pentachaeta lyonii* populations have apparently been lost and replaced by a dense community of weeds near Stunt Ranch and along upper Westlake Boulevard.

The Service solicited the opinions of several appropriate specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy and biological and ecological information for these six taxa. All responses received supported the proposed rule. Additional data provided by the reviewers have been incorporated into this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Astragalus brauntonii* Parish (Braunton's milk-vetch) and *Pentachaeta lyonii* Gray (Lyon's pentachaeta) should be classified as endangered species and that *Dudleya cymosa* (Lem.) Britt. & Rose ssp. *marcescens* Moran (marcescent dudleya), *Dudleya cymosa* (Lem.) Britt. & Rose ssp. *ovatifolia* (Britt.) Moran (Santa Monica Mountains dudleya), *Dudleya abramsii* Rose ssp. *parva* (Rose & Davids) Bartel (Conejo dudleya), and *Dudleya verityi* Nakai (Verity's dudleya) should be classified as threatened species. Procedures found at section 4 of

the Endangered Species Act (16 U.S.C. 1531) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the six plant taxa in this rule are as follows:

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

Steep terrain typifies the habitat of *Astragalus brauntonii* and, until the recent increase of urban sprawl, it has remained relatively secure. Now that the majority of flat lands have been developed, several populations occupying rugged terrain have been destroyed by urban development. Within the last 15 years, one colony has been extirpated (Monrovia) and two others have incurred significant losses related to development (Santa Ynez Canyon and Simi Hills). Another location has been approved for development by the City of Anaheim (Coal Canyon). There are no known populations that are not facing primary or secondary threats to survival. Only a small portion of the Santa Ynez Canyon population occurs on public lands (DPR) and a portion of the population was bulldozed during fire suppression activities in 1993.

The City of Anaheim has approved a development that will eliminate 50 percent of the population of *Astragalus brauntonii* in the Santa Ana Mountains (C. Spenger, President, Friends of the Tecate Cypress, *in litt.*, 1993). The County of Ventura has approved a development, with mitigation measures, that will eliminate a portion of the habitat for *A. brauntonii* in the Simi Hills. The proposed mitigation efforts are strictly experimental, consisting of the movement of limestone soils to a rare plant reserve with no limestone substrate. The reserve may not be large enough or far enough away from development to allow periodic fires. Additionally, there is no contingency in the event that these efforts fail to establish a long-term viable population of *A. brauntonii.* A previously approved development has destroyed most habitat for this species in Santa Ynez Canyon (S. Goode, pers. comm., 1992). All of the population areas (Simi Hills, Topanga State Park, Monrovia, and the Santa Ana Mountains) have experienced habitat destruction and the remaining habitat is threatened by modification of natural ecological processes.

Pentachaeta lyonii continues to be negatively impacted by urban development. The Lake Eleanor Hills Project has been approved by the City of Westlake Village and will eliminate habitat containing several thousand plants (Joseph Edminston, Executive Director, Santa Monica Mountains Conservancy, *in litt.*, 1991). The Lake Sherwood Golf Course and the Ronald Reagan Presidential Library, both recently approved and developed, have eliminated significant habitat for *Pentachaeta lyonii.* Sites that have been set aside as *ex situ* mitigation areas, with seed and soil transported from *Pentachaeta lyonii* populations destroyed in grading operations for development, have failed to successfully establish viable populations (C. Wishner and J. Bowland, biologist, pers. comms., 1994). The establishment of an *in situ* management area was required as mitigation for the removal of habitat at Lake Sherwood Golf Course that supported over 3,000 *Pentachaeta lyonii* individuals (C. Wishner, *in litt.*, 1994). The site was negatively impacted by changed hydrology, competition with non-native species, loss of habitat for potential pollinators, and elimination of natural fire cycles. There was no buffer zone and it failed to maintain a self-perpetuating population of *P. lyonii.*

Currently only a 15 m (50 ft) buffer for avoidance of rare plant populations is required by local permitting agencies (Ventura County, City of Thousand Oaks). A 15 m (50 ft) buffer zone falls within the 30 to 60 m (100 to 200 ft) fuels modification zone required in California and is usually maintained by disking and mowing. This practice modifies or destroys the habitat characteristics essential to sustaining viable populations of *Pentachaeta lyonii.* Two projects, one with a reported 10,000 individuals, have been designed with *Pentachaeta lyonii* habitat designated as part of the fuels modification zone (P. Lindsey, biologist, Impact Sciences, *in litt.*, 1994). Attempts to avoid or compensate for impacts have produced conditions that are not favorable for the long-term maintenance of the populations.

Portions of populations of *Dudleya cymosa* ssp. *ovatifolia* and *D. abramsii* ssp. *parva* have been extirpated by development in the cities of Agoura Hills, Thousand Oaks, and Westlake Village. The majority of their distribution is on private lands located in a region with increasing development pressures. At least 75 projects are proposed, approved, or under construction within 6.5 km (4 mi) of *Dudleya cymosa* ssp. *ovatifolia* habitat (County of Los Angeles, *in litt.*, 1996). *Dudleya abramsii* ssp. *parva* is also affected by trampling and off-road vehicle activities on public and private lands. Weed abatement operations along roadsides, which involve scraping with a skiploader, destroyed several hundred individuals of *D. cymosa* ssp. *ovatifolia* and have continued to modify its habitat (T. Thomas, biologist, pers. obs., 1991). *Dudleya verityi* survives on cliff habitats at the base of the Conejo Grade on land zoned for mineral extraction and with existing quarrying operations. The habitat of *Dudleya cymosa* ssp. *marcescens* is used for rock climbing and rappeling, which destroys the moss substrate and individual dudleya plants.

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

Some plant species have become vulnerable to collecting by curiosity seekers as a result of increased publicity following publication of a listing rule. Overutilization is probably not applicable to *Astragalus brauntonii* or *Pentachaeta lyonii.* However, because of the large stature and striking appearance of *Astragalus brauntonii*, it may be vulnerable to casual collection, particularly along firebreaks adjacent to areas used for recreational activities. Virtually all members of the genus *Dudleya* have been subject to collection for horticultural purposes. The four *Dudleya* taxa in this rule have all been collected by professional horticulturalists and probably by amateur collectors and gardeners as well.

C. Disease or Predation

Neither disease nor predation is known to be a factor for any of the six plant taxa in the wild. As part of a program to mitigate the loss of a substantial population of *Pentachaeta lyonii,* plants grown from seed at Rancho Santa Ana Botanic Gardens were severely damaged by a white fly infestation (Orlando Mistretta, Rancho Santa Ana Botanic Garden, pers. comm., 1992).

D. The Inadequacy of Existing Regulatory Mechanisms

The California Fish and Game Commission has listed *Dudleya cymosa* ssp. *marcescens* as rare and *Pentachaeta lyonii* as endangered under the Native Plant Protection Act (NPPA) (Div. 2, chapter 1.5 sec. 1900 *et seq.* of the CDFG Code) and the California Endangered Species Act (CESA) (Div. 3, chapter 1.5 sec. 2050 *et seq.*). *Astragalus brauntonii, Dudleya abramsii* ssp. *parva, Dudleya cymosa* ssp. *ovatifolia,* and *Dudleya verityi* are included on List 1B of the California Native Plant Society's *Inventory* (Skinner and Pavlik 1994),

indicating that, in accordance with chapter 10 sec. 1901 of the CDFG Code, they are eligible for State listing. Although NPPA and CESA both prohibit the ''take'' of State-listed plants (chapter 10 sec. 1908 and chapter 1.5 sec. 2080), these existing statutes appear inadequate to protect against the taking of such plants via habitat modification or land use change by the landowner. After the CDFG notifies a landowner that a State-listed plant grows on his or her property, the CDFG Code requires only that the landowner notify the agency ''at least 10 days in advance of changing the land use to allow salvage of such plant'' (chapter 10 sec. 1913).

Local lead agencies empowered to uphold and enforce the regulations of the California Environmental Quality Act (CEQA) have made determinations that have or will negatively impact *Pentachaeta lyonii, Astragalus brauntonii, Dudleya abramsii* ssp. *parva* and *Dudleya cymosa* ssp. *ovatifolia.* Mitigation measures used to condition project approvals are essentially experimental and fail to adequately guarantee protection of sustainable populations. Species relocation attempts have failed and project designs have failed to provide an adequate buffer zone around populations to permit long-term viability at those locations (Diane Hickson, biologist, CDFG, *in litt.*, 1994). A mitigation measure approved by Ventura County involves establishing a rare plant reserve for *Astragalus brauntonii* on non-occupied habitat. Limestone soils will be scraped from the destroyed site and placed on the reserve. Because the small reserve is bordered by development, it is unlikely that prescribed fire will be used as a management tool. The *in situ* preserve is a highly altered water tank site that has little natural habitat (Rachael Tierney, biological consultant, *in litt.*, 1990). It is highly doubtful that either measure will support viable populations of *Astragalus brauntonii.*

Many mitigation attempts do not achieve the goal of securing long-term protection for plants (Howald 1993). Three ''protected'' sites were bulldozed since the publication of the proposed rule—one during a fire suppression event in 1993, one during fuelbreak maintenance, and another by earthmoving operations related to the expansion of the Calleguas Municipal Water District Facility.

In 1991, the State of California established the Natural Communities Conservation Plan Program (NCCP), pursuant to the Natural Community Conservation Planning Act. The purpose of the NCCP program is to provide long-term, regional protection of natural vegetation and wildlife diversity, while allowing appropriate and compatible land development (CDFG 1992). The Southern California Coastal Sage Scrub NCCP Program is the pilot program, and is focused on the coastal sage scrub plant community, although other associated vegetation communities are also being addressed in this ecosystem-based planning approach. Prepared under conservation planning guidance for the Coastal Sage Scrub NCCP Program, the Natural Community Conservation Plan/Habitat Conservation Plan was developed for the Central and Coastal Subregion of Orange County, and approved by the Service on July 17, 1996. Two of the six taxa in this rule occur within the planning area for the Central and Coastal Subregional Natural Community Conservation Plan/Habitat Conservation Plan, including one population of *Astragalus brauntonii* and two populations of *Dudleya cymosa* ssp. *ovatifolia.*

Although discussed early in the planning process for the Central and Coastal Subregional Natural Community Conservation Plan/Habitat Conservation Plan, *Astragalus brauntonii* is not considered a ''covered'' species under the plan, because sufficient information regarding the most appropriate protection strategies to adequately conserve the species was not available during the planning process (USFWS, *in litt.*, 1996). Species ''covered'' under the Central and Coastal Subregional Natural Community Conservation Plan/Habitat Conservation Plan have been treated as if they were listed under the Act, and their conservation and management is provided for in the plan. The two occurrences of *A. brauntonii* in Orange County (Gypsum and Coal Canyons in the Santa Ana Mountains) are within the Central/Coastal NCCP Reserve System. Potential habitat of *A. brauntonii* occurs within the North Ranch Policy Plan Area in the Central and Coastal Subregion, which is a specifically designated area where conservation planning has been delayed due to the lack of detailed information on the life history of the species in this area. The Central and Coastal Subregional Natural Community Conservation Plan/Habitat Conservation Plan contains planning policies intended to guide future conservation planning in this area, which will focus on protecting regional biodiversity values and unique and sensitive resources (USFWS, *in litt.*, 1996). Therefore, protection and management of *A. brauntonii* via future preserves and fire management could occur in this area of the subregion. Even if this population is protected, however, the overall status of the species remains threatened, making its listing appropriate.

Dudleya cymosa ssp. *ovatifolia* is a covered species under the plan and the two Orange County populations are conserved. Under an agreement with the participants, CDFG, and the Service, future potential impacts for covered species are considered adequately addressed through the minimization and mitigation measures specified in the Central/Coastal NCCP, including establishment and long-term management of a preserve system. Although the two populations in Orange County are protected from threats (USFWS, *in litt.*, 1996), the majority of the distribution of *D. cymosa* ssp. *ovatifolia,* which is outside Orange County, is not protected and the overall status of the subspecies remains threatened.

While the public agencies that manage lands with occurrences of these and other sensitive plant taxa have a mandate to protect the resources, none of those agencies has specific management plans for the taxa in this rule. Dual mandates for recreation and preservation by the NPS sometimes result in impacts to sensitive resources. For example, in the Rocky Oaks unit of the Santa Monica Mountains National Recreation Area (SMMNRA), equestrian trail use has eliminated subpopulations of *Pentachaeta lyonii.* No monitoring of rare plants is being conducted by the SMMNRA (D. Hickson, *in litt.*, 1994). When the SMMNRA was authorized by Congress in 1978, it was given the authority to comment on projects being proposed within the ''sphere of influence'' of the SMMNRA planning area. However, such comments made by the SMMNRA are not binding upon the project proponent.

Public agencies reviewing requests for large development projects are required by CEQA to conduct surveys of the biological resources of a project site. Sensitive species located during surveys are to be reported to the NDDB, which is maintained by the CDFG's Natural Heritage Division. Occasionally the project proponent considers the information proprietary and the consulting biologists may not report complete information to the NDDB (USFWS 1994). This has the potential to further aggravate the endangerment of those species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The grasslands of California have been affected by grazing for 200 years, resulting in a type-conversion from

native, annual and perennial grass and herb species to aggressive, non-native annual species.

The fire management policy of the last 200 years has been one of fire exclusion, which has disrupted natural processes, causing an imbalance in ecosystem functioning in grasslands, coastal sage scrub, chaparral, and oak woodlands. Most California habitats are highly adapted to periodic fires. The disruption of ecological processes has not been uniform. In interior blocks of large habitat, the reduction of fire frequency (by fire suppression) has resulted in an accumulation of fuels in woody vegetation, making fire intensity and duration more severe. In contrast, wildlands in proximity to urban areas have been subjected to increased fire frequencies. In addition, range management practices have used high fire frequencies to change the vegetation type from shrub to grass (Biswell 1989). Fire frequencies of one to ten years can reduce species diversity by causing the elimination of species dependent on longer periods of time between fires to re-establish seed banks.

The Nature Conservancy has established a preserve to protect habitat for *Cupressus forbesii* (Tecate cypress) and a portion of the local *Astragalus brauntonii* population. However, the fire management required for the protection of the approved developments adjacent to habitat for these species poses a conflict. Varied and controversial fire management policies have been implemented in southern California, generally without any clear understanding of their long-term ecological effects. The emphasis on fire suppression during the last century has had a significant effect on natural fire frequencies, intensities and size. Where fire suppression has been successful, there is a resulting fuel overloading and when an ignition event takes place, the resulting fires are usually intense and large. Fire frequencies close to the urban/wildland interface are often higher, a result of increased arson-caused ignitions. A vegetation management program was initiated in 1980 when the governor of California approved Senate Bill 1704, entitled ''Prescribed Burning: Brush-Covered Lands'' (Biswell 1989). Current fire management prescriptions, including wet season burns and crush and burn techniques, are questionable management tools for maintenance of sensitive species habitats. When soil and fuel moisture are high, burning intensity may not be sufficient to induce germination; conversely, the crush and burn technique may cause increased intensity and destroy species in the seed bank (White 1990). The use of prescribed fire as a habitat management tool for *Astragalus brauntonii* and *Pentachaeta lyonii* will be difficult because approved development is situated extremely close to ''protected'' populations (C. Wishner, pers. comm., 1994). Fire suppression activities have resulted in the extirpation of *Astragalus brauntonii* habitat during the Old Topanga fire of 1993 (S. Goode, pers. comm., 1994) and *Pentachaeta lyonii* habitat during the Greenmeadow fire of 1993 (C. Wishner, pers. comm., 1994).

Air pollution impacts to coastal sage scrub have been documented in the Santa Monica Mountains as a threat to the viability and functioning of the habitat (O'Leary 1990). *Niebla ceruchoides*, a small cushion lichen, apparently functions as a nursery for seedling establishment of *Dudleya verityi*. The population of *Niebla* on Conejo Mountain is the largest on the mainland (it is also known from the California Channel Islands). Occurrences of *Niebla* in coastal sage scrub habitats of coastal southern California are being reduced by habitat loss and air pollution (Riefner 1992).

At least two populations of *Pentachaeta lyonii* have been eliminated from the secondary effects of gopher-tilling of the soil, which facilitates the growth of competitive non-native weeds. Stable populations of *Pentachaeta lyonii* occur in sites that have a crusty soil surface that results in lower spatial competition from non-native annual grasses. When the crust is broken, the aggressive non-native annual weeds have displaced *Pentachaeta lyonii* (NDDB 1994).

Human-caused disturbances, such as roads, trails, and minor landform alterations, have functioned to provide a zone where the competition from aggressive, non-native annual weeds is reduced, thereby allowing *Pentachaeta lyonii* to grow. This artificial habitat contains a zone of highly compacted soils devoid of vegetation graduating to a zone of high vegetative cover. Between the zones is a narrow strip of habitat of reduced competition where *Pentachaeta lyonii* occasionally occurs. It is not disturbance that is required for viable *Pentachaeta lyonii* habitat, rather it is the reduced competition from non-native species such as *Avena* spp. (wild oats), *Bromus* spp. (brome grass), and *Centaurea melitensis* (tocalote) (CDFG 1989).

Changes in the intensity of disturbance have eradicated colonies of *Pentachaeta lyonii* on NPS land. A linear habitat alongside a trail supported a small population for several years; however, a significant increase in equestrian use changed the character of the minor disturbance that foot traffic generated. The soils changed in texture from compacted to powder and the width of the tread increased, eliminating the narrow band of habitat occupied by *Pentachaeta lyonii*. Another colony on the same parkland was significantly reduced by recreational trampling. The colony occurred alongside an artificial pond that was used by swimmers and picnickers who spread blankets and towels over the site. That colony was fenced in 1988 to prevent further impacts, but did not show signs of recovery (CDFG 1989).

Dudleya cymosa ssp. *marcescens* is negatively affected at four sites by recreational activities, primarily rock climbing. Plants are uprooted and destroyed by rappeling and boulder climbing activities. In addition, fire has been observed to severely reduce population densities and destroy the moss substrate that *Dudleya cymosa* ssp. *marcescens* requires (M. Dodero, pers. comm., 1992).

By virtue of the limited number of individuals and/or range of the existing populations, at least three (*Astragalus brauntonii, Dudleya abramsii* ssp. *parva, Dudleya verityi*) of the taxa in this rule are threatened with extinction from naturally occurring events. Genetic viability is reduced in small populations, making them vulnerable to extinction by a single human-caused or natural event. The potential for extinction owing to small population size or a highly restricted range is exacerbated by natural causes such as fire, drought, rock slides, or disease.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to make this final rule. Based on this evaluation, the preferred action is to list *Astragalus brauntonii* and *Pentachaeta lyonii* as endangered, and *Dudleya cymosa* ssp. *marcescens, Dudleya cymosa* ssp. *ovatifolia, Dudleya abramsii* ssp. *parva*, and *Dudleya verityi* as threatened. The six taxa are individually threatened by one or more of the following—habitat alteration and destruction resulting from urban development; recreational activities; alteration of natural fire cycles within the coastal sage scrub, chaparral, grassland, and oak woodland communities; displacement by non-native weeds; and over-collection. The limited distribution of habitat for certain taxa (e.g., *Dudleya verityi*) and their small population size (e.g., *Astragalus brauntonii*) makes them particularly

vulnerable to extinction from naturally occurring events.

Because *Astragalus brauntonii* and *Pentachaeta lyonii* are in danger of extinction throughout all or a significant portion of their ranges, they meet the definition of endangered as defined in the Act. The Service has determined that threatened status rather than endangered status is appropriate for *Dudleya abramsii* ssp. *parva, D. cymosa* ssp. *marcescens, D. cymosa* ssp. *ovatifolia*, and *D. verityi* because these taxa are restricted to habitats that are somewhat less vulnerable to the threat of development. Certain populations of *D. cymosa* ssp. *marcescens* and *D. cymosa* ssp. *ovatifolia* occurring on lands owned and managed by the DPR are protected from the destruction of habitat by development. However, habitat degradation due to recreational activities such as rock climbing continues. Management activities, such as the establishment of a regional parks system by COSCA, have somewhat reduced the potential for habitat destruction for *D. abramsii* ssp. *parva*. In the case of *D. verityi*, the County of Ventura has produced a study to determine the most feasible portion(s) of Conejo Mountain for acquisition as permanent open space. Despite these management activities, occurrences of these four taxa receive no protection where they occur on private lands and efforts to secure additional protection for certain sites have yet to be achieved. These four taxa appear to be likely to become endangered species within the foreseeable future. Critical habitat is not being proposed for these taxa for reasons discussed in the ''Critical Habitat'' section of this final rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon the determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat would not be prudent for these six plant taxa. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As discussed under Factor A in the ''Summary of Factors Affecting the Species'' section, both *Astragalus brauntonii* and *Pentachaeta lyonii* face numerous anthropogenic threats and these species occur mostly on private land. The publication of precise maps and descriptions of critical habitat in the Federal Register would make these plants more vulnerable to incidents of vandalism and, therefore, could contribute to the decline of these species. As discussed under Factor B, *A. brauntonii* and the four *Dudleya* taxa are particularly threatened by overcollection, an activity difficult to regulate and enforce. Taking is only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of federally listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging-up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Publication of critical habitat descriptions and maps would make *A. brauntonii* and the four *Dudleya* taxa more vulnerable to overcollection and taking.

Each of the taxa in this rule is known to occur, at least in part, on privately owned lands. Critical habitat designation provides protection only on Federal lands or on private lands when there is Federal involvement through authorization or funding of, or participation in, a project or activity. The limited number of populations that occur on Federal lands are managed by the NPS, for which management of listed species is a high priority. All Federal and State agencies and local planning agencies involved have been notified of the location and importance of protecting the habitat of these plant taxa. Protection of their habitat will be addressed through the recovery process and through the section 7 consultation process. Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by such agency, does not jeopardize the continued existence of a federally listed species, or does not destroy or adversely modify designated critical habitat. The taxa in this rule are all confined to small geographic areas and each population is composed of so few individuals that the determinations for jeopardy and adverse modification would be similar. Therefore, designation of critical habitat provides no additional benefit beyond those that these taxa would receive by virtue of their listing as endangered or threatened species and likely would increase the degree of threat from vandalism, collecting, or other human activities. The Service finds that designation of critical habitat for these plants is not prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Five of the taxa, *Astragalus brauntonii, Dudleya cymosa* ssp. *marcescens, D. cymosa* ssp. *ovatifolia, D. verityi*, and *Pentachaeta lyonii*, occur within the current boundaries of the

SMMNRA. Land acquisition activities for conservation purposes are possible within the SMMNRA boundary and could include unprotected populations of these plant taxa. Activities that could potentially affect these taxa and their habitats on NPS lands are primarily recreational activities including hiking, equestrian use, and rock climbing. Urban development projects occurring on private lands may need permits from Federal agencies, such as section 404 permits from the U.S. Army Corps of Engineers.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened and endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, and 17.71 for threatened plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to these taxa in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these provisions provided that their containers are marked ''Of Cultivated Origin.'' Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

It is the policy of the Service to increase public understanding of the prohibited acts that will apply under section 9 of the Act. Four of the taxa in this rule (*Astragalus brauntonii*, *Dudleya cymosa* ssp. *marcescens*, *D. cymosa* ssp. *ovatifolia*, and *Pentachaeta lyonii*) are known to occur on lands under Federal jurisdiction. Collection, damage, or destruction of these taxa is prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of California State laws, or in violation of a California State criminal trespass law.

All of the *Dudleya* taxa in this rule are of horticultural interest; however, they are not currently known to be in commercial trade. Intrastate commerce (commerce within a State) is not prohibited under the Act. However, interstate and foreign commerce (sale or offering for sale across State or international boundaries) requires a Federal endangered species permit. (Endangered species may be advertised for sale provided the advertisement contains a statement that no sale may be consummated until a permit has been obtained from the Service).

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because the species are not in commercial cultivation or common in the wild. Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Assistant Field Supervisor of the Service's Ventura Field Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and regulations may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503/231–6241; facsimile: 503/231–6243).

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Managment and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein is available upon request from the Service's Ventura Field Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Tim Thomas, Ventura Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Astragalus brauntonii ...	Braunton's milk-vetch	U.S.A. (CA)	Pea (Fabaceae)	E	606	NA	NA

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	* *	*		*		*
Dudleya abramsii ssp. *parva.*	Conejo dudleya	U.S.A. (CA)	Stonecrop (Crassulaceae).	T	606	NA	NA
Dudleya cymosa ssp. *marcescens.*	Marcescent dudleya	U.S.A. (CA)	Stonecrop (Crassulaceae).	T	606	NA	NA
Dudleya cymosa ssp. *ovatifolia.*	Santa Monica Mountains dudleya.	U.S.A. (CA)	Stonecrop (Crassulaceae).	T	606	NA	NA
*	*	* *	*		*		*
Dudleya verityi	Verity's dudleya	U.S.A. (CA)	Stonecrop (Crassulaceae).	T	606	NA	NA
*	*	* *	*		*		*
Pentachaeta lyonii	Lyon's pentachaeta	U.S.A. (CA)	Aster (Asteraceae)	E	606	NA	NA
*	*	* *	*		*		*

Dated: December 26, 1996.

Jay L. Gerst,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–2059 Filed 1–28–97; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Northern Population of the Copperbelly Water Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines threatened species status pursuant to the Endangered Species Act of 1973, as amended (Act), for the copperbelly water snake (*Nerodia erythrogaster neglecta*) in the northern portion of its range. The Service also determines that the copperbelly water snake does not warrant listing as a threatened species in the southern portion of its range and is not finalizing that portion of the proposal. This snake was referred to as the northern copperbelly water snake in several previous Federal Register publications. Historical records and recent studies indicate that this animal has declined substantially, especially in the northern portion of its range, and now persists largely in isolated pockets of suitable habitat. Rangewide, the snake has been impacted by a variety of human-induced causes, including urban/suburban encroachment, coal mining, and wetland drainage. These impacts continue to threaten the snake in the northern portion of its range but are being substantially reduced in the southern portion of its range due to modifications in surface coal mining and reclamation practices.

EFFECTIVE DATE: February 28, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Bloomington Field Office, 620 South Walker Street, Bloomington, Indiana 47403; telephone 812/334–4261.

FOR FURTHER INFORMATION CONTACT: David Hudak, Field Supervisor (see **ADDRESSES** section), 812/334–4261, extension 200.

SUPPLEMENTARY INFORMATION:

Background

The plain-belly water snake (*Nerodia erythrogaster*) was formally described as a species in 1938 as *Natrix erythrogaster* (Clay 1938). The copperbelly water snake, *Nerodia erythrogaster neglecta,* was recognized as a distinct subspecies in 1949 (Conant 1949). It is one of six recognized subspecies of the plain-belly water snake (McCranie 1990). The Act defines ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife . . .'' (section 3(15)). Thus, although taxonomically recognized as a subspecies, *N. e. neglecta* will be referred to as a ''species'' through the remainder of this rule. This legal, as opposed to biological, use of the term ''species'' should not be understood to mean that this rule covers the entire species *Nerodia erythrogaster.* The two decisions announced in this rule apply only to the subspecies *N. e. neglecta.*

Because *N. e. neglecta* was not recognized until 1949, museum specimens of the copperbelly water snake archived before that time were identified only as the plain-belly water snake. Correction of these mislabelled specimens is difficult due to the rapid fading of colors from preserved specimens. Thus, the original range and distribution of the copperbelly water snake is not precisely known due to this taxonomic history and the loss of suitable habitat before recognition of the copperbelly water snake as a distinct subspecies (Conant 1949, 1951, 1955; Minton 1972).

The key field identification feature of the copperbelly water snake is its coloration. The snake has a solid dark, usually black, back with a bright orange-red underside that is visible from a side view. The head and eyes of the copperbelly water snake are proportionally larger than similar species (Clay 1938; Conant 1938, 1951; Minton 1972). The copperbelly water snake is most often confused with the yellowbelly water snake (*Nerodia erythrogaster flavigaster*), an adjacent subspecies to the south and west in Illinois and Kentucky. The most obvious single distinguishing characteristic is the belly color. The copperbelly water snake has a bright orange-red underside, whereas the yellowbelly water snake has a pale yellow belly. In addition, it has blotches of dark pigment extending onto the ventral scales that meet or nearly meet at the belly, whereas the yellowbelly water snake has dark pigment encroaching onto only the edge of the ventral scales (Brandon and Blanford 1995; Minton 1972; Conant 1938, 1949).

After its recognition as a subspecies, the known historical range of the copperbelly water snake was described by Schmidt (1953) as ''south central Michigan and northwestern Ohio, southwestward through Indiana to extreme southeastern Illinois and adjacent Kentucky.'' A notable feature of the documented historical range is the

large gap in location records between the southern and the northern population segments. The most widely accepted theory suggests that the northern segment is a relict of the more extensive southern population (Conant 1938, 1951; Adler 1963). Today, the distribution of the copperbelly water snake is clearly divided into a southern segment in southeastern Illinois, western Kentucky, and southern Indiana; and an isolated northern segment in northern Indiana, southern Michigan, and northwestern Ohio.

Currently, within the southern population segment there are five local clusters known in Illinois, 18 in Kentucky, and 13 in southern Indiana. The northern population segment consists of eight local clusters that are known to have had the species present in the last ten years; copperbelly water snakes were found at five of these northern sites during 1996 surveys. Local clusters consist of snakes within connected, or nearly connected, habitat units and which are able to interbreed because of this proximity. Thus, local clusters may include several ''sites'' or ''occurrences'' as these terms are commonly used in databases maintained by states or private conservation organizations.

It is believed, based on drainage patterns and post-1949 records of copperbelly water snakes, that its former range was nearly continuous over the three southern states. Only remnants of that original distribution are still evident, however; coal mining, drainage and damming of wetlands, channelization, damming and diversion of streams and rivers, and residential and commercial development of its habitat have disrupted and fragmented the distribution of the copperbelly water snake. Many once-connected local clusters are now isolated.

In Illinois, the copperbelly water snake distribution is believed to once have been continuous through southern Illinois; however, due to continued habitat loss and fragmentation, only five small, isolated local clusters remain today (Brandon pers. comm. 1994).

Kentucky, historically and presently, is considered to have the largest number of copperbelly water snakes rangewide. It is believed the species was once abundant and continuous throughout the western Kentucky coal field. The once-continuous range of the copperbelly water snake is now restricted to 18 isolated local clusters.

Similarly, in southern Indiana, the distribution of the species has been fragmented into 13 discrete populations.

The northern population segment has experienced extensive habitat loss; and the impacts from habitat fragmentation and degradation on this smaller population are very pronounced. Consequently, the northern population segment has been relegated to a few small, scattered and isolated local clusters in southern Michigan, northeastern Indiana, and northwestern Ohio. Under current conditions and trends, extirpation of the northern population is expected to occur within the next few decades (Kingsbury pers. comm. 1994 and 1996).

Copperbelly water snakes migrate seasonally throughout their habitat, which consists of bottomland forests and shrub swamps. Although the species is a ''water'' snake, much of its time is spent away from water in the terrestrial, forested part of its habitat (Kingsbury pers. comm. 1994). Copperbelly water snakes emerge from their hibernation sites in early spring and migrate through wooded or vegetated corridors to wetland areas. They can often be seen basking, breeding, and foraging near shallow wetland edges in woodlands. When the woodland swamps begin to dry in late spring or in early June, the snakes again disperse and move through wooded or vegetated corridors to their summer habitat areas. Summer activities usually center around forest and forest edges (Conant 1951, Kingsbury pers. comm. 1994). For this reason, upland habitat is essential for the snake's summer foraging activities.

By late fall, copperbelly water snakes seek out hibernation sites. It is believed that copperbelly water snakes use hibernation sites that are at elevations higher than the floodstage line and ponding areas (Sellers 1991). Kingsbury (pers. comm. 1996), based on results of radio-telemetry studies, reported that copperbelly water snakes do utilize bottomland hibernation sites. Bottomland hibernation sites have been identified as felled tree-root networks (Lodato 1985), crayfish burrows (Kingsbury pers. comm. 1994), dense brush piles, fieldstone piles, and perhaps beaver and muskrat lodges (Sellers 1991). These studies indicate that upland hibernation sites are essential to the long-term survival of viable populations of the snake. A mid-winter flood, coupled with freezing temperatures, could be lethal to snakes and could decimate the local copperbelly water snake population if floodplain and riverbank areas are the only hibernation sites available.

This species is known to form small groups in the spring and fall. Groups of snakes have been observed swimming, feeding, courting, and resting together (Conant 1938; Martin 1982, *in* Sellers 1991). Courtship and mating occurs in April, May, and June. Copperbelly water snakes have a longer gestation period than other water snakes sharing their range, and their average litter size (18) is also smaller (Schmidt and Davis 1941). Young snakes are born in the fall near, or in, the hibernaculum and may not become active until the following spring.

Distinct Population Segments

The range of the copperbelly water snake contains a geographical barrier between the local clusters in Michigan, Ohio, and northeastern Indiana, and the rest of the local clusters in southern Indiana, Kentucky, and Illinois. This gap is apparent from historical and recent known locations for the snake (Adler 1963, Conant and Collins 1991, Sellers 1991). This hiatus between the northern and southern populations currently is approximately 180 miles wide. Within the gap those areas of habitat that are potentially suitable for copperbelly water snakes are small and isolated, making copperbelly water snake movement though this gap extremely unlikely.

These populations qualify as distinct under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Act, published in the Federal Register on February 7, 1996 (61 FR 4722–4725). The Policy identifies three criteria that must be satisfied in order to list a distinct population segment of a species or subspecies as threatened or endangered—discreteness, significance, and conservation status.

The wide geographic gap in suitable and inter-connected habitat between the northern and southern Indiana local clusters clearly identifies these as discrete and isolated population segments. The loss of the peripheral, isolated, northern population is considered significant as characterized under the policy, as it would result in a significant reduction in the range of the taxon.

The existence of two distinct population segments for the copperbelly water snake enables the Service to treat each as a species and to make separate determinations for each of them. Therefore, the Service is adopting the following designations of the two population segments, and these terms will be used in the remainder of this rule.

Northern Population Segment—Michigan, Ohio, and Indiana north of 40 degrees north latitude (approximately Indianapolis, IN).

Southern Population Segment—Illinois, Kentucky, and Indiana south of 40 degrees north latitude.

Final Determination on Northern Population Segment

As discussed below in the Summary of Factors Affecting the Species section, the threats affecting the northern population segment arise from several sources that are not addressed in the Conservation Agreements. Because these threats continue to affect the northern population segment the Service has determined that the northern population segment of the copperbelly water snake warrants listing as a threatened species.

Final Determination on Southern Population Segment

Since the 1993 proposal for the threatened listing of the copperbelly water snake there have been several parallel efforts to develop formal methods to reduce threats to the species and its habitat. In recent months these efforts have coalesced into two Conservation Agreements, with the Service being a signatory to both. One Agreement deals specifically with the effects of coal mining in Indiana. The second Agreement covers the impacts of coal mining in Kentucky and Illinois and also institutes other conservation measures in all three states.

The Conservation Agreements will promote the conservation of the copperbelly water snake and its habitat during surface coal mining in Indiana by delineating approximately 10,400 acres of high quality copperbelly water snake habitat as core habitat areas that will not be affected by surface coal mining. Furthermore, the Agreements require the maintenance of habitat corridors connecting all other copperbelly water snake habitats, restrict the mining of large habitat fragments that are outside of the core areas to practices that will ensure the survival of existing copperbelly water snake local clusters, and ensure that all snake habitat that is mined will be reclaimed in such a way as to increase both the quantity and quality of snake habitat.

In Kentucky the Conservation Agreements provide that a maximum of four percent of the approximately 112,400 acres of known copperbelly water snake habitat can be disturbed by surface coal mining activities. All copperbelly water snake habitat has been divided into management units of which no one unit may have more than ten percent of its area disturbed by mining activities, and all copperbelly water snake habitat that is mined will be reclaimed in such a way as to increase both the quantity and quality of snake habitat.

Similarly, in Illinois, the Agreements require that all copperbelly water snake habitat that is mined will be reclaimed in such a way as to increase both the quantity and quality of snake habitat.

The Conservation Agreements also ensure that in all three states within the southern population segment the state natural resource departments will emphasize land acquisition, management, and law enforcement to manage and conserve the copperbelly water snake as if it were a federally listed species. In Illinois and Kentucky, where the snake is not listed as threatened or endangered by the states, there will be special regulations written to provide the species with protection from take. In addition, the Office of Surface Mining Reclamation and Enforcement will prioritize their Clean Stream initiative program to aid protection and enhancement of copperbelly water snake habitats. The Farm Bureau's role will be to publicize the conservation needs of the snake to its members.

These provisions of the Conservation Agreements significantly reduce the threats from surface coal mining at all known copperbelly water snake local clusters in the southern population segment. Because habitat destruction and degradation resulting from surface coal mining was the predominant recent threat to the southern population segment, the Service has determined that the southern population segment does not warrant listing as a threatened species at this time.

Previous Federal Action

The copperbelly water snake was recognized as a category 2 species in the Service's December 30, 1982, (47 FR 58454); January 6, 1989, (54 FR 554); and November 21, 1991, (56 FR 58804) Animal Notices of Review. On November 12, 1991, the Service reassigned this species to category 1. On August 18, 1993, the Service published the proposed rule to list the copperbelly water snake as threatened (58 FR 43860). The Service extended the public comment period on October 12, 1993, (58 FR 52740) for 30 days. The public comment period was re-opened on March 22, 1994, for an additional 30 days (59 FR 13472) to hold a public hearing on April 5, 1994. On July 11, 1994, the Service published a Notice in the Federal Register (59 FR 35307) indicating that the deadline for the final listing determination had been extended six months (until February 18, 1995) while re-opening the public comment period until November 1, 1994. As a result of significant new data received during, and immediately following, the public comment period, on December 15, 1994, (59 FR 64647) the Service re-opened the public comment for 30 days, and announced the availability of the new data.

The Service was prohibited from making final determinations on listing proposals during a congressionally-imposed moratorium that began on April 10, 1995 (Public Law 104–06). To ensure that the Service could continue to receive and review relevant data and continue discussions with interested parties, the comment period was reopened on August 15, 1995, (60 FR 42140) and closed at the end of the fiscal year on September 30, 1995. During the first half of fiscal year 1996 the moratorium and a lack of appropriated funds prevented the Service from taking any actions related to listing species. Subsequent to the ending of the moratorium and restoration of funding for listing activities, the comment period was re-opened on July 16, 1996, (61 FR 37034) to receive data that might have become available during the moratorium and listing program shut-down. That comment period was extended another 60 days on September 17, 1996, (61 FR 48876) in order to receive a report on the northern population segment. The comment period ended on November 15, 1996.

The processing of this final rule conforms with the Service's final listing priority guidance published in the Federal Register on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings during fiscal year 1997. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This final rule falls under Tier 2. At this time, there are no pending Tier 1 actions.

Summary of Comments and Recommendations

In the August 18, 1993, proposed rule and subsequent notices reopening the comment period, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and state agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in newspapers across the range of the species inviting public

comment. A public hearing was requested by Mr. James Baker, of the Western Kentucky Coal Association, and Ms. Bertha Daubendiek, of the Michigan Nature Association. The public hearing was held in Indianapolis, IN, on April 5, 1994. Twenty-six people attended the hearing. One-hundred forty-two comments were received during the comment periods and at the public hearing and are discussed below; some parties provided more than one comment.

On July 11, 1994, the Service published a notice (59 FR 35307) extending the one-year listing decision deadline until February 18, 1995. Comments had been submitted on the proposed rule indicating that there were scientific disagreements concerning the location of, and significance of, intergradation in Illinois and Kentucky. When such a scientific disagreement exists, the one-year period within which the Service must ordinarily take final action on a proposal to list a species may be extended for not more than six months in accordance with section 4(b)(5)(B)(I) of the Act. During the six-month extension the Service funded additional studies in Illinois and Kentucky. The reports of these studies, as well as information from a third study funded by the Indiana Department of Natural Resources, were publicized and made available for review by the public.

The Service received comments from one-hundred forty-two individuals and organizations. Forty-eight commentors supported the proposal. Thirty-three parties provided suggestions and/or information but did not indicate either support of, or opposition to, the proposal. Sixty-one commentors expressed opposition to the proposal. Many provided data further substantiating or clarifying the threats to the species. During the most recent public comment period two draft Conservation Agreements were submitted which are intended to significantly reduce the threats from surface coal mining. This new information on the reduction in threats has been incorporated into the final rule where appropriate (see Summary of Factors Affecting the Species, below).

Written comments and oral statements presented at the public hearings and/or received during the comment periods are addressed in the following section. Comments of a similar nature are grouped together. Comments received on the southern population segment that is not being listed are also addressed below.

Issue 1: The morphological and genetic research conducted in Illinois is insufficient to distinguish between *N. e. neglecta, N. e. flavigaster,* and their intergrades.

Service Response: Although the results of the genetic analysis did not prove to be a reliable method for distinguishing *neglecta* from the intergrades, the morphological analysis was able to successfully identify the subspecies for 95 percent of the snakes examined. The Service believes that, for the purposes of delineating the boundary of an intergrade zone in southern Illinois, the high degree of reliability of morphological distinctiveness is sufficient to distinguish between the two subspecies. However, because there is no intergrade zone within, or near, the northern population segment, identifying intergrades from copperbelly water snakes is not a concern with this final determination.

Issue 2: Critical habitat should be designated.

Service Response: Section 4 of the Act requires designation of critical habitat concurrent with listing, to the maximum extent prudent and determinable (also see 50 CFR 424.12). The Service finds that designation of critical habitat is not prudent for this species. This finding is based on the conclusion that such a designation would not be beneficial to the species. As discussed under Factor B in the Summary of Factors Affecting the species, and in the Critical Habitat section, the copperbelly water snake would become vulnerable to collectors and vandals who would be readily able to locate the known populations by the publication of critical habitat maps and other specific location information. Furthermore, the Service does not believe critical habitat will provide any additional benefit beyond that already provided under section 7 of the Act.

Issue 3: Economic, recreational, and other impacts should be considered when listing a species.

Service Response: Section 4 of the Act requires the Service to consider only biological and commercial trade information in determining whether to list a species. The Service recognizes the potential for adverse economic impacts stemming from this listing, and will work closely with mining, development, agricultural, and other interests throughout the range of the copperbelly water snake to accommodate economic and recreational activities to the extent possible while ensuring the continued survival and recovery of the snake.

Issue 4: Exemptions from the taking prohibitions for normal or routine farming activities should be provided.

Service Response: As of October 1, 1994, the Service must identify, to the extent possible, specific activities that will and will not likely result in violation of section 9 of the Act. The Service believes that agricultural activities on lands considered to be unsuitable habitat for the copperbelly water snake, but which are adjacent to copperbelly water snake habitat, are unlikely to result in a take pursuant to section 9 of the Act. Refer to additional discussion on actions that may or may not constitute take under Available Conservation Measures.

Issue 5: Several commentors stated that the status information for Kentucky is incomplete and inaccurate, therefore, the proposal should be delayed until further studies can be completed in Kentucky.

Service Response: The Service agrees that total population estimates are lacking for this species; however, the Service considered several additional factors that are also important in developing a biologically accurate species status assessment. Gross population estimates are particularly important for species for which distinct local populations are not readily identified. However, the biological security of many declining species is more a function of the number of healthy local populations than the total number of individuals in the wild. Therefore, although quantitative surveying has not been completed throughout the range of the snake, pertinent and significant information regarding the other aspects of the snake's status is known. The Service believes precise population estimates are not necessary to recognize overall declining trends of the snake. The trends and the overall health of copperbelly water snake local clusters throughout its historical and current distribution are a more accurate reflection of the snake's status than are rough estimates of the number of snakes at a given time. In addition to the gross population estimates and the number of populations, the Service also considers factors such as the size of existing populations, historical and current rates of decline, current recruitment rates, distribution and proximity of populations, quantity and quality of available habitat, genetic diversity, and imminent and potential threats to the species and its habitat.

Issue 6: One commentor stated that the Service is basing their decision on erroneous data. In particular, the accuracy of the habitat acreage estimates was questioned within the Bryan *et al.* (1994) Kentucky status report.

Service Response: The Service recognizes that earlier habitat estimates were based on older topographic

quadrangle maps and limited aerial photography and personal knowledge, and therefore, the habitat estimates were not necessarily indicative of what precisely exists today. However, those sources of information represented the best available information at the time, as the surveyors were not able to obtain permission to survey current habitat on most of the land under mining lease. Since the Bryan *et al.* (1994) study the Service has updated its habitat estimates for Kentucky and vastly refined its knowledge of where suitable habitat still exists within the states. This work involved field verification of topographic maps, recent aerial photography and geographic information system mapping of the photos, meeting with copperbelly water snake experts and state field biologists, and field work by Kentucky State Nature Preserves Commission biologists. The Conservation Agreement for Kentucky is based upon this updated information.

Issue 7: Coal mining in Kentucky is creating, rather than eliminating, copperbelly water snake habitat wherever previously mined areas are reclaimed to wildlife habitat.

Response: Based on the available information, the Service believes coal mining reclamation procedures generally are not providing snake habitat (Bryan *et al.* 1994; Kingsbury pers. comm. 1996; MacGregor pers. comm. 1994; Sellers 1991). Mined land generally has been reclaimed to cropland, hay fields, and wildlife land unsuitable for the snake, such as upland forest, upland game habitat, and deep water impoundments. Ponds and wetlands reclaimed or restored on mined lands are often too widely scattered and lack suitable fish and/or amphibian populations, hibernation sites, and cover to be suitable copperbelly water snake habitat. However, the Service believes that coal mining activities can be compatible with the conservation of the copperbelly water snake if the extent, timing, and reclamation design are modified to incorporate snake conservation measures. As described in the Final Determination on Southern Population Segment section, the Conservation Agreements are instituting such changes to mining and reclamation activities throughout the southern population segment. The Service believes that these reclamation methods will increase and enhance copperbelly water snake habitat.

Issue 8: The factors threatening the species are no longer significant because there are Federal and state laws protecting the species.

Response: The Service recognizes the efforts of private groups and governmental programs, and agrees that some of the past threats to the species have been reduced and/or eliminated. However, interpretation and enforcement of the Food Security Act, the Clean Water Act, and the Surface Mining Reclamation Control Act have not provided sufficient protection to the copperbelly water snake or its habitat. Furthermore, state protection of the copperbelly water snake is not currently uniform across its range and the lack of any state authority to protect the habitat of state-listed species significantly weakens the protection of the species. However, the Service agrees that, for the Southern Population Segment, where mining and the lack of consistent state protection against take previously were the major threats to the species, the recently signed Conservation Agreements will provide adequate protection.

Issue 9: The population data cited in the proposed rule are incorrect.

Response: The Service agrees that population numbers for much of the copperbelly's occupied range are not very useful due to the difficulty with censusing elusive animals such as water snakes. However, the Act requires the Service to make its determinations on the basis of the best available scientific and commercial data, which need not be population estimates or counts that can be statistically analyzed. Also, as noted under Issue 5, the Service has not relied heavily on population data for its determinations. The Service also points out that additional monitoring of snake habitat and populations will be carried out as a result of the two Conservation Agreements, so our knowledge of copperbelly water snake numbers will continue to improve.

Issue 10: The Service failed to recognize the tracts of habitat already in protective ownership, such as the Patoka River National Wildlife Refuge, Land Between the Lakes, and properties under Indiana Department of Natural Resource ownership.

Service Response: Although the proposed rule did not emphasize the areas already protected for the species, the Service is aware of these areas and has concluded that habitat under public and private conservation ownership is not sufficient to protect the copperbelly water snake throughout its range. This determination was based on the following information. First, in the southern population segment, while suitable habitat does exists within the Patoka River corridor in southern Indiana, currently the National Wildlife Refuge ownership consists of only two hundred twenty-five acres which provide benefit to the snake. Furthermore, significant tracts of copperbelly water snake habitat within the Patoka River corridor are privately owned and are currently being adversely impacted by coal mining. Second, snakes found within the publicly-owned Land Between the Lakes are considered to be intergrades and would not be included in a listing of the southern population segment. Third, few populations of copperbelly water snakes are found on state-owned land. In the northern population segment, only two of the eight known sites are under partial state ownership and a third is partly owned by a private conservation organization.

Issue 11: The listing analysis concentrated on historical habitat degradation and destruction trends rather than current habitat loss trends.

Service Response: As previously mentioned, the Service considers a variety of factors in making a listing determination. Although historical rates of decline are considered during the species' status assessment, many other factors, including current rates of decline, potential and imminent threats, gross population estimates, number of populations, distribution of populations, genetic diversity, and current recruitment rates are evaluated as well. Historical rates of decline are utilized by the Service to ascertain if a species is undergoing a precipitous or gradual decline. Also, the historical trend information is also useful in identifying the likelihood of natural cyclical fluctuations in numbers. The Service utilized the historical trend information in aggregate with all other information in determining if listing is warranted.

Issue 12: Conservation agreements which significantly reduce the threats to the species should be considered in the listing decision.

Service Response: The states of Kentucky, Illinois, and Indiana; the Kentucky Farm Bureau; the Office of Surface Mining, Reclamation, and Enforcement; the Western Kentucky Coal Association; and others submitted a Conservation Agreement which primarily addresses coal mining threats in Kentucky and Illinois. Similarly, the State of Indiana and the Indiana Coal Council submitted a Conservation Agreement which addresses coal mining threats in Indiana. The Service has reviewed those Agreements and concurs that, when fully implemented, the Agreements will reduce the threats to the southern population segment of the copperbelly water snake sufficiently to

preclude the need to list that population segment.

Issue 13: The Service also received comments from conservation organizations opposed to the use of Conservation Agreements to preclude the need to list the species. Their opposition is based on the non-binding nature of Conservation Agreements and the risk of mitigation efforts failing.

Service Response: Both Conservation Agreements include monitoring and compliance measures along with the flexibility to respond to changes needed to allow the Agreements to be successful. The Service is a signatory on both Agreements and will be an active partner in their implementation and monitoring. Further, the Service will constantly evaluate the status of the species, and if the Agreements fail to meet expectations, will reevaluate the need to list the southern population segment.

Peer Review

The Service routinely has solicited comments from parties interested in, and knowledgeable of, taxa which have been proposed for listing as threatened or endangered species. A July 1, 1994, policy statement (59 FR 34270) established the formal requirement that a minimum of three peer reviewers be asked to provide input into the Service's listing decisions. Although the proposed rule to list the copperbelly water snake as a threatened species predated that policy, the Service nonetheless elected to apply the formalized peer review process to the proposal. During the July 16, 1996, to November 15, 1996, comment period, the Service solicited the expert opinions of five biologists having recognized expertise in herpetology and/or conservation biology and requested their review of the published and unpublished data concerning the copperbelly water snake. In order to ensure an unbiased examination of the data, the Service contacted biologists who previously had only minor or no involvement in discussions on the possible listing of the snake.

Comments were received within the comment period from all five reviewers. All five reviewers concurred with the Service on factors relating to the taxonomy, and biological and ecological information. One reviewer believed current Kentucky data were insufficient.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the northern population segment of the copperbelly water snake should be classified as a threatened species, and that listing is not warranted for the southern population segment of the copperbelly water snake. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the copperbelly water snake (*Nerodia erythrogaster neglecta*) are as follows:

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

Habitat loss and fragmentation were the primary causes of the decline of the copperbelly water snake and continue to be the major factors threatening the continued existence of the species. From 1790 to the mid-1980's, much of the copperbelly water snake's wetland habitat was modified or destroyed. According to Dahl and Johnson (1990), Indiana has lost 87 percent of its original wetlands, Illinois 85 percent, Michigan 50 percent, Ohio 90 percent, and Kentucky 81 percent. The principal cause of these losses was land conversion to agricultural use. This was especially true from 1950 through the 1970's, when agriculture was cited as the cause for 87 percent of the wetland loss nationwide (Dahl and Johnson 1990). However, since that time, other land uses and modifications such as dredging, coal mining, stream channelization, road construction, and commercial and residential development have played a more significant role in the loss of wetland habitat.

The loss of snake habitat is especially evident in areas occupied by the northern population segment of the snake, where the species has been relegated to only a few small, isolated habitat areas. The northern population segment has, since 1986, occupied only eight very limited sites in four southern Michigan counties, one northwestern Ohio county, and one northeastern Indiana county. Six of these local clusters, including the Indiana and Ohio local clusters, are encompassed within an area of about 100 square miles. The other two local clusters are 35 to 60 miles to the northwest.

Two of the eight sites have a portion of their area protected by state ownership, and one is partially owned by a private conservation organization. The remaining sites are all private property with uncertain fates. A key characteristic of these sites is separation by unsuitable habitat from each other and from important habitat components. The unsuitable habitat is primarily agricultural land, rural residential sites, and roads.

Landscape fragmentation and isolation of local clusters from each other increases the likelihood of extinction by causing each local cluster to function as an independent, but much smaller population. Very small populations are far more susceptible to local extirpation from factors such as drought and from genetic irregularities caused by inbreeding.

Other factors that may be adversely affecting northern population habitat include increased residential development, sedimentation, and contamination caused by fertilizer runoff (Sellers 1996a, 1996b.). A large residential complex has been developed around a deep water lake that is utilized by the snake during droughts. New residences have been built near the Cass/St. Joseph counties local cluster. Residences add to roadway traffic, increase habitat fragmentation, and increase the likelihood of direct harm to snakes by people, pets, and vehicles. Sedimentation, usually resulting from agricultural activities, but also caused by construction, may change hydrological characteristics and plant succession, as well as reduce the numbers of amphibian and fish used by the snake as food.

The presence of copperbellies at two of the eight northern local clusters has not been confirmed since 1987, and since 1989 at a third site. Two of these three sites were surveyed in 1996, one of them for 46 hours, and no copperbellies were found. The third site has not been surveyed since 1987. Suitable habitat at these three sites still seems to be available. While it may be reasonable to conclude that snake numbers at the two recently surveyed sites have declined, surveys have not been frequent enough to conclude with certainty that these two local clusters no longer support copperbellies. Northern population survey data since 1986 are not complete for all local clusters, and do not support any conclusion as to an overall trend of increase or decrease. However, total numbers of snakes seen have remained very low since 1986. The low numbers and possible disappearance of snakes from various sites in the last 10 years indicates that progress toward extirpation which became apparent in the 1950's and 1960's probably is continuing, and underscores the perilous state of the northern population segment. The northern population probably will be

extirpated within the next few decades without immediate additional protection (Kingsbury pers. comm. 1994 and 1996).

Specific habitat-related threats that have cumulatively led to the extirpation of northern population segment copperbelly water snake local clusters include woodlot, brush, and other land clearing; habitat constriction and fragmentation from surrounding development; road construction; and coal mining.

Although coal mining has been a major recent factor in the decline of the species in the southern portion of its range, the Service believes mining practices can be compatible with the existence of the snake. Coal mining can be compatible with the copperbelly water snake if the extent, the timing of the mining, and the reclamation design are modified to incorporate snake conservation measures. The Conservation Agreements for the southern population segment make such changes to coal mining and reclamation practices, thus greatly reducing mining threats to the species, and providing compatibility between mining and snake conservation. Because habitat loss and degradation from surface coal mining constituted the main threats facing the southern population, the Service believes that the reduction of the coal mining impacts by the Conservation Agreements precludes the need to list the southern population segment.

While the northern population segment is not impacted by coal mining, it is significantly affected by all of the other threats of destruction, modification, or curtailment of its habitat listed above.

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

Scientific overutilization, without careful regulation, can pose a threat. During the first 30 years after its discovery and formal publication of its description, many copperbelly water snakes were collected as specimens for museums. Although museums have abandoned this practice, amateur collectors continue to take wild snakes (Sellers 1991). The species is believed to be collected fairly regularly because of its rarity, large size, unique coloration, and value in the pet trade. For example, an international commercial dealer reportedly offered $260 to an amateur collector for a breeding pair of copperbelly water snakes.

C. Disease or Predation

The snakes are vulnerable to predation during migration, especially when their migration routes are interrupted by cleared areas such as roads, mowed areas, and farmlands. Dispersing through such areas increases the likelihood of the snakes being preyed upon by natural predators such as skunks, raccoons, and raptors. Due to habitat fragmentation, the ability to use suitable cover to migrate safely throughout its home range is a limiting factor in the life cycle of the copperbelly water snake. In addition to predation, vehicle-caused mortality and injury also has increased as suitable habitat becomes more fragmented by transportation corridors. Such habitat fragmentation is especially significant to the northern population segment where seasonal movements among its smaller habitat patches force snakes to cross roadways or other open habitat (Sellers 1991).

D. The Inadequacy of Existing Regulatory Mechanisms

The copperbelly water snake receives varying degrees of protection through state listings as an endangered, threatened, or nongame species throughout its range. Michigan, Indiana, and Ohio confer full legal protection to the copperbelly water snake; it is illegal to collect, kill, or injure the snake in these three states. Illinois and Kentucky offer no legal protection to the snake at this time.

Whereas three states have laws and regulations which protect the species from take, the lack of uniform protection throughout the United States hampers enforcement and imperils the species by creating loopholes for illegal take and trade. More importantly, legal provisions for protection and management of copperbelly water snake habitat at the state level are non-existent. Because destruction and alteration of habitat are the major reasons for the species' decline, the inability to protect non-federally listed species' habitat will exacerbate the continued decline of the copperbelly water snake without additional Federal protection.

As discussed under Factor A above, to alleviate any potential threats to the snake from surface mining, the recently-signed Conservation Agreements will require consideration of the southern population segment of the copperbelly water snake and its habitat in the surface mining and reclamation permitting process as if the species was federally-listed as threatened or endangered in Kentucky and Illinois. In Indiana core areas of snake habitat have been designated and will remain undisturbed by surface mining; snake habitat outside of the core areas can be mined to some extent but new reclamation standards will produce habitat suitable for copperbelly watersnakes. The Service believes that this modification to past permitting practices will remedy the threats presented by surface mining.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Weather extremes such as drought, flooding, and unusually mild, as well as severe, winters may influence the population of the copperbelly water snake. These factors affect the snake's ability to estivate for prolonged periods, as well as impeding access to, and use of, essential upland hibernation and foraging sites and wetland breeding areas. While these factors are not as likely to affect larger and healthier populations, small, isolated copperbelly water snake local clusters, like those that make up the northern population segment, are especially vulnerable to these naturally occurring events.

The widely held general dislike for snakes by humans further threatens copperbelly water snakes. For example, Kingsbury (pers. comm. 1994) reported two incidents in which the species was intentionally killed, with a gravid (pregnant) female being one of the victims. Such intentional killing likely has been more common in the southern population segment, due to geographic proximity to poisonous wetland-inhabiting snakes. However, one of the Conservation Agreements will lead to regulations in all three states which will prohibit the killing of this species.

In the northern population segment, due to the small number and isolation of the surviving local clusters, the snake remains vulnerable to habitat modification and destruction and collection and persecution.

The southern population segment is more widespread and consists of larger and more numerous local clusters. Several of the larger local clusters are partially or entirely on Federal or state lands. Most of the remaining local clusters are on private land, and most of these are covered by approved permits for surface coal mining. The threats from surface coal mining have been greatly removed by the recently-signed Conservation Agreements with the coal mining industry and state and Federal regulatory authorities for surface mining. These Agreements will preserve existing core habitat needed by the species, and will modify past post-mining land reclamation practices so

that suitable copperbelly water snake habitat will be developed following mining. The Service believes these changes in mining and reclamation practices reduce the existing and potential threats from mining to a level at which the species in the southern portion of its range is no longer likely to become endangered in the foreseeable future, and therefore does not warrant listing as a threatened species at this time.

The Service will continue to work closely with the surface coal mining industry and state and Federal surface mining regulatory agencies to monitor and evaluate the effects of the modified surface mining practices on the snake.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the copperbelly water snake in finalizing this rule. Based on this evaluation, the preferred action is to list the northern population segment of the copperbelly water snake, *Nerodia erythrogaster neglecta*, as a threatened species; the Service will not finalize the proposal to list as threatened the southern population segment of the copperbelly water snake.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the northern and southern population segment of the copperbelly water snake at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

As discussed under Factor B in the Summary of Factors Affecting the Species, the copperbelly water snake is known to be subject to collection, and those snakes would become increasingly vulnerable to reptile collectors who would be able to locate the known populations by the publication of critical habitat maps and other specific location information. Publication of critical habitat locations would also aid the intentional killing of individual snakes by individuals opposed to Federal and state conservation efforts for the species. The Service is concerned that threats made against the snakes during the listing process will be more likely to be carried out if snake locations are published.

Furthermore, critical habitat designation would not provide significant additional protection over that afforded through the normal recovery process, through section 7 consultation, and the prohibitions of section 9 of the Act. The precarious status of the northern population segment necessitates identical section 7 biological opinion thresholds for determining adverse modification of critical habitat and jeopardizing the continued existence of the species. Furthermore, sufficient habitat protection is provided by the Service's current interpretation of the meaning of ''harm'' in the Act's definition of ''take''; this interpretation holds that habitat degradation which significantly impairs essential behaviors constitutes ''harm'' and is prohibited by the Act.

In addition, Conservation Agreements for the snake and its habitat in the southern portion of its range, have removed significant threats to this species. Critical habitat for the snake will not be designated on any lands where the habitat is included in a Conservation Agreement, for the life of the agreement, so long as the agreement remains in effect consistent with its terms.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and encourages conservation actions by Federal, Tribal, state, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continuous existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions that may require consultation include the U.S. Army Corps of Engineers regulatory involvement in projects such as the construction of roads, bridges, and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 401 *et seq.*); Office of Surface Mining Reclamation and Enforcement coal mining permitting process; Federal Highway Administration funded projects; Bureau of Land Management lease activities; and Natural Resources Conservation Service projects.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply

to agents of the Service and state conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is the policy of the Service, published in the Federal Register on July 1, 1994, (59 FR 34272) to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within a species' range. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9 for listed copperbelly water snakes, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Routine agricultural activities on property adjacent to occupied copperbelly habitat, excluding activities which convert wooded, shrubby, or brushy areas to cropland or pasture;

(2) Possession of legally acquired copperbelly water snakes; and

(3) Actions that may affect copperbelly water snakes that are funded, authorized, or carried out by a Federal agency if the action is conducted in accordance with section 7 of the Act.

Activities that the Service believes could potentially harm the copperbelly water snake and result in ''take'' to the northern population segment of the snake include, but are not limited to;

(1) Collecting or handling of the snake in any manner;

(2) Possess, sell, transport, or ship illegally taken copperbelly water snakes;

(3) Substantial destruction or degradation of the species' wetland habitat such as discharge of fill material, drainage, damming of wetlands, channelization, damming, diversion of streams or rivers, diversion or alteration of surface or ground water flow into or out of wetlands (due to roads, impoundments, discharge pipes, storm water detention basins, etc.);

(4) Discharges or dumping of toxic chemicals, silt, or other pollutants (e.g., sewage, oil, and gasoline) into waters supporting the species; and

(5) Interstate and foreign commerce and export without obtaining the appropriate permit. Permits to conduct these activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the appropriate Service field office as follows: in Indiana, the Bloomington Field Office, 620 South Walker Street, Bloomington, Indiana 47403 (812/334–4261); in Michigan, the East Lansing Field Office, 2651 Coolidge Road, East Lansing, Michigan 48823 (517/351–2555); and in Ohio, the Reynoldsburg Field Office, 6950–H Americana Parkway, Reynoldsburg, Ohio 43068 (614/469–6923) (see **ADDRESSES** section). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Division of Endangered Species, Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056 (telephone 612/725–3536; facsimile 612/725–3526).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein is available upon request from the Service's Bloomington, Indiana, Ecological Service Field Office. (See **ADDRESSES** section.)

Author

The primary authors of this document are Scott Pruitt of the Service's Bloomington Field Office (see **ADDRESSES** section) and Jennifer Szymanski (U.S. Fish and Wildlife Service, Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 10080 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under REPTILES, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
REPTILES							

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Snake, copperbelly water.	Nerodia erythrogaster neglecta.	U.S.A. (IL, IN, KY, MI, OH).	Indiana north of 40 degrees north latitude, Michigan, Ohio.	T	607	NA	NA
*	*	*	*	*	*		*

Dated: January 16, 1997.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–2056 Filed 1–27–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960502124–6190–02; I.D. 012497B]

Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Fishery; Closure in Registration Area E

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

ACTION: Closure.

SUMMARY: NMFS is closing the scallop fishery in Scallop Registration Area E (Prince William Sound) east of 146° West long. This action is necessary to prevent exceeding the scallop total allowable catch (TAC) in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), January 24, 1997, until 2400 hrs, A.l.t., June 30, 1997.

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

SUPPLEMENTARY INFORMATION: The scallop fishery in the exclusive economic zone off Alaska is managed by NMFS according to the Fishery Management Plan for Scallop Fishery off Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing for scallops is governed by regulations appearing at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.62(b), the 1996–1997 scallop TAC for Scallop Registration Area E was established by the Final 1996–1997 Harvest Specifications of Scallops (61 FR 38099, July 23, 1996) and a reduced TAC was apportioned (62 FR 2043, January 15, 1997) as 17,300 lb (7,847 kg) of shucked scallop meat in the part of Registration Area E east of 146° West long.

In accordance with § 679.62(c), the Administrator, Alaska Region, NMFS, has determined that the scallop TAC for Scallop Registration Area E east of 146° West long. has been reached. Consequently, NMFS is prohibiting the taking and retention of scallops in Scallop Registration Area E east of 146° West long. from 1200 hrs, A.l.t., January 24, 1997, through 2400 hrs, A.l.t., June 30, 1997.

Classification

This action is required by § 679.62 and is exempt from review under E.O. 12866.

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

Dated: January 24, 1997.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–2229 Filed 1–24–97; 3:50 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961126333–6333–01; I.D. 012497A]

[Docket No. 960129018–6018–01: I.D. 122396A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610; Pacific Cod for Processing by the Inshore Component in the Western and Central Regulatory Areas

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

ACTION: Closure and correction.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification for pollock in this area. NMFS is also correcting a typographical mistake in FR Doc. 96–33290 (I.D. 122396A) published on December 31, 1996.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), January 26, 1997, until superseded by the Final 1997 Harvest Specifications for Groundfish.

FOR FURTHER INFORMATION CONTACT: Michael Sloan, 907–581–2062.

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-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim specification of pollock total allowable catch in Statistical Area 610 was established by Interim 1997 Harvest Specifications (61 FR 64299, December 4, 1996) as 9,075 metric tons (mt), determined in accordance with § 679.20(c)(2)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1997 interim specification of pollock in Statistical Area 610 soon will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,875 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 until superseded by the Final 1997 Harvest Specifications for Groundfish.

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

Correction

In a directed fishing opening, FR Doc 96–33290, published December 31, 1996 (61 FR 69050), the first line of the

SUMMARY contained a typographical error. It is corrected to read, ''SUMMARY: NMFS is opening * * *''

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: January 24, 1997.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–2230 Filed 1–24–97; 3:50 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 19
Wednesday, January 29, 1997

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

General Crop Insurance Regulations, Rice Endorsement; and Common Crop Insurance Regulations, Rice Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes specific crop provisions for the insurance of rice. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Rice Endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Rice Endorsement to the 1997 and prior crop years.

DATES: Written comments, data, and opinions on this proposed rule will be accepted until close of business March 31, 1997 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through March 31, 1997.

ADDRESSES: Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, United States Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C., 8:15 a.m. to 4:45 p.m., est, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order 12866, and therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

The amendments set forth in this proposed rule contains information collections that require clearance by Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is ''Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; Rice Crop Insurance Provisions.'' The information to be collected includes a crop insurance application and an acreage report. Information collected from the application and acreage report is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of rice that are eligible for Federal crop insurance.

The information requested is necessary for the reinsured companies and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

FCIC is requesting comments on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current

regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The insured must also annually certify to the previous years production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least three years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR parts 11 and 780 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR § 457.141, Rice Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supercede the current provisions for insuring rice found at 7 CFR § 401.120 (Rice Endorsement). FCIC also proposes to amend § 401.120 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve § 401.120.

This rule makes minor editorial and format changes to improve the Rice Endorsement's compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing substantive changes in the provisions for insuring rice as follows:

1. Section 1—Add definitions for the terms ''FSA,'' ''flood irrigation,'' ''good farming practices,'' ''irrigated practice,'' ''local market price,'' ''practical to replant,'' ''saline water,'' ''swathed,'' ''total milling yield'' and ''written agreement'' for clarification. The definition of ''harvest'' has been amended for clarification.

2. Section 4—Change the contract change date to November 30 for all counties to maintain an adequate time period between this date and the revised cancellation dates (see item 3 below).

3. Section 5—Change the cancellation and termination dates to February 28 in states and counties that currently have March 31 and April 15 dates, to February 15 in states and counties that currently have March 15 dates, and to January 15 in states and counties that currently have February 15 dates. These changes are made to standardize the cancellation and termination dates with the sales closing dates which were amended to comply with the requirement of the Federal Crop Insurance Reform Act of 1994 that spring planted crop sales closing dates be moved ahead by 30 days.

4. Section 6—Current provisions for rice that state that any acreage destroyed to comply with United States Department of Agriculture programs will not be insured have been deleted from the proposed rice crop provisions. Under those provisions insurance was provided on a crop until it was destroyed without any premium being paid.

5. Section 6(c)—Add a provision that requires the insured crop to be flood irrigated. Current regulations only require the rice crop be irrigated. This change will insure that adequate water covers the crop during the growing season.

6. Section 6(d)—Add a provision which makes wild rice uninsurable. The current regulation is mute regarding wild rice, but coverage has never been intended for wild rice.

7. Section 7—Add a provision which makes acreage uninsurable if it does not meet the rotation requirements contained in the Special Provisions, or if it was planted to rice the preceding crop year unless otherwise allowed by the Special Provisions. Also added a provision which states that any acreage of the insured crop damaged prior to the final planting date must be replanted unless the insurer agrees that replanting is not practical.

8. Section 10(a)(3)—Clarify that replanted rice must be seeded at a rate that is normal for initially planted rice to be eligible to receive a replanting payment.

9. Section 10(c)—Reduce the liability for a unit by the amount of any replanting payment, when rice is replanted using a practice that was originally uninsurable. The current rice provisions are mute regarding this issue. This addition is consistent with the replant provisions under the same circumstances for other crops.

10. Sections 12(d)(1) and (2)—Add provisions to permit an insured to be eligible for both moisture and quality adjustments to be consistent with other crop policies which offer moisture and quality adjustments.

11. Section 12(d)(4)—Allow the use of a standard quality adjustment if provided in the Special Provisions. The use of such a standard simplifies the loss adjustment process and assures consistent adjustment for insureds with quality related losses.

12. Section 14—Adds provisions for providing insurance coverage by written agreement. FCIC has a long standing policy of permitting certain modifications of the insurance contract by written agreement for some policies. This amendment allows FCIC to tailor the policy to a specific insured in certain instances. The new section will cover the procedures for and duration of written agreements.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Rice, Rice endorsement.

Proposed Rule

For the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The introductory text of § 401.120 is revised to read as follows:

§ 401.120 Rice endorsement.

The provisions of the Rice Crop Insurance Endorsement for the 1988 through the 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

3. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

4. 7 CFR part 457 is amended by adding a new § 457.141 to read as follows:

§ 457.141 Rice Crop Insurance Provisions.

The Rice Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

RICE CROP PROVISIONS

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Days—Calendar days.

Final planting date—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

Flood irrigation—A method of irrigation commonly used for rice production whereby the planted acreage is intentionally covered with water that is maintained at a uniform and shallow depth throughout the growing season.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—Combining or threshing the rice for grain. A crop that is swathed prior to combining is not considered harvested.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Late planted—Acreage planted to the insured crop during the late planting period.

Late planting period—The period that begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

Local market price—The cash price per pound for the U.S. No. 3 grade of rough rice offered by buyers in the area in which you normally market the rice. Factors not associated with grading under the United States Standards for Rice including, but not limited to protein and oil or milling quality will not be considered.

Planted—The uniform placement of an adequate amount of rice seed into a prepared seedbed by one of the following methods:.

(a) Drill seeding—Using a grain drill to incorporate the seed to a proper soil depth;

(b) Broadcast seeding—Distributing seed evenly onto the surface of an un-flooded seedbed followed by either timely mechanical incorporation of the seed to a proper soil depth in the seedbed or flushing the seedbed with water; or

(c) Broadcast seeding into a controlled flood—Distributing the rice seed onto a prepared seedbed that has been intentionally covered to a proper depth by water. The water must be free of movement and be completely contained on the acreage by properly constructed levees and gates.

Acreage seeded in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant—In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, marketing windows, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period unless replanting is generally occurring in the area.

Prevented planting—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

Production guarantee (per acre)—The number of pounds determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

Replanting—Performing the cultural practices necessary to replace the rice seed and then replacing the rice seed in the insured acreage with the expectation of growing a successful crop.

Saline water—Water that contains a concentration of salt that causes damage to the insured crop.

Second crop rice—The regrowth of a stand of rice following harvest of the initially insured rice crop that can be harvested in the same crop year.

Swathed—Severance of the stem and grain head from the ground without removal of the rice kernels from the plant and placing in a windrow.

Timely planted—Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Total milling yield—Rice production consisting of heads, second heads, screenings, and brewer's rice as defined by the official United States Standards for Rice.

Written agreement—A written document that alters designated terms of this policy in accordance with section 14.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(b) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period, other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you.

(d) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must be located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election for all the rice in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each rice type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

State and county	Cancellation and termination date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas; and all Texas counties south thereof.	January 15.
Florida	February 15.
All other Texas counties and all other states.	February 28.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the rice in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That is planted for harvest as grain;

(c) That is flood irrigated; and

(d) That is not wild rice.

7. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(a) We will not insure any acreage planted to rice:

(1) The preceding crop year unless allowed by the Special Provisions; or

(2) That does not meet the rotation requirements shown in the Special Provisions; and

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted unless we agree that replanting is not practical.

8. Insurance Period

In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the calendar date for the end of the insurance period is October 31 immediately following planting.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss not insured against in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against any loss of production due to the application of saline water.

10. Replanting Payment

(a) A replant payment for rice is allowed as follows:

(1) You must comply with all requirements regarding replanting payments contained under section 13 (Replanting Payment) of the Basic Provisions (§ 457.8);

(2) The rice must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage; and

(3) The replanted rice must be seeded at a rate that is normal for initially planted rice (if new seed is planted at a reduced seeding rate into a partially damaged stand of rice, the acreage will not be eligible for a replanting payment).

(b) In accordance with the provisions of section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), the maximum amount of the replanting payment per acre will be the lesser of twenty percent of the production guarantee or 400 pounds, multiplied by your price election, multiplied by your insured share.

(c) When rice is replanted using a practice that is uninsurable for an original planting, the liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

11. Duties in the Event of Damage or Loss

In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by its respective production guarantee by type, if applicable;

(2) Multiplying each result in section 12(b)(1) by the respective price election, by type, if applicable;

(3) Totaling the results of section 12(b)(2);

(4) Multiplying the total production to be counted by type, if applicable, (see section 12(c) through (e)) by the respective price election;

(5) Totaling the results of section 12(b)(4);

(6) Subtracting the total of section 12(b)(5) from the total of section 12(b)(3); and

(7) Multiplying the result of section 12(b)(6) by your share.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 12(d));

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us, (The amount of production to count for such acreage will be

based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage, including any production from a second rice crop harvested in the same crop year.

(d) Mature rough rice may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of twelve percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Rice, result in rice not meeting the grade requirements for U.S. No. 3, (grades U.S. No. 4 or worse), because of red rice, chalky kernels or damaged kernels;

(ii) The rice has a total milling yield of less than 68 pounds per hundredweight;

(iii) The whole kernel weight is less than 55 pounds per hundredweight of milled rice for medium and short grain varieties;

(iv) The whole kernel weight is less than 48 pounds per hundredweight of milled rice for long grain varieties; or

(v) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions specified in section 12(d)(2) resulted from a cause of loss against which insurance is provided under these crop provisions and which occurs within the insurance period;

(ii) The deficiencies, substances, or conditions specified in section 12(d)(2) result in a net price for the damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions specified in section 12(d)(2) are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader licensed to grade rice under the authority of the United States Agriculture Marketing Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Notwithstanding the preceding sentence, test weight for quality adjustment purposes may be determined by our loss adjuster.

(4) Rice production that is eligible for quality adjustment, as specified in sections 12(d)(2) and (3), will be reduced as follows:

(i) In accordance with quality adjustment factors contained in the Special Provisions; or

(ii) If quality adjustment factors are not contained in the Special Provisions, as follows:

(A) The market price of the qualifying damaged production and the local market price will be determined on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit. The price for the qualifying damaged production will be the market price for the local area to the extent feasible. Discounts used to establish the net price of the damaged production will be limited to those that are usual, customary, and reasonable. The price will not be reduced for:

(*1*) Moisture content;

(*2*) Damage due to uninsured causes; or

(*3*) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the rice; except, if the price of the damaged production can be increased by conditioning, we may reduce the price of the production after it has been conditioned by the cost of conditioning but not lower than the value of the production before conditioning,

(We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the rice to those buyers.);

(B) The value of the damaged or conditioned production will be divided by the local market price to determine the quality adjustment factor; and

(C) The number of pounds remaining after any reduction due to excessive moisture (the moisture-adjusted gross pounds (if appropriate)) of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the net production to count.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

13. Late Planting and Prevented Planting

(a) In lieu of provisions contained in the Basic Provisions (§ 457.8) regarding acreage initially planted after the final planting date and the applicability of a Late Planting Agreement Option, insurance will be provided for acreage planted to the insured crop during the late planting period (see section 13(c)), and acreage you were prevented from planting (see section 13(d)). These coverages provide reduced production guarantees. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for late planted acreage or prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided, no premium will be due, and no indemnity will be paid for such acreage.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

(c) Late Planting

(1) For rice acreage planted during the late planting period, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent per day for the 1st through the 10th day; and

(ii) Two percent per day for the 11th through the 25th day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of rice continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions for the insured crop; or

(ii) Five days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from timely planting rice, you may elect:

(i) To plant rice during the late planting period. The production guarantee for such acreage will be determined in accordance with section 13(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be thirty-five percent of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 2,000 pounds per acre, your prevented planting production guarantee would be 700 pounds per acre (2,000 pounds multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with sections 12 (c) through (e); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the 10th day following the final planting date for the insured crop; or

(B) A production guarantee equal to seventeen and five tenths percent of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the 10th day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 2,000 pounds per acre, your prevented planting production guarantee would be 350 pounds per acre (2,000 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the

applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Production guarantees for timely, late, and prevented planting acreage within a unit will be combined to determine the production guarantee for the unit. For example, assume you insure one unit in which you have a 100 percent share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted seven (7) days after the final planting date (late planted), and 50 acres were not planted but are eligible for a prevented planting production guarantee. The production guarantee for the unit will be computed as follows:

(i) For the timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(ii) For the late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent and multiply the result by the 50 acres planted late; and

(iii) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(A) Thirty-five percent and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(B) Seventeen and five tenths percent and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This paragraph (B) is not applicable, and prevented planting coverage is not available under these crop provisions, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see section 13 (d)(1)(iii))).

Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(3) You must have the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee. Proof that these inputs were available may be required.

(4) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example, if you make application and purchase insurance for rice for the 1998 crop year, prevented planting coverage will begin on the 1998 sales closing date for rice in the county. If the rice coverage remains in effect for the 1999 crop year (is not terminated or canceled during or after the 1998 crop year), prevented planting coverage for the 1999 crop year began on the 1998 sales closing date. Cancellation for the purpose of transferring the policy to a different insurance provider when there is no lapse in coverage will not be considered terminated or canceled coverage for the purpose of the preceding sentence.

(5) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all FSA Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to rice on the FSA Farm Serial Number during the previous crop year; or

(C) One-hundred percent of the simple average of the number of acres planted to rice during the crop years that you certified to determine your yield.

(iii) A prevented planting production guarantee will not be provided for any acreage:

(A) That does not constitute at least 20 acres or twenty percent of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or twenty percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed, or grazed on the same acreage in the same crop year, (other than a cover crop as specified in section 13(d)(2)(iii)(A), or a substitute crop allowed in section 13(d)(2)(iii)(B), unless you provide adequate records of acreage and production showing that the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double-cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of rice acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of rice on one optional unit and 40 acres rice on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(6) In accordance with the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee, the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

14. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 14(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on January 21, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–2041 Filed 1–28–97; 8:45 am]

BILLING CODE BILLING CODE 3410–FA–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Numbers EE–RM–93–801 and EE–RM–93–801–RAC]

Energy Conservation Program for Consumer Products; Room Air Conditioner Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Energy Department.

ACTION: Notice of limited reopening of the record and opportunity for public comment.

SUMMARY: The Department of Energy reopens the record of its rulemaking to revise the room air conditioner energy conservation standards under the Energy Policy and Conservation Act. Notice is given of revised draft reports on the potential impact of alternative efficiency levels, various written and oral comments from industry representatives and energy efficiency advocates, new factual information, and the principal policy options now under consideration.

DATES: Comments must be received on or before February 13, 1997.

ADDRESSES: Comments should be addressed to Kathi Epping, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, S.W., Washington, D.C. 20585. A copy of the revised draft Technical Support Document and other post comment period correspondence is available for public inspection and copying at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–7574, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Copies of the revised draft Technical Support Document may be obtained from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9127.

FOR FURTHER INFORMATION CONTACT:

Kathi Epping, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202 586–7425, or

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: Pursuant to section 325 of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6295, the Department of Energy (DOE) proposed to revise the energy conservation standards applicable to room air conditioners, as well as a variety of other consumer products. 59 FR 10464 (March 4, 1994). Section 325(o)(2) requires that any amended standard be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. 42 U.S.C. 6295(o)(2).

DOE held public hearings and received 12 comments on its proposed revisions to the room air conditioner energy conservation standards. After reviewing the comments, DOE concluded that a number of significant issues had been raised that required additional analysis. DOE also decided to sever the rulemaking on room air conditioners from the rulemakings for the other consumer products covered by the notice of proposed rulemaking.

On May 5, 1996, DOE distributed a copy of the Draft Report on the Potential Impact of Alternative Energy Efficiency Levels for Room Air Conditioners (Draft Report), containing DOE's revised analysis examining five alternative efficiency levels, to a mailing list that included all of the commenters on the proposed rule on room air conditioners. (EE–RM–93–801–RAC No. 1 and No. 2.) The letter invited recipients to comment on the Draft Report by no later than July 1, 1996. A copy of the cover letter and the mailing list has been added to the record on file for inspection in the DOE Freedom of Information Reading Room.

On April 23, 1996, the American Council for an Energy Efficient Economy (ACEEE) and the Natural Resources Defense Council (NRDC) sent a letter to the Association of Home Appliance Manufacturers (AHAM) with the following table of proposed standard levels:

Class	Standard level
Units without reverse cycle and with louvered sides.	
Capacity less than 20,000 Btu/h.	10.0 EER.
Capacity 20,000 Btu/h and more.	9.0 EER.
Units without reverse cycle and without louvered sides.	9.0 EER.
Slider/casement and casement-only units.	9.0 EER.
Units with reverse cycle, all capacities.	0.5 EER less than the standard for a comparable cool-only model.

At a May 21, 1996, meeting at which representatives of ACEEE, AHAM, and DOE were present, AHAM circulated a handout including a variety of charts that has been added to the record on file for public inspection in the DOE Freedom of Information Reading Room. Attachment 3A of the handout was a chart entitled ''Life Cycle Cost and Payback—Room Air Conditioners, Effect of Allocating Cost of Chassis Size Change.'' (EE–RM–93–801–RAC No. 9 at Attachment 3A.)

Between the beginning of June and the end of November, 1996, DOE received six comments on the Draft Report or related issues. DOE officials held meetings on September 26 with representatives of AHAM and interested manufacturers and on September 27 with ACEEE, the Alliance to Save

Energy, NRDC, and State energy officials from California, Florida, and Oregon. Memoranda summarizing these meetings have been added to the record on file for public inspection in the DOE Freedom of Information Reading Room. (EE–RM–93–801–RAC No. 11 and No. 12.) The participants in each meeting were informed as to the discussions during the other meeting: at the September 27 meeting with energy efficiency advocates, DOE described the September 26 meeting with the manufacturers, and after the September 27 meeting, DOE informed AHAM of the discussions at the September 27 meeting. In these meetings: (1) manufacturers argued for prorating the cost of increasing chassis size at each efficiency level; (2) efficiency advocates indicated concern about loopholes that might be created by establishing considerably lower standard levels for certain reverse cycle or non-louvered product classes as compared to their louvered or cool-only counterpart product classes; and (3) efficiency advocates objected to industry-recommended standard levels for casement room air conditioners.

On the basis of these inputs, DOE prepared a supplemental analysis to be appended to the Draft Report that focused on a set of efficiency levels for the same 9 classes analyzed in the proposed rule. The Department is inclined to use the same standard for class 6 as it uses for class 7 and the same standard for classes 9 and 10 as it uses for class 8, as was done in the proposed rule. A copy of the supplemental analysis has been added to the record on file for inspection in the DOE Freedom of Information Reading Room, and DOE is sending a copy to all commenters on the proposed rule for room air conditioners. (EE–RM–93–801–RAC No. 13.) The analyzed efficiency levels by class are as follows:

1. Without reverse cycle and with louvered sides less than 6,000 Btu/h	9.7 EER.
2. Without reverse cycle and with louvered sides 6,000 to 7,999 Btu/h	9.7 EER.
3. Without reverse cycle and with louvered sides 8,000 to 13,999 Btu/h	9.8 EER.
4. Without reverse cycle and with louvered sides 14,000 to 19,999 Btu/h	9.7 EER.
5. Without reverse cycle and with louvered sides 20,000 and more Btu/h	8.5 EER.
* * * * *	
7. Without reverse cycle and without louvered sides 6,000 to 7,999 Btu/h	9.0 EER.
8. Without reverse cycle and without louvered sides 8,000 to 13,999 Btu/h	8.5 EER.
* * * * *	
11. With reverse cycle, and with louvered sides	9.0 EER.
12. With reverse cycle, without louvered sides	8.5 EER.

For some classes, there was a coincidence of views between the energy efficiency advocates and AHAM on the efficiency level. As to classes 1 through 5, there was disagreement about how to take into account the cost of increasing chassis size. DOE has chosen to analyze efficiency levels corresponding to the minimum life cycle costs when chassis size cost is prorated. (See Attachment 3A.)

With respect to class 8, manufacturers commented that under the 1990 standards they were forced to reduce the highest capacity models within this product class. They argue that increasing the standard (currently at 8.5 EER) for this class will again eliminate higher capacity models within the class from the market. (EE–RM–93–801 No. 544 at 5.) According to the 1996 AHAM Directory, the highest capacity model available without louvered sides and without a reverse cycle is 12,500 Btu/h with an EER of 8.5. In addition, only one manufacturer currently makes units at a capacity of 9,000 Btu/h or higher which would meet the 9.0 standard recommended by ACEEE and NRDC. The Department believes that raising the current standard for this class risks eliminating higher capacity models within this class, and therefore, the Department is not inclined to raise the standard for this class.

For the final rule, DOE is inclined to split classes 11 and 12. ACEEE, NRDC, and AHAM all recommended using a .5 differential between reverse cycle units and their ''cool-only'' counterparts. (EE–RM–93–801–RAC No. 3 and EE–RM–93–801 No. 1 at 21.) For units with reverse cycle and louvered sides, the energy efficiency advocates are willing to accept an EER of 9.0. (EE–RM–93–801–RAC No. 5 at 5.) AHAM finds this level to be acceptable for units with capacities less than 20,000 Btu/h. However, for units at 20,000 Btu/h or more, AHAM argues that the standard should not be higher than the standard for its ''cool-only'' counterpart. (EE–RM–93–801–RAC No. 6 at 3.) The Department is inclined to agree. By splitting the class 11 at 20,000 Btu/h, the Department can raise the standard for most of the units with reverse cycle and with louvers without raising the standard for units of capacities of 20,000 Btu/h or more above the 8.5 EER of its cool-only counterpart.

Similarly, the Department is inclined to split class 12, and set the standard for units less than 14,000 Btu/h at 8.5 EER while keeping the standard for units of 14,000 Btu/h or more at 8.0 EER. This split would follow the recommendation of a .5 differential between reverse cycle units and their ''cool-only'' counterparts for the standards for units without louvers proposed by the ACEEE and NRDC. Similarly, it would follow the recommendation of a .5 differential between reverse cycle units and their ''cool-only'' counterparts for the standards proposed by AHAM with the exception of units in the 8,000–13,999 Btu/h capacity range. However, according to the 1996 AHAM directory, only one model with reverse cycle and without louvers in this capacity range does not meet an 8.5 EER.

In the notice of proposed rulemaking, DOE proposed standard levels for all product classes, other than casement room air conditioners. For the final rule, DOE is inclined to use the efficiency standard recommended by AHAM, ACEEE, and NRDC for casement-slider units (9.5 EER) (EE–RM–93–801–RAC No. 6 at 2 and EE–RM–93–801–RAC No. 5 at 5) and the standard recommended by AHAM for casement-only units (8.7 EER). (EE–RM–93–801–RAC No. 6 at 2.) For the purposes of this rulemaking, a casement-type unit is defined as a 14 x 11 inch or smaller unit used in a casement-only or casement-slider window. Although the efficiency advocates argued for a higher standard level for casement-only units (EE–RM–93–801–RAC No. 5 at 3–4), they did not provide the supporting analysis that would warrant adoption of that level.

The Department is providing a 15 day comment period because all the interested parties who have actively participated in this rulemaking are familiar with most of the information on which this notice is based and have already been given extensive opportunities to make their views known to each other and to DOE.

Issued in Washington, D.C., on January 23, 1997.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 97–2175 Filed 1–28–97; 8:45 am]

BILLING CODE 6450–01–P

10 CFR Part 430

[Docket No. EE–RM–94–230]

RIN 1904–AA88

Energy Conservation Program for Consumer Products: Notice of Public Workshop on Residential Water Heater Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshop.

SUMMARY: In today's notice, the Department of Energy (the Department or DOE) is convening a public workshop for water heaters to discuss comments received on its notice of proposed rulemaking and from the public hearing. All persons are hereby given notice of the opportunity to attend and participate in the public workshop.

DATES: The public workshop will be held on Wednesday, February 12, 1997, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: A copy of the comments may be obtained from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Stop: EE–43, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7574. These documents may be read at the DOE Freedom of Information Reading Room, U.S. DOE, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

The public workshop will be held at the U.S. Department of Energy, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Stop EE–43, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–0371; or

Ms. Sandy Beall, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Stop EE–43, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7574.

SUPPLEMENTARY INFORMATION: On March 23, 1995, the Department of Energy published a notice of Proposed Rule and Public Hearing on proposed amendments to clarify the water heater; kitchen range, oven, and microwave; and clothes washer test procedures. (60 FR 15330, March 23, 1995) The notice requested data and comments until the close of comment period on August 31, 1995 (Docket No: EE–RM–94–230). A public hearing was held on July 12, 1995.

The Department is convening a public workshop for water heaters to discuss the large number of comments received on the notice and from the public hearing. The Department seeks to gather additional information and/or data on certain unresolved issues being considered by the Department in its development of the Final Rule for Water Heater Test Procedure.

The tentative topics and issues to be discussed at the February 12, 1997, public workshop include the following:

1. First Hour Rating for Storage-Type Water Heaters

- Should DOE consider the 1979 test method (44 FR 52632, September 7, 1979) for measuring first hour rating?
- Should DOE retain the current test method (55 FR 42162, October 17, 1990) for measuring first hour rating?
- Should DOE adopt the 1995 proposed test method (60 FR 15330, March 23, 1995) for measuring first hour rating (with revision to include a temperature correction factor of 120°F for each draw if an internal mixing device is used)?
- Should DOE adopt the alternate test method proposed by Dr. Carl Hiller of Electric Power Research Institute (EPRI) (EE–RM–94–230, No. 17)?

2. Instantaneous water heaters

- Do oil-fired instantaneous water heaters exist in the marketplace, and, if so, should test procedures be developed for them?
- Should test procedures be developed for single point-of-use type electric instantaneous water heaters?
- Should DOE adopt an alternate first-hour rating method for instantaneous water heaters using a maximum draw rate at a temperature rise of 77 °F as proposed by Gas Appliance Manufacturers Association (GAMA) (EE–RM–94–230, No. 1 & 35), or a temperature rise of 50 °F as proposed by Edison Electric Institute (EEI) (EE–RM–94–230, No. 2 & 27) and EPRI (EE–RM–94–230, No. 17)?

3. Storage-type water heaters with rated storage capacities of less than 20 gallons

- Should test procedures developed for storage-type water heaters be applied to storage-type water heaters with rated storage capacities of less than 20 gallons?
- If so, should the draw rate and daily draw volume in ASHRAE Standard 118.2—1993, as referenced in the 1995 DOE proposed rule, be used in the 24-hour simulated use test for storage-type water heaters with rated storage capacities of less than 20 gallons? Or should some other draw rate and total daily drawn volume be used?
- Should test procedures be developed for storage-type water heaters with rated storage capacities of less than 10 gallons (single point-of-use type heaters)?

4. Daily hot water usage

- Does the daily usage assumed in the current test procedures, 64.3 gallons, reflect realistic daily hot water usage, and if not, what volume should it be?
- How will the Energy Factor be affected if testing were conducted at a daily hot water usage volume other than 64.3 gallons?

5. Thermostat settings

- Should the current setting of 135 °F be lowered to 120 °F to reflect manufacturers' recommendation that thermostat setting be set at a lower setting to avoid potential scalding?
- How will the Energy Factor be effected if testing were conducted at a thermostat setting of 120 °F?

6. Test procedures for heat pump water heaters

- Does the current test procedure (draw schedule of six hourly draws of 10.7 gallons per draw) provide operating conditions which would allow the resistance element(s) to be activated?
- Should DOE consider an alternate draw schedule to be used in the 24-hr simulated use test for heat pump water heaters and if so, what should this draw schedule be?
- How will the Energy Factor be effected if testing were conducted using different alternate draw schedules?

7. Definitions for heat pump water heaters, add-on heat pump water heaters, integral heat pump water heaters, solar water heaters, and heat pump water heater storage tanks

- Should any of the proposed definition be adopted by DOE?
- Should any proposed definition be revised and if so, which one(s) and how should it (they) be revised?
- Which, if any proposed definition should be completely deleted?

After completion of the workshop, the Department will review all of the findings and other recommendations. The Department will use this information to develop the final rule for the water heater test procedures. The workshop will be professionally facilitated.

Please notify Mr. Bryan Berringer at the above listed address of your

intention to attend the workshop, or if you wish to be added to the DOE mailing list for receipt of future rules and information concerning water heater matters relating to energy efficiency.

Issued in Washington, DC on January 22, 1997.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 97–2173 Filed 1–28–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–65–AD]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft, Inc. SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 96–21–05, which currently requires the following on certain Fairchild Aircraft, Inc. (Fairchild) SA226 and SA227 series airplanes that do not have a certain elevator torque tube installed: drilling inspection access holes in the elevator torque tube arm, inspecting the elevator torque tube for corrosion, replacing any corroded elevator torque tube, and applying a corrosion preventive compound. AD 96–21–05 resulted from several reports of corrosion found in the elevator torque tube area on the affected airplanes. The proposed AD would retain the actions required by AD 96–21–05, and would add certain Fairchild Model SA227–BC airplanes to the Applicability section of that AD. The actions specified by the proposed AD are intended to prevent failure of the flight control system caused by a corroded elevator torque tube, which could result in loss of control of the airplane.

DATES: Comments must be received on or before April 1, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–65–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–65–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–65–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Events Leading to the Proposed AD

AD 96–21–05, Amendment 39–9782 (61 FR 54538, October 21, 1996), currently requires the following on certain Fairchild Aircraft SA226 and SA227 series airplanes that do not have a part number (P/N) 27–44026–007 elevator torque tube installed:

- Drilling inspection access holes in the elevator torque tube arm;
- Inspecting the elevator torque tube for corrosion and replacing any corroded elevator torque tube; and
- Applying a corrosion preventive compound.

Accomplishment of the inspection access hole drilling, the inspection, and the corrosion preventive compound application is in accordance with either Fairchild Aircraft Service Bulletin (SB) 226–27–050 or Fairchild Aircraft SB 227–27–028, both issued: January 22, 1990.

AD 96–21–05 resulted from several reports of corrosion found in the elevator torque tube area on the affected airplanes.

The FAA has since determined that the requirements of AD 96–21–05 should also apply to certain Fairchild Model SA227–BC airplanes. In addition, Fairchild has issued an engineering order that provides instructions for reworking the elevator torque tube. When reworked, the elevator torque tube is identified as P/N 27–44026–SEO–1–03.

The FAA has also determined that airplane owners/operators should not have to accomplish the actions of AD 96–21–05 if the affected airplane incorporates an elevator torque tube with either P/N 27–44026–005, P/N 27–44026–007, or P/N 27–44026–SEO–1–03.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent failure of the flight control system caused by a corroded elevator torque tube, which could result in loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild SA226 and SA227 series airplanes of the same type design, the FAA is proposing an AD that would supersede AD 96–21–05. The proposed AD would (1) retain the requirements of drilling inspection access holes in the elevator torque tube arm, inspecting the elevator torque tube for corrosion and replacing any corroded elevator torque tube, and applying a corrosion preventive compound; (2) add certain Fairchild

Model SA227–BC airplanes to the Applicability section of the AD; and (3) exempt from the AD those airplanes incorporating an elevator torque tube with either P/N 27–44026–005, P/N 27–44026–007, or P/N 27–44026–SEO–1–03. Accomplishment of the proposed inspection access hole drilling, the inspection, and the corrosion preventive compound application would still be in accordance with either Fairchild Aircraft SB 226–27–050 or Fairchild Aircraft SB 227–27–028, both Issued: January 22, 1990.

Compliance Time of the Proposed AD

The compliance time for the proposed AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time for compliance would be the most desirable method because the unsafe condition described by the proposed AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service or on the ground.

Cost Impact

The FAA estimates that 396 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 10 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $237,600. This figure is based on the presumption that no owner/operator of the affected airplanes has accomplished the proposed inspection access hole drilling, inspection, or corrosion preventive compound application. It also is based on the presumption that no elevator torque tube would be found corroded and need to be replaced.

AD 96–21–05 currently requires the same actions as is proposed for 390 of the affected airplanes. The actions specified in this proposed AD would affect only six additional airplanes over that already required by AD 96–21–05. With this in mind, the cost impact of the proposed AD over that already required by AD 96–21–05 would be $3,600.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 96–21–05, Amendment 39–9782, and by adding a new AD to read as follows:

Fairchild Aircraft, Inc.: Docket No. 96–CE–65–AD; Supersedes AD 96–21–05, Amendment 39–9782.

Applicability: The following airplane models and serial numbers, certificated in any category, that do not incorporate an elevator torque tube with either part number (P/N) 27–44026–005, P/N 27–44026–007, or P/N 27–44026–SEO–1–03:

Model	Serial Nos.
SA226–T ..	T201 through T275 and T277 through T291.
SA226–T(B).	T(B)276 and T(B)292 through T(B)417.
SA226–AT	AT001 through AT074.
SA226–TC	TC201 through TC419.
SA227–TT	TT421 through TT541.
SA227–AT	AT423 through AT695.
SA227–AC	AC406, AC415, AC416, and AC420 through AC772.
SA227–BC	BC762, BC764, BC766, BC770, BC771, and BC772.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next six calendar months after the effective date of this AD, unless already accomplished (compliance with AD 96–21–05).

To prevent failure of the flight control system caused by a corroded elevator torque tube, which could result in loss of control of the airplane, accomplish the following:

(a) Drill two .5-inch diameter holes in the inboard side of the elevator torque tube arm in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of, and as specified in Figure 1 of, Fairchild Aircraft Service Bulletin (SB) 226–27–050 or Fairchild Aircraft SB 227–27–028, both Issued: January 22, 1990, as applicable.

(b) Inspect the elevator torque tube in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft SB 226–27–050 or Fairchild Aircraft SB 227–27–028, both Issued: January 22, 1990, as applicable.

(1) If corrosion is found inside the elevator torque tube, prior to further flight after the inspection required by paragraph (b) of this AD, replace the corroded elevator torque tube with either a P/N 27–44026–005, P/N 27–44026–007, or P/N 27–44026–SEO–1–03 elevator torque tube in accordance with the applicable maintenance manual.

(2) If corrosion is not found inside the elevator torque tube, prior to further flight after the inspection required by paragraph (b) of this AD, apply a corrosion preventive compound in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Aircraft SB 226–27–050 or Fairchild Aircraft SB 227–27–028, both Issued: January 22, 1990, as applicable.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO. Alternative methods of compliance approved in accordance with AD 96–21–05 (superseded by this AD) are considered approved for this AD.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(e) All persons affected by this directive may obtain copies of the service bulletins referred to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine these service bulletins at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 96–21–05, Amendment 39–9782.

Issued in Kansas City, Missouri, on January 21, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–2103 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–13–P

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–37–AD]

RIN 2120–AA64

Airworthiness Directives; Burkhart Grob, Luft- und Raumfahrt, Model G 103 C Twin III SL Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to the Burkhart Grob, Luft- und Raumfahrt (Grob) Model G 103 C Twin III SL sailplanes. The proposed action would require inspecting the propeller bearing and upper pulley wheel for increased play and, if increased play is found, modifying the propeller bearing and pulley wheel with a part of improved design. The proposed action is prompted by two reports of Model G 103 C Twin III SL sailplanes losing the engine propeller while in flight and one operator finding increased play in the sailplane propeller during an inspection. The actions specified by the proposed AD are intended to prevent the loss of the sailplane engine propeller and possibly causing loss of the sailplane.

DATES: Comments must be received on or before April 3, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–37–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Burkhart Grob Luft und Raumfahrt, D–86874 Mattsies, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri, 64106; telephone (816) 426–6934, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–37–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–37–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Events Leading to the Proposed Action

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Grob Model G 103 C Twin III SL sailplanes, serial numbers (S/N) 35002 through 35051. The LBA reports that two Model G 103 C Twin III SL sailplanes lost the engine propeller while in flight, and one operator found increased play in the sailplane propeller bearing and upper pulley wheel during an inspection. Increased play is defined by measuring the movement at the outer edge of the brake disc. If the movement exceeds or is equal to 0.4 mm, then the outer bearing and upper pulley wheel would need to be replaced. This increased play could start rotating the outer bearing races and damage the grooved nut, subsequently causing the engine propeller to come loose and possibly fall off. This condition, if not detected and corrected, could result in loss of the sailplane.

Grob has issued Service Bulletin (SB) 869–18, dated March 7, 1996, and SB 869–18/2, dated July 8, 1996, that revises page six of SB 869–18, which specifies inspecting the propeller bearing for increased play and modifying the propeller bearing, if increased play is found.

FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Grob G 103 C Twin III SL sailplanes of the same type design, the proposed AD would require repetitively inspecting the propeller bearing and pulley wheel for increased play, eventually modifying the propeller bearing and upper pulley wheel by installing a part of improved design.

Related Service Information

Accomplishment of the proposed action would be in accordance with Grob Service Bulletin (SB) 869–18, dated March 7, 1996, and Grob SB 869–18/2, dated July 8, 1996, which is a

revised page 6 of the Grob SB 869–18, dated March 7, 1996.

Cost Impact

The FAA estimates that 8 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 hour per sailplane to accomplish the proposed initial inspection and that the average labor rate is approximately $60 an hour. The estimated cost for the initial inspection would be $60 per sailplane. Based on this figure, the total cost impact of the proposed AD on U.S. operators is estimated to be $480.

Grob has informed the FAA that no parts have been distributed to equip any sailplane in the United States. The FAA has no way of determining how many owners/operators may have incorporated the proposed action on their sailplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

Burkhardt Grob: Docket No. 96–CE–37–AD.

Applicability: Model G 103 C Twin III SL sailplanes (serial numbers 35002 through 35051, including gliders), certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the loss of the sailplane engine propeller and possibly causing loss of the sailplane, accomplish the following:

(a) Within the next 5 engine operating hours do one of the following:

(1) Modify the propeller bearing and upper pulley wheel by installing parts of improved design in accordance with the ''Actions: 2.'' and the ''Installation Instructions'' sections of Grob service bulletin (SB) 869–18, dated March 7, 1996, and Grob SB 869–18/2, dated July 8, 1996; or,

(2) Inspect the propeller bearing and upper pulley wheel for increased play (movement that exceeds or is equal to 0.4 mm) in accordance with the ''Actions'' section of Grob service bulletin (SB) 869–18, dated March 7, 1996.

(i) If increased play is found, prior to further flight, accomplish the modification in paragraph (a)(1) of this AD or,

(ii) If no increased play is found, continue to repetitively inspect for increased play in the propeller bearing and upper pulley wheel every 5 engine operating hours in accordance with the ''Actions: 1.'' section in Grob SB 869–18, dated March 7, 1996, and Grob SB 869–18/2, dated July 8, 1996. If increased play is found during any inspection, then, prior to further flight, accomplish the modifications in paragraph (a)(1) of this AD.

(b) Accomplishing the modification in paragraph (a)(1) of this AD is a terminating action to the repetitive inspection required in paragraph (a)(2)(ii) of this AD.

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

(d) An alternative method of compliance or adjustment of the initial and repetitive compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri, 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri, 64106.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Burkhart Grob Luftund Raumfahrt, D–86874 Mattsies, Germany; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 22, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR DOC. 97–2104 Filed 1–28 97; 8:45 am]

BILLING CODE 4910–13–P

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–60–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company (Formerly Beech Aircraft Corporation) Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) Models 1900, 1900C, and 1900D airplanes (formerly referred to as Beech Models 1900, 1900C, and 1900D airplanes). The proposed AD would require installing lubrication fittings in the airstair door handle and latch housing mechanisms. The proposed AD results from reports of the airstair door

not opening because the door was frozen shut. The actions specified by the proposed AD are intended to prevent moisture from accumulating and freezing in the airstair door handle and latch housing, which could result in the door freezing shut and passengers not being able to evacuate the airplane in an emergency situation.

DATES: Comments must be received on or before April 7, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–60–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Safety Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4124; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–60–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–60–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received numerous reports of the airstair door not opening because the door was frozen shut on Raytheon Models 1900, 1900C, and 1900D airplanes (formerly referred to as Beech Models 1900, 1900C, and 1900D airplanes). Under the current configuration of these airplanes, moisture accumulates and freezes in the airstair door handle and latch housings, resulting in the door freezing shut. This condition, if not detected and corrected, could result in passengers not being able to evacuate the airplane in an emergency situation.

Applicable Service Information

Raytheon has issued Mandatory Service Bulletin No. 2572, dated July, 1996, which includes procedures for installing lubrication fittings in the airstair door handle and latch housing mechanisms on certain Raytheon Models 1900, 1900C, and 1900D airplanes.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent moisture from accumulating and freezing in the airstair door handle and latch housing, which could result in the door freezing shut and passengers not being able to evacuate the airplane in an emergency situation.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Models 1900, 1900C, and 1900D airplanes of the same type design, the proposed AD would require installing lubrication fittings in the airstair door handle and latch housing mechanisms. Accomplishment of the proposed installation would be in accordance with Raytheon Mandatory Service Bulletin No. 2572, dated July, 1996.

Cost Impact

The FAA estimates that 408 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 14 workhours per airplane to accomplish the proposed installation, and that the average labor rate is approximately $60 an hour. Parts cost approximately $50 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $363,120 or $890 per airplane. This figure is based on the presumption that no owner/operator of the affected airplanes has accomplished the proposed installation.

Raytheon has informed the FAA that parts have been distributed to equip approximately 36 of the affected airplanes. Presuming that each set of parts has been incorporated on one of the affected airplanes, the cost impact of the proposed AD upon U.S. operators of the affected airplanes would be reduced $32,040 from $363,120 to $331,080.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company (formerly Beech Aircraft Corporation): Docket No. 96–CE–60–AD.

Applicability: The following airplane models and serial numbers, certificated in any category:

Model	Serial Nos.
1900	UA–1 through UA–3.
1900C	UB–1 through UB–74, and UC–1 through UC–174.
1900D	UE–1 through UE–157.
1900D (C–12J)	UD–1 through UD–6.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent moisture from accumulating and freezing in the airstair door handle and latch housing, which could result in the door freezing shut and passengers not being able to evacuate the airplane in an emergency situation, accomplish the following:

(a) Install lubrication fittings in the airstair door handle and latch housing mechanisms in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service Bulletin No. 2572, dated July, 1996.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 21, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–2106 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–NM–44–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A310 series airplanes. This proposal would require inspections of the lower door surrounding structure to detect cracks and corrosion, and repair, if necessary. This proposal also would require inspections to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the door structures; and repair, if necessary. In addition, this proposal would provide for optional terminating action for certain inspections. This proposal is prompted by reports indicating that corrosion was found between the scuff plates at exit and cargo doors, and fatigue cracks originated from certain fastener holes located in adjacent structure. The actions specified by the proposed AD are intended to detect and correct such corrosion and fatigue cracking, which could result in reduced structural integrity of the door surroundings.

DATES: Comments must be received by March 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–44–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–44–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No.

96–NM–44–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on all Airbus Model A310 series airplanes. The DGAC advises that it has received reports indicating that corrosion was found behind the scuff plates at passenger/crew doors, emergency exits, and the bulk cargo door. The DGAC also advises that results of structural fatigue testing have revealed that cracks were found on the corner doublers of the forward, mid, and aft passenger/crew door frames; and, after various simulated flights, on the fail-safe ring and frames 14 and 16A of the forward passenger/crew door. After 50,000 simulated flights, cracks measuring between 8.0 mm and 109.0 mm were found on the forward door frames and fail-safe ring. On the mid door frame, a 53.0 mm crack was found after 60,493 simulated flights. A crack which measured 32.0 mm was found on the aft door frame after 106,000 simulated flights. In all cases, the cracks originated at the fastener holes. In addition, cracks originating from corner doubler edges were found at the aft passenger/crew doors.

Such corrosion and cracking, if not detected and corrected, could result in reduced structural integrity of the door surroundings.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A310–53–2030, Revision 5, dated March 6, 1991, which describes procedures for a one-time inspection to detect cracks and corrosion in the areas behind the scuff plates at passenger/crew doors, emergency exits, and the bulk cargo door, and repair, if necessary. Airbus also has issued Service Bulletin A310–53–2041, Revision 2, dated July 2, 1996, which describes procedures for corresponding repetitive inspections in these areas, and repair, if necessary.

In addition, Airbus has issued Service Bulletin A310–53–2037, Revision 1, dated April 29, 1992. This service bulletin describes procedures for repetitive inspections to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames at the left-and right-hand forward, mid, and aft passenger/crew door structures; and repair, if necessary.

Airbus also has issued Service Bulletin A310–53–2017, Revision 7, dated February 25, 1992, which describes procedures for modification of the passenger/crew door frames. This modification consists of performing cold expansion procedures on the fastener holes in door frames, corner doublers, and fail-safe rings; and installing oversized Hi-Lok fasteners and additional steel doublers at door frame corners, where necessary, to improve the fatigue life of the corner doublers, fail-safe rings, and door frames. Accomplishment of the modification eliminates the need for the repetitive inspections specified in Airbus Service Bulletin A310–53–2037.

The DGAC classified the inspection service bulletins as mandatory and issued French airworthiness directive 91–132–124(B), dated June 26, 1991, as amended by a Correction, dated August 21, 1991, in order to assure the continued airworthiness of these airplanes in France. (The DGAC did not classify the modification service bulletin as mandatory.)

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspections of the lower door surrounding structure to detect cracks and corrosion, and repair, if necessary. The proposed AD also would require inspections to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the door structures; and repair, if necessary. In addition, the proposed AD would provide for optional terminating action for certain inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA has considered the following criteria in allowing repetitive inspections of the crack-prone area to be permitted to continue indefinitely, even though a positive fix for the unsafe condition exists: (1) the design of the airplane is damage tolerant; and (2) the proposed interval of the repetitive inspections does not require that numerous inspections will be accomplished over the life of the airplane.

Cost Impact

The FAA estimates that 33 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 700 work hours per airplane to accomplish the proposed inspections (including access and close-up), and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be $1,386,000, or $42,000 per airplane.

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

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, it would take approximately 147 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $5,581 per airplane. Based on these figures, the cost impact of the optional terminating action would be $14,401 per airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 96-NM–44–AD.

Applicability: All Model A310 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion behind the scuff plates at exit and cargo doors, and fatigue cracking in certain fastener holes located in adjacent structure, which could result in reduced structural integrity of the door surroundings, accomplish the following:

(a) Perform an initial inspection of the areas behind the scuff plates below the passenger/crew doors and bulk cargo door to detect cracks and corrosion, in accordance with Airbus Service Bulletin A310–53–2030, Revision 5, dated March 6, 1991; at the applicable time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD. If any crack or corrosion is found during this inspection, prior to further flight, repair in accordance with the service bulletin. Accomplishment of this inspection is not required for the aft passenger/crew doors if a steel doubler that covers the entire inspection area is installed.

(1) For any door on which Modification 5382 has been accomplished: Perform the initial inspection within 9 years since airplane manufacture, or within 1 year after the effective date of this AD, whichever occurs later.

(2) For any door on which Modification 5382 has not been accomplished, and on which the procedures described in Airbus Service Bulletin A310–53–2004, Revision 2, dated June 17, 1985, or Airbus Service Information Letter 53–033, Revision 2, dated November 23, 1984, have been accomplished: Perform the initial inspection within 5 years since airplane manufacture, or within 1 year after the effective date of this AD, whichever occurs later.

(3) For any door on which Modification 5382 has not been accomplished, and on which the procedures described in Airbus Service Bulletin A310–53–2004, Revision 2, dated June 17, 1985, or Airbus Service Information Letter 53–033, Revision 2, dated November 23, 1984, have not been accomplished: Perform the initial inspection within 4 years since airplane manufacture, or within 1 year after the effective date of this AD, whichever occurs later.

(b) Perform repetitive inspections of the areas behind the scuff plates below the passenger/crew doors and bulk cargo door to detect cracks and corrosion, in accordance with Airbus Service Bulletin A310–53–2041, Revision 1, dated March 6, 1991; at the applicable times specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD. Accomplishment of these inspections is not required for the aft passenger/crew doors if a steel doubler that covers the entire inspection area is installed.

(1) For the forward passenger/crew doors, the bulk cargo door, and the aft passenger/crew doors, except the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler, on all Model A310–200 and –300 series airplanes: Perform the first inspection within 5 years after accomplishing the inspection required by paragraph (a) of this AD; and repeat the inspection thereafter at intervals not to exceed 5 years.

(2) For the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler of the aft passenger/crew door on all Model A310–200 series airplanes: Perform the first inspection within 5 years or 12,000 landings after accomplishing the inspection required by paragraph (a) of this AD, whichever occurs first; and repeat the inspection thereafter at intervals not to exceed 5 years or 12,000 landings, whichever occurs first.

(3) For the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler of the aft passenger/crew door on all Model A310–300 series airplanes: Perform the first inspection within 5 years or 7,000 landings after accomplishing the inspection required by paragraph (a) of this AD, whichever occurs first; and repeat the inspection thereafter at intervals not to exceed 5 years or 7,000 landings, whichever occurs first.

(c) If any crack is found during any inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A310–53–2041, Revision 1, dated March 6, 1991. Thereafter, perform the repetitive inspections required by paragraph (b) of this AD at the applicable times specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD.

(d) If any corrosion is found during any inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A310–53–2041, Revision 1, dated March 6, 1991. Thereafter, perform the repetitive inspections required by paragraph (b) of this AD at the applicable time specified in paragraph (d)(1) or (d)(2) of this AD.

(1) For Model A310–200 series airplanes: Inspect at intervals not to exceed 5 years or 9,600 landings, whichever occurs first.

(2) For Model A310–300 series airplanes: Inspect at intervals not to exceed 5 years or 5,600 landings, whichever occurs first.

(e) Perform an inspection to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the left-and right-hand forward, mid, and aft passenger/crew door structures, in accordance with Airbus Service Bulletin A310–53–2037, Revision 1, dated April 29, 1992, and at the applicable times specified in paragraphs (e)(1), (e)(2), or (e)(3) of this AD.

(1) For the upper corners of the forward doors: Inspect prior to the accumulation of 20,000 total landings, or within 2,000 landings after the effective date of this AD, whichever occurs later.

(2) For the lower corners of the forward doors: Inspect prior to the accumulation of 20,000 total landings, or within 4,000 landings after the effective date of this AD, whichever occurs later.

(3) For the upper and lower corners of the aft doors, and for the parts underneath the corners of the upper door frames: Inspect prior to the accumulation of 20,000 total landings, or within 4,000 landings after the effective date of this AD, whichever occurs later.

(f) Repeat the inspections required by paragraph (e) of this AD at the applicable times specified in paragraphs (f)(1), (f)(2), (f)(3), (f)(4), and (f)(5).

(1) For the upper corners of the forward doors: Inspect at intervals not to exceed 6,000 landings.

(2) For the lower corners of the forward doors: Inspect at intervals not to exceed 10,000 landings.

(3) For the upper and lower corners of the aft doors on which an inspection required by paragraph (e) of this AD was accomplished using a Roto test technique: Inspect at intervals not to exceed 8,000 landings.

(4) For the upper and lower corners of the aft doors on which an inspection required by paragraph (e) of this AD was accomplished using an X-ray technique: Inspect at intervals not to exceed 3,500 landings.

(5) For the areas around the fasteners in the vicinity of stringer 12 on the upper door frames of the aft doors on which an inspection required by paragraph (e) of this AD was accomplished using a visual technique: Inspect at intervals not to exceed 6,900 landings.

(g) If any crack is found during any inspection required by paragraph (e) or (f) of this AD: Prior to further flight, accomplish the requirement of paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) If any crack is found, and the crack can be eliminated using the method specified in Airbus Service Bulletin A310–53–2037, Revision 1, dated April 29, 1992: Prior to further flight, repair the crack in accordance with that service bulletin.

(2) If any crack is found, and the crack cannot be eliminated using the method specified in Airbus Service Bulletin A310–53–2037, Revision 1, dated April 29, 1992: Prior to further flight, repair the crack in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(h) Modification of the passenger/crew door frames in accordance with Airbus Service Bulletin A310–53–2017, Revision 7, dated February 25, 1992, constitutes terminating action for the repetitive inspections required by paragraph (f) of this AD.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on January 23, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–2224 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–NM–42–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300–600 series airplanes. This proposal would require inspections of the lower door surrounding structure to detect cracks and corrosion, and repair, if necessary. This proposal also would require inspections to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the door structures; and repair, if necessary. In addition, this proposal would provide for optional terminating action for certain inspections. This proposal is prompted by reports indicating that corrosion was found behind the scuff plates at exit and cargo doors, and fatigue cracks originated from certain fastener holes located in adjacent structure. The actions specified by the proposed AD are intended to detect and correct such corrosion and fatigue cracking, which could result in reduced structural integrity of the door surroundings.

DATES: Comments must be received by March 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–42–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–42–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–42–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on all Airbus Model A300–600 series airplanes. The DGAC advises that it has received reports indicating that corrosion was found behind the scuff plates at passenger/crew doors, emergency exits, and the bulk cargo door. The DGAC also advises that results of structural fatigue testing have revealed that cracks were found on the corner doublers of the forward, mid, and aft passenger/crew door frames; and, after various simulated flights, on the fail-safe ring and frames 14 and 16A of the forward passenger/crew door. After 50,000 simulated flights, cracks measuring between 8.0 mm and 109.0 mm were found on the forward door frames and fail-safe ring. On the mid door frame, a 53.0 mm crack was found after 60,493 simulated flights. A crack that measured 32.0 mm was found on the aft door frame after 106,000 simulated flights. In all cases, the cracks originated at the fastener holes. In addition, cracks originating from corner doubler edges were found at the aft passenger/crew doors.

Such corrosion and fatigue cracking, if not detected and corrected, could result in reduced structural integrity of the door surroundings.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–53–6011, Revision 3, dated February 4, 1991, which describes procedures for a one-time inspection to detect cracks and corrosion in the areas behind the scuff plates at passenger/crew doors, emergency exits, and the bulk cargo door, and repair, if necessary. Airbus also has issued Service Bulletin A300–53–6022, dated February 4, 1991,

which describes procedures for corresponding repetitive inspections in these areas, and repair, if necessary.

In addition, Airbus has issued Service Bulletin A300–53–6018, Revision 1, dated April 29, 1992. This service bulletin describes procedures for repetitive inspections to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames at the left- and right-hand forward, mid, and aft passenger/crew door structures; and repair, if necessary.

Airbus also has issued Service Bulletin A300–53–6002, Revision 3, dated February 22, 1992, which describes procedures for modification of the passenger/crew door frames. This modification consists of performing cold expansion procedures on the fastener holes in door frames, corner doublers, and fail-safe rings; and installing oversized Hi-Lok fasteners and additional steel doublers at door frame corners, where necessary, to improve the fatigue life of the corner doublers, fail-safe rings, and door frames. Accomplishment of the modification eliminates the need for the repetitive inspections specified in Airbus Service Bulletin A300–53–6018.

The DGAC classified the inspection service bulletins as mandatory and issued French airworthiness directive 91–132–124(B), dated June 26, 1991, as amended by a Correction, dated August 21, 1991, in order to assure the continued airworthiness of these airplanes in France. (The DGAC did not classify the modification service bulletin as mandatory.)

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspections of the lower door surrounding structure to detect cracks and corrosion, and repair, if necessary. The proposed AD also would require inspections to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the door structures; and repair, if necessary. In addition, the proposed AD would provide for optional terminating action for certain inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA has considered the following criteria in allowing repetitive inspections of the crack-prone area to be permitted to continue indefinitely, even though a positive fix for the unsafe condition exists: (1) the design of the airplane is damage tolerant; and (2) the proposed interval of the repetitive inspections does not require that numerous inspections will be accomplished over the life of the airplane.

Cost Impact

The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 700 work hours per airplane to accomplish the proposed inspections (including access and close-up), and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,470,000, or $42,000 per airplane.

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

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, it would take approximately 147 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $5,581 per airplane. Based on these figures, the cost impact of the optional terminating action would be $14,401 per airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ''**ADDRESSES**.''

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 96–NM–42–AD.

Applicability: All Model A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To detect and correct corrosion behind the scuff plates at exit and cargo doors, and fatigue cracking in certain fastener holes located in adjacent structure, which could result in reduced structural integrity of the door surroundings, accomplish the following:

(a) Perform an initial inspection of the areas behind the scuff plates below the passenger/crew doors and bulk cargo door to detect cracks and corrosion, in accordance with Airbus Service Bulletin A300–53–6011, Revision 3, dated February 4, 1991; at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD. If any crack or corrosion is found during this inspection, prior to further flight, repair in accordance with the service bulletin. Accomplishment of this inspection is not required for the mid and aft passenger/crew doors if a steel doubler that covers the entire inspection area is installed.

(1) For airplanes on which Modification 5382S6526 (for forward doors) and Modification 5382D4741 (for all other doors) have been accomplished prior to delivery of the airplane: Perform the initial inspection within 9 years since manufacture, or within 1 year after the effective date of this AD, whichever occurs later.

(2) For airplanes on which Modification 5382S6526 (for forward doors) and Modification 5382D4741 (for all other doors) have not been accomplished; and on which the procedures described in Airbus Service Information Letter (SIL) A300–53–033, Revision 2 (for all doors), dated November 23, 1984, have been accomplished: Perform the initial inspection within 5 years after accomplishment of the procedures described in the SIL, or within 1 year after the effective date of this AD, whichever occurs later.

(3) For airplanes on which Modification 5382S6526 (for forward doors), Modification 5382D4741 (for all other doors), and the procedures described in Airbus SIL A300–53–033, Revision 2, dated November 23, 1984, have not been accomplished: Perform the initial inspection within 4 years since manufacture, or within 1 year after the effective date of this AD, whichever occurs later.

(b) Perform repetitive inspections of the areas behind the scuff plates below the passenger/crew doors and bulk cargo door to detect cracks and corrosion, in accordance with Airbus Service Bulletin A300–53–6022, dated February 4, 1991; at the applicable times specified in paragraphs (b)(1) and (b)(2) of this AD. Accomplishment of these inspection is not required for the mid and aft passenger/crew doors if a steel doubler that covers the entire inspection area is installed.

(1) For the forward and mid passenger/crew doors, the bulk cargo door, and the aft passenger/crew doors, except the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler: Perform the first inspection within 5 years after accomplishing the inspection required by paragraph (a) of this AD; and repeat the inspection thereafter at intervals not to exceed 5 years.

(2) For the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler of the aft passenger/crew doors: Perform the first inspection within 5 years or 6,000 landings after accomplishing the inspection required by paragraph (a) of this AD, whichever occurs first; and repeat the inspection thereafter at intervals not to exceed 5 years or 6,000 landings, whichever occurs first.

(c) If cracks are found as a result of any inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A300–53–6022, dated February 4, 1991. Thereafter, perform the repetitive inspections required by paragraph (b) of this AD at the applicable times specified in paragraphs (b)(1) and (b)(2) of this AD.

(d) If corrosion is found as a result of any inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A300–53–6022, dated February 4, 1991. Thereafter, perform the repetitive inspections required by paragraph (b) of this AD at the applicable times specified in paragraphs (d)(1) or (d)(2) of this AD.

(1) For the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler of the aft passenger/crew doors, and for the mid passenger/crew door: Inspect at intervals not to exceed 5 years or 5,000 landings, whichever occurs first.

(2) For the forward passenger/crew doors and bulk cargo doors: Inspect at intervals not to exceed 5 years.

(e) Perform an inspection to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the left- and right-hand forward, mid, and aft passenger/crew door structures, in accordance with Airbus Service Bulletin A300–53–6018, Revision 1, dated April 29, 1992, and at the applicable times specified in paragraphs (e)(1), (e)(2), (e)(3), or (e)(4) of this AD.

(1) For the upper corners of the forward doors: Inspect prior to the accumulation of 20,000 total landings, or within 2,000 landings after the effective date of this AD, whichever occurs later.

(2) For the lower corners of the forward doors: Inspect prior to the accumulation of 20,000 total landings, or within 4,000 landings after the effective date of this AD, whichever occurs later.

(3) For the upper and lower corners of the mid doors: Inspect prior to the accumulation of 20,000 total landings, or within 2,000 landings after the effective date of this AD, whichever occurs later.

(4) For the upper and lower corners of the aft doors, and for the parts underneath the corners of the upper door frames: Inspect prior to the accumulation of 20,000 total landings, or within 4,000 landings after the effective date of this AD, whichever occurs later.

(f) Repeat the inspections required by paragraph (e) of this AD at the applicable times specified in paragraphs (f)(1), (f)(2), (f)(3), (f)(4), and (f)(5).

(1) For the upper corners of the forward doors: Inspect at intervals not to exceed 6,000 landings.

(2) For the lower corners of the forward doors: Inspect at intervals not to exceed 10,000 landings.

(3) For the upper and lower corners of the mid and aft doors on which an inspection required by paragraph (e) of this AD was accomplished using a Roto test technique: Inspect at intervals not to exceed 8,000 landings.

(4) For the upper and lower corners of the mid and aft doors on which an inspection required by paragraph (e) of this AD was accomplished using an X-ray technique: Inspect at intervals not to exceed 3,500 landings.

(5) For the areas around the fasteners in the vicinity of stringer 12 on the upper door frames of the aft doors on which an inspection required by paragraph (e) of this AD was accomplished using a visual technique: Inspect at intervals not to exceed 6,900 landings.

(g) If any crack is found during any inspection required by paragraph (e) or (f) of this AD: Prior to further flight, accomplish the requirement of paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) If any crack is found, and the crack can be eliminated using the method specified in Airbus Service Bulletin A300–53–6018, Revision 1, dated April 29, 1992: Prior to further flight, repair the crack in accordance with that service bulletin.

(2) If any crack is found, and the crack cannot be eliminated using the method specified in Airbus Service Bulletin A300–53–6018, Revision 1, dated April 29, 1992: Prior to further flight, repair the crack in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(h) Modification of the passenger/crew door frames in accordance with Airbus Service Bulletin A300–53–6002, Revision 3, dated February 22, 1992, constitutes terminating action for the repetitive inspections required by paragraph (f) of this AD.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on January 23, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–2221 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–NM–43–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300 series airplanes. This proposal would require inspections of the lower door surrounding structure to detect cracks and corrosion, and repair, if necessary. This proposal also would require inspections to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the door structures; and repair, if necessary. This proposal would require modification of the passenger/crew door frames, which, when accomplished, terminates certain inspections. This proposal is prompted by reports indicating that corrosion was found behind the scuff plates at exit and cargo doors, and fatigue cracks originated from certain fastener holes located in adjacent structure. The actions specified by the proposed AD are intended to detect and correct such corrosion and fatigue cracking, which could result in reduced structural integrity of the door surroundings.

DATES: Comments must be received by March 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–43–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–43–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–43–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on all Airbus Model A300 series airplanes. The DGAC advises that it received reports indicating that corrosion was found behind the scuff plates at passenger/crew doors, emergency exits, and the bulk cargo door. The DGAC also advises that results of structural fatigue testing have revealed that cracks were found on the corner doublers of the forward, mid, and aft passenger/crew door frames; and, after various simulated flights, on the fail-safe ring and frames 14 and 16A of the forward passenger/crew door. After 50,000 simulated flights, cracks measuring between 8.0 mm and 109.0 mm were found on the forward door frames and fail-safe ring. On the mid door frame, a 53.0 mm crack was found after 60,493 simulated flights. A crack which measured 32.0 mm was found on the aft door frame after 106,000 simulated flights. In all cases, the cracks originated at the fastener holes. In addition, cracks originating from corner doubler edges were found at the aft passenger/crew doors.

Such corrosion and fatigue cracking, if not detected and corrected, could result in reduced structural integrity of the door surroundings.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–53–204, Revision 6, dated October 11, 1993, which describes procedures for a one-time inspection to detect cracks and corrosion in the areas behind the scuff plates at passenger/crew doors, emergency exits, and the bulk cargo door, and repair, if necessary. Airbus also has issued Service Bulletin A300–53–233, Revision 1, dated April 18, 1991, which describes procedures for corresponding repetitive inspections in these areas, and repair, if necessary.

In addition, Airbus has issued Service Bulletin A300–53–227, Revision 1, dated April 29, 1992. This service bulletin describes procedures for repetitive inspections to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames at the left- and right-hand forward, mid, and aft passenger/crew door structures; and repair, if necessary.

Airbus also has issued Service Bulletin A300–53–192, Revision 7, dated July 13, 1992, which describes procedures for modification of the passenger/crew door frames. This modification consists of performing cold expansion procedures on the fastener holes in door frames, corner doublers, and fail-safe rings; and installing oversized Hi-Lok fasteners and additional steel doublers at door frame corners, where necessary, to improve the fatigue life of the corner doublers, fail-safe rings, and door frames. Accomplishment of the modification eliminates the need for the repetitive inspections specified in Airbus Service Bulletin A300–53–227.

The DGAC classified the inspection service bulletins as mandatory and issued French airworthiness directive (CN) 91–132–124(B), dated June 26, 1991, as amended by a Correction, dated August 21, 1991, in order to assure the continued airworthiness of these airplanes in France. (The DGAC did not classify the modification service bulletin as mandatory.)

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed

of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspections of the lower door surrounding structure to detect cracks and corrosion, and repair, if necessary. The proposed AD also would require inspections to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the door structures; and repair, if necessary. In addition, the proposed AD would require modification of the passenger/crew door frames, which, when accomplished, constitutes terminating action for certain inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Differences Between Proposed Rule and Parallel French CN

Operators should note that the French CN does not mandate modification of the passenger/crew door frames. However, the FAA finds that, since the design of Model A300 series airplanes is not damage tolerant, accomplishment of the modification described in Airbus Service Bulletin A300–53–192 must be required.

Additionally, the FAA considers that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with this consideration.

Cost Impact

The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 700 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be $168,000, or $42,000 per airplane.

The FAA estimates that it would take approximately 330 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,055 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $83,420, or $20,855 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 96–NM–43–AD.

Applicability: All Model A300 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion behind the scuff plates at exit and cargo doors, and fatigue cracking in certain fastener holes located in adjacent structure, which could result in reduced structural integrity of the door surroundings, accomplish the following:

(a) Perform an initial inspection of the areas behind the scuff plates below the passenger/crew doors and bulk cargo door to detect cracks and corrosion, in accordance with Airbus Service Bulletin A300–53–204, Revision 6, dated October 11, 1993; at the applicable time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD. If any crack or corrosion is found during this inspection, prior to further flight, repair in accordance with the service bulletin. Accomplishment of this inspection is not required for the mid and aft passenger/crew doors if a steel doubler that covers the entire inspection area is installed.

(1) For airplanes on which Modifications 5382S6526 (for forward doors), 3690S4613 (for forward doors), and 5382D4741 (for all other doors) have been accomplished prior to delivery of the airplane: Perform the initial inspection within 9 years since manufacture, or within 1 year after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the procedures described in Airbus Service Information Letter (SIL) A300–53–033, Revision 2 (for all doors), dated November 23, 1984; or Airbus Service Bulletin A300–53–169 (for forward doors), Revision 2, dated May 14, 1985; have been accomplished: Perform the initial inspection within 5 years after accomplishment of the SIL or the service bulletin, or within 1 year after the effective date of this AD, whichever occurs later.

(3) For airplanes on which the procedures described in Airbus Service Bulletin A300–53–116 (for all doors), Revision 4, dated June 30, 1983, have been accomplished: Perform the initial inspection within 2 years after accomplishment of the procedures in accordance with that service bulletin, or

within 1 year after the effective date of this AD, whichever occurs later.

(4) For airplanes on which Modifications 5382S6526 (for forward doors), 3690S4613 (for forward doors), and 5382D4741 (for all other doors); and the procedures described in Airbus Service Bulletin A300–53–116, Revision 4, dated June 30, 1983; or Service Information Letter (SIL) A300–53–033, Revision 2, dated November 23, 1984; have not been accomplished: Perform the initial inspection within 1 year after the effective date of this AD.

(b) Perform repetitive inspections of the areas behind the scuff plates below the passenger/crew doors and bulk cargo door to detect cracks and corrosion, in accordance with Airbus Service Bulletin A300–53–233, Revision 1, dated April 18, 1991, at the applicable times specified in paragraphs (b)(1) and (b)(2) of this AD. Accomplishment of these inspections is not required for the mid and aft passenger/crew doors if a steel doubler that covers the entire inspection area is installed.

(1) For the forward and mid passenger/crew doors, the bulk cargo doors, the emergency exits, and the aft passenger/crew doors, except for the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler: Perform the first inspection within 5 years after accomplishing the inspection required by paragraph (a) of this AD; and repeat the inspection thereafter at intervals not to exceed 5 years following the immediately preceding inspection.

(2) For the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler of the aft passenger/crew doors: Perform the first inspection within 5 years or 10,000 landings after accomplishing the inspection required by paragraph (a) of this AD, whichever occurs first; and repeat the inspection thereafter at intervals not to exceed 5 years or 10,000 landings, whichever occurs first.

(c) If any crack is found during any inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A300–53–233, Revision 1, dated April 18, 1991. Thereafter, perform the repetitive inspections required by paragraph (b) of this AD at the applicable times specified in paragraphs (b)(1) and (b)(2) of this AD.

(d) If any corrosion is found during any inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with Airbus Service Bulletin A300–53–233, Revision 1, dated April 18, 1991. Thereafter, perform the repetitive inspections required by paragraph (b) of this AD at the applicable times specified in paragraphs (d)(1) and (d)(2) of this AD.

(1) For the upper and lower edges of the fail-safe ring and the upper edges of the corner doubler of the aft passenger/crew doors, and for the mid passenger/crew doors: Inspect at intervals not to exceed 5 years or 8,000 landings, whichever occurs first.

(2) For the forward passenger/crew doors, bulk cargo door, and emergency exits: Inspect at intervals not to exceed 5 years.

(e) Perform inspections to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the left- and right-hand forward, mid, and aft passenger/crew door structures, in accordance with Airbus Service Bulletin A300–53–227, Revision 1, dated April 29, 1992. Perform the inspections at the times specified in paragraphs (e)(1), (e)(2), and (e)(3) of this AD, as applicable. If any cracking is found, prior to further flight, repair in accordance with the service bulletin; or, if cracks cannot be eliminated in accordance with the service bulletin, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(1) Except as provided by paragraph (e)(2) of this AD, for the left- and right-hand forward and mid passenger/crew door structures of all airplanes: Inspect at the time specified in paragraph (e)(1)(i), (e)(1)(ii), (e)(1)(iii), or (e)(1)(iv) of this AD, as applicable.

(i) For airplanes that have accumulated less than 20,000 total landings as of the effective date of this AD: Inspect prior to the accumulation of 20,000 total landings, or within 1,250 landings after the effective date of this AD, whichever occurs later.

(ii) For airplanes that have accumulated 20,000 total landings or more, but less than 21,000 landings as of the effective date of this AD: Inspect prior to the accumulation of 21,000 total landings, or within 1,000 landings after the effective date of this AD, whichever occurs later.

(iii) For airplanes that have accumulated 21,000 total landings or more, but less than 22,000 landings as of the effective date of this AD: Inspect prior to the accumulation of 22,000 total landings, or within 500 landings after the effective date of this AD, whichever occurs later.

(iv) For airplanes that have accumulated 22,000 total landings or more as of the effective date of this AD: Inspect within 250 landings after the effective date of this AD.

(2) For the left-hand mid passenger/crew door structures of Model A300 C4 and F4 series airplanes: Inspect at the time specified in paragraph (e)(2)(i), (e)(2)(ii), (e)(2)(iii), or (e)(2)(iv) of this AD, as applicable.

(i) For airplanes that have accumulated less than 12,000 total landings as of the effective date of this AD: Inspect prior to the accumulation of 12,000 total landings, or within 1,250 landings after the effective date of this AD, whichever occurs later.

(ii) For airplanes that have accumulated 12,000 total landings or more, but less than 13,000 landings as of the effective date of this AD: Inspect prior to the accumulation of 13,000 total landings, or within 1,000 landings after the effective date of this AD, whichever occurs later.

(iii) For airplanes that have accumulated 13,000 total landings or more, but less than 14,000 landings as of the effective date of this AD: Inspect prior to the accumulation of 14,000 total landings, or within 500 landings after the effective date of this AD, whichever occurs later.

(iv) For airplanes that have accumulated 14,000 total landings or more as of the effective date of this AD: Inspect within 250 landings after the effective date of this AD.

(3) For the left- and right-hand aft passenger/crew door structures of all airplanes: Inspect prior to the accumulation of 24,000 total landings, or within 250 landings after the effective date of this AD, whichever occurs later.

(f) Repeat the inspections required by paragraph (e) of this AD at the times specified in paragraphs (f)(1), (f)(2), (f)(3), (f)(4), (f)(5), (f)(6), (f)(7), (f)(8), (f)(9), and (f)(10), as applicable, until the modification required by paragraph (g) of this AD is accomplished.

(1) For the forward passenger/crew door structure of airplanes on which Airbus Modification No. 1282/S1862 has not been accomplished: Inspect at the intervals specified in paragraphs (f)(1)(i) and (f)(1)(ii), as applicable.

(i) For the upper corners of the door structure: At intervals not to exceed 4,000 landings.

(ii) For the lower corners of the door structure: At intervals not to exceed 7,500 landings.

(2) For the forward passenger/crew door structure of airplanes on which Airbus Modification No. 1282/S1862 has been accomplished: Inspect at the intervals specified in paragraphs (f)(2)(i) and (f)(2)(ii), as applicable.

(i) For the upper corners of the door structure: At intervals not to exceed 6,000 landings.

(ii) For the lower corners of the door structure: At intervals not to exceed 10,000 landings.

(3) For the forward passenger/crew door structure of the airplane having manufacturer's serial number 063, on which Airbus Modification No. 1282/S1862 has been accomplished partially: Inspect at the intervals specified in paragraph (f)(3)(i) or (f)(3)(ii), as applicable.

(i) For the upper corners of the door structure: At intervals not to exceed 4,000 landings.

(ii) For the lower corners of the door structure: At intervals not to exceed 7,500 landings.

(4) For the left- and right-hand mid passenger/crew door structure on Model A300 B1, B2, and B4 series airplanes; and for the right-hand mid passenger/crew door structure on Model A300 C4 and F4 series airplanes; on which an inspection required by paragraph (e) of this AD was accomplished using a Roto test technique: Inspect at intervals not to exceed 8,000 landings.

(5) For the left- and right-hand mid passenger/crew door structure on Model A300 B1, B2, and B4 series airplanes; and for the right-hand mid passenger/crew door structure on Model A300 C4 and F4 series airplanes; on which an inspection required by paragraph (e) of this AD was accomplished using an X-ray technique: Inspect at intervals not to exceed 3,500 landings.

(6) For the left-hand mid passenger/crew door structure on Model A300 C4 and F4 series airplanes on which an inspection required by paragraph (e) of this AD was accomplished using a Roto test technique: Inspect at intervals not to exceed 5,200 landings.

(7) For the left-hand mid passenger/crew door structure on Model A300 C4 and F4

series airplanes on which an inspection required by paragraph (e) of this AD was accomplished using an X-ray technique: Inspect at intervals not to exceed 2,300 landings.

(8) For the aft passenger/crew door structure on which an inspection required by paragraph (e) of this AD was accomplished using a Roto test technique: Inspect at intervals not to exceed 8,000 landings.

(9) For the aft passenger/crew door structure on which an inspection required by paragraph (e) of this AD was accomplished using an X-ray technique: Inspect at intervals not to exceed 3,500 landings.

(10) For the areas around the fasteners in the vicinity of stringer 12 on the aft passenger/crew door structure on which an inspection required by paragraph (e) of this AD was accomplished using a visual technique: Inspect at intervals not to exceed 6,900 landings.

(g) Prior to the accumulation of 20,000 total landings, or within 1 year after the effective date of this AD, whichever occurs later: Modify the passenger/crew door structures in accordance with Airbus Service Bulletin A300–53–192, Revision 7, dated July 13, 1992. Accomplishment of this modification constitutes terminating action for the repetitive inspections required by paragraph (f) of this AD.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on January 23, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–2220 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–SW–30–AD]

Airworthiness Directives; McDonnell Douglas Helicopter Systems Model MD–900 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to McDonnell Douglas Helicopter Systems (MDHS) Model MD–900 series helicopters. This proposal would require removing certain serial-numbered main rotor swashplate bearings (bearings) and replacing them with airworthy bearings. This proposal is prompted by reports that inspections of several helicopters revealed that the outer bearing race had been rotating relative to the swashplate assembly, which was evidenced by wear marks in the rotating swashplate. The actions specified by the proposed AD are intended to prevent possible heat accumulation and resulting damage to the bearing caused by the bearing races rotating relative to the bearing seat, which could result in degraded helicopter response to pilot control input and possible loss of control of the helicopter.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–30–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Greg DiLibero, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5231, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–SW–30–AD. The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–30–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new AD that is applicable to MDHS Model MD–900 series helicopters. This proposal would require, before further flight, inspecting the bearing, part number (P/N) 900C3010100–101, to determine if a bearing having a serial number (S/N) of S/N 059150–E0019, S/N 059150–E0020, S/N 059150–E0021, S/N 059150–E0022, S/N 059150–E0023, S/N 059150–E0024, S/N 059150–E0025, S/N 059150–E0026, S/N 059150–E0027, S/N 059150–E0028, S/N 059150–E0029, or S/N 059150–E0030 is installed, and if so, removing and replacing the bearing with an airworthy bearing. This proposal is prompted by reports of inspections of several helicopters that indicated the outer bearing race had been rotating relative to the swashplate assembly, which was evidenced by wear marks in the rotating swashplate. An investigation revealed that 12 non-conforming bearings had been released to production. Some of the 12 bearings have been located. The actions specified by the proposed AD are intended to prevent possible heat accumulation and resulting damage to the bearing caused by the bearing races rotating relative to the bearing seat, which could result in degraded helicopter response to pilot control input and possible loss of control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other MDHS Model MD–900 series helicopters of the same type design, the proposed AD would require, before further flight, inspecting the bearing, P/N 900C3010100–101, to determine if a bearing having S/N

059150–E0019, S/N 059150–E0020, S/N 059150–E0021, S/N 059150–E0022, S/N 059150–E0023, S/N 059150–E0024, S/N 059150–E0025, S/N 059150–E0026, S/N 059150–E0027, S/N059150–E0028, S/N 059150–E0029, or S/N 059150–E0030 is installed; and, if installed, removing and replacing that bearing with an airworthy bearing.

The FAA estimates that 20 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 1.5 work hours per helicopter to determine the bearing's S/N, 12 work hours per helicopter to remove and replace a bearing, if necessary, and that the average labor rate is $60 per work hour. Replacement bearings would cost $8,765 per helicopter, however, replacement bearings are covered by a manufacturer's warranty. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,400, assuming five helicopters will require removal and replacement of the bearing.

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

For the reasons discussed above, I certify that this proposed regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ''**ADDRESSES**.''

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

McDonnell Douglas Helicopter Systems: Docket No. 96–SW–30–AD.

Applicability: Model MD–900 series helicopters, certificated in any category.

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

Compliance: Required before further flight, unless accomplished previously.

To prevent possible heat accumulation and resulting damage to the main rotor swashplate bearing (bearing) caused by the bearing races rotating relative to the bearing seat, which could result in degraded helicopter response to pilot control input and possible loss of control of the helicopter, accomplish the following:

(a) Disconnect the lower end of the main rotor pitch links. Disconnecting the drive link may make the inspection easier.

(b) Cut the safety wire and remove the inner and outer labyrinth seals, part number (P/N) 900C2010194–101 and P/N 900C201190–101, respectively, and the inner and outer bearing retaining rings.

(c) Inspect the bearing, part number (P/N) 900C3010100–101, to determine if it has one of the following serial numbers (S/N): S/N 059150–E0019, S/N 059150–E0020, S/N 059150–E0021, S/N 059150–E0022, S/N 059150–E0023, S/N 059150–E0024, S/N 059150–E0025, S/N 059150–E0026, S/N 059150–E0027, S/N 059150–E0028, S/N 059150–E0029, or S/N 059150–E0030.

Note 2: S/N's similar to those above were produced without the character ''E'' in the number. This AD is only concerned with those that contain the character ''E''.

(d) Enter into the helicopter Log Book the bearing S/N.

(e) If a bearing having one of the S/N's stated in paragraph (c) of this AD is installed on the helicopter, remove the bearing and replace it with an airworthy bearing prior to further flight.

(f) Prior to the installation of a swashplate assembly, inspect the bearing in accordance with the requirements of this AD.

(g) Report the results of all inspections required by this AD within 72 hours to the Manager, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

Issued in Fort Worth, Texas, on January 20, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–2215 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 97–ANM–01]

Proposed Establishment of Class D and Class E Airspace, Redmond, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposed rule would establish the Redmond, Oregon, Class D and Class E airspace areas to accommodate the commissioning of an Airport Traffic Control Tower (ATCT) at Roberts Field. Additionally, this notice proposes to redesignate the existing Class E surface area at Roberts Field as part-time to preclude the concurrent existence of the different classes of airspace designated as surface areas at the same location. These areas would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before March 8, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 97–ANM–01, 1601 Lind Avenue SW., Renton Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT:

James C. Frala, ANM–532.4, Federal Aviation Administration, Docket No. 97–ANM–01, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–ANM–01.'' 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 the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lund Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NORM. Persons interested in being placed on a mailing list for future NORM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulation (14 CFR part 71) to establish Class D and Class E airspace at Redmond, Oregon, to accommodate the commissioning of an ATCT at Roberts Field. This notice proposes to establish Class D airspace, which is appropriate for an airport with an operating control tower, and to establish a Class E4 surface area, which is the appropriate designation for arrival extensions to Class D airspace. These areas would be designated part-time and effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time would thereafter be continuously published in the Airport/Facility Directory. Currently, the airspace encompassing Roberts Field is designated as Class E2 surface area and is in effect continuously. This notice also proposes to redesignate this area as part-time to preclude the concurrent existence of different classes of airspace designated as surface areas at the same location. These areas would be depicted on aeronautical charts for pilot reference.

The coordinates for this airspace docket are based on North American Datum 83. Class D and Class E airspace areas extending upward from the surface of the earth are published in paragraph 5000, paragraph 6004, and paragraph 6002, respectively, 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 D and Class E airspace designations 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. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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 5000 Class D Airspace.

* * * * *

ANM OR D Redmond, OR [New]

Remond, Roberts Field, OR
(Lat. 44°15′14″ N, long. 121°09′00″ W)

That airspace extending upward from the surface to, and including, 5,600 feet MSL within a 5.1-mile radius of Roberts Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice of Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ANM OR E4 Redmond, OR [New]

Redmond, Roberts Field, OR
(Lat. 44°15′14″ N, long. 121°09′00″ W)
Deschutes VORTAC
(Lat. 44°15′10″ N, long. 121°18′13″ W)

That airspace extending upward from the surface within 1.4 miles each side of the Deschutes VORTAC 269° and 089° radials extending from the 5.1-mile radius of Roberts Field to .9 mile west of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an in airport.

* * * * *

ANM OR E2 Redmond, OR [Revised]

Redmond, Roberts Field, OR
(Lat. 44°15′14″ N, long. 121°09′00″ W)
Deschutes VORTAC

(Lat. 44°15′10″ N, long. 121°18′13″ W)

Within a 5.1-mile radius of Roberts Field, and within 1.4 miles each side of the Deschutes VORTAC 269° and 089° radials extending from the 5.1-mile radius of the airport to .9 mile west of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on January 13, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–2092 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ANM–027]

Proposed Amendment of Class E Airspace; Montrose, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would amend the Montrose, Colorado, Class E airspace to accommodate a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the Montrose Regional Airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before March 15, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 96–ANM–027, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James C. Frala, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–027, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (206) 277–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ANM–027.'' 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 the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Montrose, Colorado, to accommodate a new GPS SIAP to the Montrose Regional Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from the surface of the earth, and from 700 feet or more above the surface of the earth, are published in Paragraph 6002 and Paragraphs 6005, respectively, 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 designations listed on 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. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ANM CO E2 Montrose, CO [Revised]

Montrose Regional Airport, CO

(Lat. 38°30′32″ N, long. 107°53′38″ W)

Montrose VOR/DME

(Lat. 38°30′23″ N, long. 107°53′58″ W)

That airspace extending upward from the surface within a 4.8-mile radius of the Montrose Regional Airport, and within 3.5 miles each side of the Montrose VOR/DME 313° radial extending from the 4.8-mile radius to 12.2 miles northwest of the VOR/DME, and within 2.5 miles each side of the Montrose VOR/DME 360° radial extending from the 4.8-mile radius to 8.5 miles north of the VOR/DME. This Class E airspace area is effective during the specific dates and

times established by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Montrose, CO [Revised]

Montrose Regional Airport, CO
(Lat. 38°30′32″ N, long. 107°53′38″ W)
Montrose VOR/DME
(Lat. 38°30′23″ N, long 107°53′58″ W)

That airspace extending upward from 700 feet above the surface within 4.3 miles northeast and 8.3 miles southwest of the Montrose VOR/DME 313° and 133° radials extending from 6.1 miles southeast to 21.4 miles northwest of the VOR/DME, and within 4 miles each side of the Montrose VOR/DME 360° radial extending to 9.5 miles north of the VOR/DME; and that airspace extending upward from 1,200 feet above the surface within an area bounded by a point beginning at lat. 38°40′00″ N, long. 108°46′00″ W; to lat. 38°25′00″ N, long. 108°42′30″ W; to lat. 37°58′00″ N, long. 108°10′00″ W; to lat. 38°09′00″ N, long. 107°35′00″ W; to lat. 38°43′00″ N, long. 107°39′30″ W; to lat. 38°51′30″ N, long. 107°41′00″ W; to lat. 38°50′00″ N, long. 107°53′00″ W; to lat. 38°53′00″ N, long. 108°03′30″ W; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on January 13, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–2093 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 601, and 606

[Docket No. 96N–0395]

Revision of the Requirements for a Responsible Head for Biological Establishments

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations by deleting the requirements for a biologics establishment to name a ''responsible head'' or ''designated qualified person'' to represent the establishment in its dealings with FDA. Because many manufacturers of biological products are firms that have more than one manufacturing location and complex corporate structures, it may no longer be practical for one individual to represent a manufacturer in all matters. The proposed rule would provide manufacturers with more flexibility in assigning control and oversight responsibility within a company. This proposed rule is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiative, and it is intended to reduce the burden of unnecessary regulations on industry without diminishing public health protection.

DATES: Comments must be submitted on or before April 29, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Corporations should submit two copies of any comments and individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

I. Background

Under § 600.10(a) (21 CFR 600.10(a)), a manufacturer of biological products is required to name a ''responsible head'' who is to exercise control of the manufacturing establishment in all matters relating to compliance with regulations in parts 600 through 680 (21 CFR parts 600 through 680) and who is to represent the manufacturer in all pertinent matters with the Center for Biologics Evaluation and Research (CBER). This individual must also have an understanding of the scientific principles and techniques related to the manufacture of biological products. When FDA announced in the Federal Register of June 3, 1994 (59 FR 28821 and 28822), the review by CBER of certain biologics regulations to identify those regulations that are outdated, burdensome, inefficient, duplicative, or otherwise unsuitable or unnecessary, § 600.10(a) was included. FDA also held a public meeting on January 26, 1995, to discuss the retrospective review effort and to provide a forum for the public to voice its comments on the retrospective review.

Many of the comments submitted requested revision or elimination of the requirements for a ''responsible head'' in § 600.10(a). The majority of the comments supported deletion of the regulation. The comments stated that the requirement for a responsible head to be an expert in multiple functions and to be responsible for a number of facility locations is incompatible with current industry practice. The comments added that the list of activities in § 600.10(a) is extremely broad and this regulation could be interpreted to require the responsible head to have an intimate understanding of a wide variety of extremely complex activities. All of these activities require specific expertise, and it may not be practical to expect one person to be an expert in all of those areas. Some comments addressed the requirement that the responsible head be responsible for training and have the authority to enforce discipline, stating that direct line supervision and management personnel are much better qualified and in a better position to ''enforce or direct the enforcement of discipline and performance of assigned functions by employees engaged in the manufacture of products.'' Many comments requested the designation of an alternate responsible head, especially in the situation of multiple locations.

As part of the President's ''Reinventing Government'' initiative, a report entitled ''Reinventing the Regulation of Drugs Made From Biotechnology'' was issued in November 1995. The report announced several initiatives to reduce the burden of FDA regulations on the biologics industry without reducing public health protection, including a proposal to remove the requirements in § 600.10(a) for a ''responsible head.'' The proposed revision, reflecting comments submitted in response to the January 26, 1995, public meeting, would enable firms to designate more than one person to communicate directly with FDA on official matters related to the biological products they manufacture. The commitment to remove requirements for a ''responsible head'' was based on FDA's determination that, with the many changes that have occurred in science, technology, and corporate structure, it no longer may be practical for most biologics manufacturers to rely on one individual to meet the requirements included in § 600.10(a). In addition, the responsible corporate officer doctrine, e.g., *United States* v. *Park*, 421 U.S. 658 (1975); *United States* v. *Dotterweich*, 320 U.S. 277 (1943),

places the burden of ensuring compliance with the statutes and regulations applicable to biological products on corporate officials ''standing in responsible relation to a public danger.'' (*Dotterweich*, 320 U.S. at 281.) Thus, it is not necessary to require manufacturers to designate a ''responsible head'' in order to enforce the duty responsible corporate officials have to implement measures to ensure that violations do not occur. (*Park*, 421 U.S. at 672.)

In accordance with a recent revision to the definition of ''manufacturer'' in § 600.3 (see 61 FR 24227, May 14, 1996), a biologics applicant may apply for and obtain a license for a product to be manufactured at more than one manufacturing site that may or may not be owned by the applicant. Therefore, firms may want to designate more than one person with primary responsibility to maintain adequate oversight of multiple manufacturing sites and ensure that each is conforming to FDA's requirements for current good manufacturing practices and the applicable biologics standards. Many biologics manufacturers also manufacture drugs that are regulated by the Center for Drug Evaluation and Research (CDER) under the Federal Food, Drug, and Cosmetic Act whose regulations do not contain an analogous requirement for the responsible head. FDA's proposal to revise the requirements with respect to a responsible head is an effort to harmonize CBER's and CDER's policies and requirements and to keep pace with changes in science, technology, and corporate structure.

II. Proposed Rule

Under the proposed revision, an authorized official would be chosen by the applicant to receive and send correspondence to CBER. The applicant could choose to have more than one authorized official. Accordingly, the agency proposes to amend § 600.10 by removing and reserving paragraph (a) and revising the heading of paragraph (b) to read ''Personnel''. The agency also proposes to amend § 601.2 *Applications for establishment and product licenses; procedures for filing* by adding the statement ''The applicant, or the applicant's attorney, agent, or other authorized official shall sign the application'' in paragraph (a) and new paragraph (c)(6). Finally, the agency proposes to amend § 601.25(b)(3)(VIII) by replacing ''signed by the responsible head (as defined in § 600.10 of this chapter of the licensee)'' with ''signed by an authorized official of the licensee''.

FDA is also proposing to remove § 606.20(a), which contains language similar to that in § 600.10(a) and applies to all blood establishments, including registered, unlicensed blood establishments. Like other components of the biologics industry, the blood industry has experienced changes in science, technology, and corporate structure. Complex donor and transfusion recipient issues, the evolution of sophisticated computerized laboratory and donor equipment, complicated serology problems, and state-of-the-art laboratory techniques have all contributed to changes within the structure of blood establishments, regardless of size. To ensure the quality and safety of the blood supply, many blood establishments employ personnel who are experts in donor issues, infectious disease, computers, molecular biology, serology, transfusion issues, quality control, administration, and management. It is no longer practical to expect one individual to have expertise in all the subspecialties of transfusion medicine. Accordingly, to provide sufficient flexibility for a blood establishment to select a person with appropriate training and experience to be responsible for each facet of its operation, the agency proposes to remove and reserve § 606.20(a).

FDA intends that a final rule would become effective as soon as possible after publication in the Federal Register.

III. Economic Impact

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of a rule on small entities. The proposed rule would have no compliance costs and would not result in any new requirements. Therefore, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner of Food and Drugs certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before April 29, 1997, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 600, 601, and 606 be amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

1. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374); secs. 215, 351, 352, 353, 361, 2125 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25).

§ 600.10 [Amended]

2. Section 600.10 *Personnel* is amended by removing and reserving

paragraph (a) and by revising the heading of paragraph (b) to read *''Personnel.''*

PART 601—LICENSING

3. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 513–516, 518–520, 701, 704, 721, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381); secs. 215, 301, 351, 352 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461).

4. Section 601.2 is amended by adding a sentence before the last sentence in paragraph (a), and by adding new paragraph (c)(6) to read as follows:

§ 601.2 Applications for establishment and product licenses; procedures for filing.

(a) * * * The applicant, or the applicant's attorney, agent, or other authorized official shall sign the application. * * *

* * * * *

(c) * * *

(6) The applicant, or the applicant's attorney, agent, or other authorized official shall sign the application.

5. Section 601.25 is amended by revising the first sentence of paragraph (b)(3)(VIII) to read as follows:

§ 601.25 Review procedures to determine that licensed biological products are safe, effective, and not misbranded under prescribed, recommended, or suggested conditions of use.

* * * * *

(b) * * *

(3) * * *

(VIII) If the submission is by a licensee, a statement signed by an authorized official of the licensee shall be included, stating that to the best of his or her knowledge and belief, it includes all information, favorable and unfavorable, pertinent to an evaluation of the safety, effectiveness, and labeling of the product, including information derived from investigation, commercial marketing, or published literature. * * *

* * * * *

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

6. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 505, 510, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374); secs. 215, 351, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263a, 264).

§ 606.20 [Amended]

7. Section 606.20 *Personnel* is amended by removing and reserving paragraph (a).

Dated: January 10, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–2238 Filed 1–28–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Parts 404 Through 407

Seaway Regulations and Rules: Great Lakes Pilotage Regulations; Public Meeting

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Public meeting.

SUMMARY: This document announces a public meeting that will be held from 10 a.m. until 3 p.m., on March 11, 1997, in the Lambert Room at the Sheraton Airport Hotel at Cleveland Hopkins Airport in Cleveland, Ohio. The purpose of the meeting is to gather information and to provide a forum for members of the public to discuss their ideas for improving the safety, reliability and efficiency of the Great Lakes Pilotage System.

DATES: The public meeting will be held from 10 a.m. until 3 p.m., on March 11, 1997.

ADDRESSES: The public meeting will be held in the Lambert Room at the Sheraton Airport Hotel at Cleveland Hopkins Airport, 5300 Riverside Dr., Cleveland, OH 44135, phone (216) 267–1500.

FOR FURTHER INFORMATION CONTACT: Scott A. Poyer, Chief Economist, Saint Lawrence Seaway Development Corporation, Office of Great Lakes Pilotage, United States Department of Transportation, 400 7th Street SW., Suite 5424, Washington, DC 20590, phone 1–800–785–2779.

SUPPLEMENTARY INFORMATION: On September 25, 1996, the Saint Lawrence Seaway Development Corporation (SLSDC) published a notice of proposed rulemaking and hearing in the Federal Register (61 FR 50258) (the NPRM), which proposed to increase Great Lakes pilotage rates. In response to the NPRM and public hearing, the SLSDC received many comments which were beyond the scope of the NPRM. Many commenters recommended changes to the entire system of pilotage on the Great Lakes.

The current system of pilotage on the Great Lakes was established by the Great Lakes Pilotage Act of 1960 (46 U.S.C. Chapter 93), and its attendant Great Lakes Pilotage Regulations (33 CFR Parts 404–407). In the 36 years since the Great Lakes pilotage system was established the pilotage system has remained virtually unchanged, even though the maritime industry on the Great Lakes has changed substantially. Many commenters on the NPRM raised questions concerning the current pilotage system's safety, reliability and efficiency. These commenters, representing all facets of the maritime industry on the Great Lakes, requested a comprehensive review of this issue.

The purpose of the public meeting announced in this notice is to provide a forum for the public to discuss with the SLSDC, and with each other, ideas for improving the safety, reliability, and efficiency of the Great Lakes Pilotage System.

Issued at Washington, D.C. on January 23, 1997.

Saint Lawrence Seaway Development Corporation.

Gail C. McDonald,

Administrator.

[FR Doc. 97–1993 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–61–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–26, RM–8968]

Radio Broadcasting Services; Detroit, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Great Plains Radiocasting requesting the allotment of Channel 294C2 at Detroit, Texas, as the community's first local FM service. Channel 294C2 can be allotted to Detroit in compliance with the Commission's minimum distance separation requirements with a site restriction of 22.0 kilometers (13.7 miles) northwest in order to avoid a short-spacing conflict with the licensed operation of Station KWSK(FM), Channel 295A, Daingerfield, Texas, at coordinates 33–49–16 NL; 95–24–16 WL.

DATES: Comments must be filed on or before March 17, 1997, and reply comments on or before April 1, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In

addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William J. Pennington, III, Post Office Box 403, Westfield, Massachusetts 10186 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–26, adopted January 17, 1997, and released January 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–2145 Filed 1–28–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 97–25, RM–8981]

Radio Broadcasting Services; Fife Lake, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Fife Lake Broadcasting Company requesting the allotment of Channel 240A to Fife Lake, Michigan, as that community's first local service. The coordinates for Channel 240A are 44–34–36 and 85–20–54. Canadian concurrence will be obtained for this allotment.

DATES: Comments must be filed on or before March 17, 1997, and reply comments on or before April 1, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, 1150 Connecticut Avenue, NW., suite 900, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–25, adopted January 17, 1997, and released January 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–2146 Filed 1–28–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 97–35, RM–8900]

Radio Broadcasting Services; Calhan, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Calhan Radio Company requesting the allotment of Channel 280A to Calhan, Colorado, an incorporated community, as its first local aural transmission service. Coordinates used for Channel 280A at Calhan are 39–06–07 and 104–11–01.

DATES: Comments must be filed on or before March 17, 1997, and reply comments on or before April 1, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Esq., Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW., Suite 900, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–35, adopted January 17, 1997, and released January 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–2147 Filed 1–28–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–34; RM–8938]

Radio Broadcasting Services; Saint Paul, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Saint Paul Broadcasting requesting the allotment of Channel 287A to Saint Paul, Arkansas, as that community's first local aural transmission service. Petitioner is requested to provide additional documented information to establish Saint Paul's status as a community for allotment purposes. Coordinates used for Channel 287A at Saint Paul are 35–48–14 and 93–37–00.

DATES: Comments must be filed on or before March 17, 1997, and reply comments on or before April 1, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Esq., Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW., Suite 900, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–34, adopted January 17, 1997, and released January 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–2148 Filed 1–28–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–30, RM–8922]

Radio Broadcasting Services; Pocatello, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Riverside Broadcasting Company requesting the allotment of Channel 221A to Pocatello, Idaho, as that community's fourth local FM service. Coordinates used for Channel 221A at Pocatello are 42–52–24 and 112–27–00.

DATES: Comments must be filed on or before March 17, 1997, and reply comments on or before April 1, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows:

Henry E. Crawford, Esq., Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW., Suite 900, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–30, adopted January 17, 1997, and released January 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–2149 Filed 1–28–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–33, RM–8937]

Radio Broadcasting Services; Victor, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Victor Broadcasting of Idaho proposing the allotment of Channel 282A to Victor, Idaho, an incorporated community, as its first local aural transmission service. Coordinates used for Channel 282A at Victor are 43–36–12 and 111–06–36.

DATES: Comments must be filed on or before March 17, 1997, and reply comments on or before April 1, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Esq., Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW., Suite 900, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–33, adopted January 17, 1997, and released January 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The

complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–2150 Filed 1–28–97; 8:45 am]

BILLING CODE 6712–01–U

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47 CFR Part 73

[MM Docket No. 97–29, RM–8921]

Radio Broadcasting Services; Grass Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Knight Monument Broadcasting requesting the allotment of Channel 277A to Grass Valley, California, as that community's third local FM service. Coordinates used for Channel 277A at Grass Valley are 39–12–31 and 120–59–02.

DATES: Comments must be filed on or before March 17, 1997, and reply comments on or before April 1, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Esq., Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW., Suite 900, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–29, adopted January 17, 1997, and released January 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, D.C. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–2151 Filed 1–28–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 97–28, RM–8917]

Radio Broadcasting Services; Twin Falls, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Orchalara Broadcasting Company requesting the allotment of Channel 252A to Twin Falls, Idaho, as that community's third local FM service. Coordinates used for Channel 252A at Twin Falls are 42–33–42 and 114–28–12.

DATES: Comments must be filed on or before March 17, 1997, and reply comments on or before April 1, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Esq., Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW., Suite 900, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–28, adopted January 17, 1997, and released January 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–2152 Filed 1–28–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 97–27, RM–8901]

Radio Broadcasting Services; Salome, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Browns Well Broadcasting seeking the allotment of FM Channel 241A to Salome, Arizona, as that locality's first local aural

transmission service. Petitioner is requested to provide additional information to establish Salome's status as a community for allotment purposes. Coordinates used for this proposal are 33–46–54 and 113–36–42. As Salome, Arizona, is located within 320 kilometers (199 miles) of the Mexico border, the Commission must obtain the concurrence of the Mexican government in this proposal.

DATES: Comments must be filed on or before March 17, 1997, and reply comments on or before April 1, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Esq., Law Offices of Henry E. Crawford, Suite 900, 1150 Connecticut Avenue, NW., Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–27, adopted January 17, 1997, and released January 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–2153 Filed 1–28–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–23; RM–8972]

Radio Broadcasting Services; Glendo, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Vixon Valley Broadcasting proposing the allotment of Channel 261A at Glendo, Wyoming, as the community's first local aural transmission service. Channel 261A can be allotted to Glendo in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 261A at Glendo are North Latitude 42–30–12 and West Longitude 105–01–30.

DATES: Comments must be filed on or before March 17, 1997, and reply comments on or before April 1, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Vixon Valley Broadcasting, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, Wyoming 82001 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–23, adopted January 17, 1997, and released January 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–2154 Filed 1–28–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–32, RM–8931]

Radio Broadcasting Services; Calico Rock, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Sugarloaf Broadcasting requesting the allotment of Channel 246A to Calico Rock, Arkansas, an incorporated community, as its first local aural transmission service. Coordinates used for Channel 246A at Calico Rock are 36–05–01 and 92–09–26.

DATES: Comments must be filed on or before March 17, 1997, and reply comments on or before April 1, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Esq., Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW., Suite 900, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–32, adopted January 17, 1997, and released January 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–2155 Filed 1–28–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–22, RM–8953]

Radio Broadcasting Services; Waelder, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Waelder Broadcasting Company requesting the allotment of Channel 242A at Waelder, Texas, as the community's first local FM service. Channel 242A can be allotted to Waelder in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.1 kilometers (2.7 miles) east in order to avoid a short-spacing conflict with the licensed operation of Station KSJL(FM), Channel 241C1, San Antonio, Texas. The coordinates for Channel 242A at Waelder are 29–41–50 and 97–15–21.

DATES: Comments must be filed on or before March 17, 1997, and reply comments on or before April, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Henry E. Crawford, Esq., 1150 Connecticut Avenue, NW, Suite 900, Washington, DC 20036 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–22, adopted January 17, 1997, and released January 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–2156 Filed 1–28–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–31, RM–8930]

Radio Broadcasting Services; Des Arc, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Whippoorwill Creek Broadcasting requesting the allotment of Channel 284A to Des Arc, Arkansas, as that community's first local commercial FM transmission service. Coordinates used for Channel 284A at Des Arc are 34–58–24 and 91–29–54.

DATES: Comments must be filed on or before March 17, 1997, and reply comments on or before April 1, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Esq., Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW., Suite 900, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–31, adopted January 17, 1997, and released January 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

[FR Doc. 97–2157 Filed 1–28–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies Mr. Alan F. Van Horen's petition to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 108, Lamps, reflective devices, and associated equipment, to permit an exterior lamp that would be a visual indicator that the vehicle is in its cruise control mode. The petition provided no information to support the petitioner's contention that an exterior lamp showing when a vehicle's cruise control was engaged would enhance safety, nor does NHTSA's experience and judgment suggest any safety benefits from such a lamp.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Flanigan, Office of Safety Performance Standards, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Flanigan's telephone number is: (202) 366–4918. His facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION: By letter dated September 16, 1996, Mr. Van Horen petitioned the agency to amend FMVSS No. 108 to permit an exterior lamp that would serve as a visual indicator that a vehicle operator has engaged the vehicle's cruise control. Mr. Van Horen stated that the indicator would consist of a small green light located in the driver-side tail light housing and driver-side front parking light housing. The indicator would be illuminated when the vehicle's cruise control mode is activated. A silhouette type insignia could be used for color blind motorists. Mr. Van Horen argued that the indicator would contribute to highway safety by reducing ''rubbernecking, accidents, and general traffic gridlock.''

To establish a new vehicle safety specification, the agency decides, on the basis of data and analyses, that there is a significant safety problem and that the safety problem would likely be reduced by adopting that specification. The petitioner asserted that an external cruise control indicator would reduce ''rubbernecking, accidents, and general traffic gridlock.'' However, the petitioner did not provide any information showing that that lack of a cruise control indicator contributes to crashes, nor is NHTSA aware of any such information from other sources.

Regarding ''rubbernecking,'' the act of observing nearby activity while driving, the petitioner provided no information about how this indicator would reduce crashes occurring as a result of this act. Absent such information, NHTSA's judgment is that ''rubbernecking'' would not be reduced if vehicle operators were aware that adjacent vehicle operators had engaged their cruise control.

Regarding crashes, the petitioner did not submit any information showing how or how many crashes would be prevented if vehicle operators had this information about cruise control on adjacent vehicles. The agency's judgment is that crashes would not be reduced.

Finally, regarding the reduction of traffic gridlock, the petitioner did not submit any information as to how this indicator would reduce gridlock. The agency fails to see any relationship, let alone one relating to safety, between gridlock and vehicle operators' knowledge of whether adjacent vehicle operators have engaged their cruise control.

The petitioner has submitted no information to support the petition and the agency's judgment is that this indicator would offer no discernable safety benefit. At this time, NHTSA does not believe that changing its agency priorities or allocation of resources to further investigate these types of lamps would be beneficial to safety.

The agency also notes that the specific solution chosen, a green lamp in the same housing as a red tail lamp or an amber or white front parking lamp (or as pictured in the sample illustration provided by the petitioner, optically combined using a multi-color lens and the same optical compartment), would not be permissible under Federal rules. There is a specific provision against any lamp, reflective device, or other motor vehicle equipment that impairs the effectiveness of required motor vehicle lighting equipment. The agency believes that the proximity of the proposed green lamp to the required lamps would impair the effectiveness of required lamps by altering the perceived color of emitted light of the required lamp when the auxiliary green lamp is activated.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. Accordingly, it denies Mr. Van Horen's petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: January 22, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–2095 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD05

Endangered and Threatened Wildlife and Plants; Proposed Rule to List the Northern Population of the Bog Turtle as Threatened and the Southern Population as Threatened Due to Similarity of Appearance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the northern population of the bog turtle (*Clemmys muhlenbergii*) as threatened from New York and Massachusetts south to Maryland; and the southern population of bog turtle, which occurs in the Appalachian Mountains from southern Virginia to northern Georgia, as threatened due to similarity of appearance to the northern population, with a special rule, pursuant to the Endangered Species Act of 1973 Act), as amended. The bog turtle is threatened by a variety of factors which include: habitat degradation and fragmentation from agriculture and urban development; habitat succession due to invasive exotic and native plants; and illegal trade and collecting.

DATES: Comments from all interested parties must be received by April 29, 1997. Public hearing requests must be received by March 17, 1997.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Pennsylvania Field Office, U.S. Fish and Wildlife Service, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801. The complete file for this rule is available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carole Copeyon, Endangered Species Biologist, at the above address (telephone 814/234–4090; facsimile 814/234–0748).

SUPPLEMENTARY INFORMATION:

Background

The bog turtle was first described and named as Muhlenberg's tortoise (*Testudo muhlenbergii*) by Johann David Schoepff in 1801, based on specimens received in 1778 from Reverend Heinreich Muhlenberg of Lancaster County, Pennsylvania. In 1835, L.J. Fitzinger transferred the species to the genus *Clemmys*, where it remains today

(Barton and Price 1955). In 1917, Dunn considered the southern morph to be distinct and classified the southern population as *Clemmys nuchalis* (Amato *et al.* 1993). This taxon was subsequently synonymized with *Clemmys muhlenbergii* and researchers still question the taxonomic validity of the northern and southern morphs (Amato *et al.* 1993, Klemns *in press*). Initial data from recent preliminary genetic studies, based on examination of variability at the 16S ribosomal gene, suggest that there may not be any significant genetic differences between the northern and southern populations. However, due to the conservative nature of this gene in other turtle species, any definitive conclusions concerning genetic differences between the northern and southern populations is premature (Amato *et al.* 1993).

The bog turtle is sparsely distributed over a discontinuous geographic range extending from New England south to northern Georgia. A 250-mile gap within the range separates the species into distinct northern and southern populations (Klemens *in press*, Tryon 1990, Tryon and Herman 1990). The northern population extends from southern New York and western Massachusetts southward through western Connecticut, New Jersey and eastern Pennsylvania, to northern Delaware and Maryland. Disjunct populations previously occurred in western Pennsylvania and in the Lake George and Finger Lakes regions of New York. The western Pennsylvania and Lake George populations have been extirpated an only a remnant population exists at two remaining sites in the Finger Lakes region. The southern population occurs in the Appalachian Mountains from southwestern Virginia southward through western North Carolina, eastern Tennessee, northwestern South Carolina and northern Georgia.

Based on the disjunct distribution of this species, and the recognition by herpetologists of the existence of distinct allopatric northern and southern populations, the northern population of the bog turtle for the purposes of listing will be treated as a species (a distinct vertebrate population). The Act defines a species to include any subspecies of fish or wildlife or plants, or any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

The bog turtle is the smallest member of the genus *Clemmys*, with the carapace (upper shell) of adults measuring 7.5–11.4 cm (3.0–4.5 in.) in length (Bury 1979). The domed carapace is weakly keeled and ranges in color from light brown to ebony. The scutes of the shell often have lighter-colored centers resembling a starburst pattern (Herman and George 1986). The plastron (lower shell) is brownish-black with contrasting yellow or cream areas, often along the midline. This species is readily distinguished from other turtles by the large, conspicuous bright orange, yellow or red blotch found on each side of the head. The species is sexually dimorphic. Males have concave plastrons and long, thick tails and the vent is located beyond the posterior carapace margin. Females have proportionately higher carapaces, flat plastrons, relatively short tails, and the vent is located beneath the carapace edge (Bury 1979. Klemens *In press*).

Bog turtles are semi-aquatic and are only active during part of the year (Barton and Price 1955). In the northern part of their range, they are active from April to mid-October (Arndt 1977, Nemuras 1976). The difficulty of locating turtles in July and August may be a result of inactivity during that period (Lovich *et al.* 1992). Bog turtles hibernate from October to April, often just below the upper surface of frozen mud or ice (Chase *el al.* 1989). Their varied diet consists of beetles, lepidopteran larvae, caddisfly larvae, snails, nematodes, millipedes, fleshy pondweed seeds, sedge seeds, and carrion (Barton and Price 1955, Nemura 1967). Where population estimates are available, bog turtles have been found at densities ranging from 7 to 213 turtles per hectare (Chase *et al.* 1989). Chase *et al.* (1989) found an average of 44 turtles per site at his 9 Maryland study sites.

Female bog turtles reach sexual maturity between 5 and 8 years of age (Barton and Price 1955, Ernst 1977). Mating occurs in May and June, and in June or July, females deposit from two to six white eggs in sphagnum moss or sedge tussocks (Arndt 1977, Herman 1990, Herman and George 1986, Klemens *in press*). The eggs hatch after an incubation period of 42 to 56 days (Arndt 1977, Herman 1990) and the young emerge in August or early September (Arndt 1977, Barton and Price 1955). Infertile eggs are common (Arndt 1977, Herman 1990, Tryon 1990) and not all females produce clutches annually (Tryon 1990). Also, there is no evidence to suggest that multiple clutches are deposited in a single season.

Bog turtles inhabit shallow, spring-fed fens, sphagnum bogs, swamps, marshy meadows and pastures which have soft, muddy bottoms; slow-flowing water; and open canopies (Arndt 1977, Barton and Price 1955, Herman and George 1986, Klemens *in press*). In Maryland, Chase *et al.* (1989) reported that bog turtles were found in circular basins with spring-fed pockets of shallow water, a substrate of soft mud and rock, dominant vegetation of low grasses and sedges, and interspersed wet and dry pockets. In these types of habitats, bog turtles often utilize the runways or muskrats and meadow voles (Barton and Price 1955, Nemuras 1967, Taylor *et al.* 1984). Bog turtles range in elevation from near sea level in the north to 1500 m (4500 feet) in the south (Herman and George 1986).

Bog turtles are usually found in small, discrete populations in wetland habitats that are a mosaic of micro-habitats which include dry pockets, saturated areas, and areas that are periodically flooded (Collins 1990). They depend upon this diverse hydrological mosaic, utilizing shallow water in spring, and returning to deeper water in winter (Chase *et al.* 1989). Unless disrupted by fire, beaver activity, grazing, or periodic wet years; open-canopy wetlands are slowly invaded by woody vegetation. They undergo a transition and become closed-canopy, wooded swamplands that are unsuitable for habitation by bog turtles (Klemens *in press*, Tryon 1990). Historically, bog turtles probably moved from one open-canopy wetland patch to another, as succession closed wetland canopies in some areas, and natural processes (beaver activity or fire) opened canopies in other areas (Klemens 1989).

Several plant species commonly associated with bog turtles habitats are: alders (*Alnus* sp.). willows (*Salix* sp.), sedges (*Carex* sp.), sphagnum moss (*Sphagnum* sp.), jewelweed (*Impatiens capensis*), rice cut-grass (*Leersia oryzoides*), tearthumb (*Polygonum sagittatum*), arrow arum (*Peltandra virginica*), red maple (*Acer rubrum*), skunk cabbage (*Symplocarpus foetidus*) and bulrushes (*Juncus* sp. and *Scirpus* sp.) (Arndt 1977, Barton and Price 1955, Herman and George 1986, Taylor *et al.* 1984). Pedestal vegetation, such as tussock sedge (*C. stricta*) and sphagnum moss, are utilized for nesting and basking (Gelvin-Innvaer and Stetzar 1992, Klemens *in press*).

Presently, many wetlands occupied by bog turtles in agricultural areas are subject to livestock grazing. Light to moderate grazing many function to impede succession by preventing or minimizing the encroachment of invasive native and exotic plant species and it appears that moderate grazing helps to maintain an intermediate stage of succession (Smith 1994, Tryon 1990).

Due to the rarity in nature, its small size, and unique habitats, it is difficult

to obtain reliable bog turtle population demographics. This lack of data has led to a misconception as to the number of healthy populations found throughout the species' range. For example, some of the sites documented to support healthy populations consist primarily of old individuals. These populations are slowly disappearing due to negligible recruitment of juveniles over a sustained period of time (Klemens 1989).

A model, based on habitat characteristics, was developed to assess the capacity of sites to maintain viable populations of bog turtles. Known as the ''Standardized Bog Turtle Site-quality Analysis'' (Klemens, Wildlife Conservation Society, *in litt.* 1993), it groups bog turtle occurrences into sites based on the likelihood of turtles moving between documented occurrence locations and interbreeding. A site is ranked according to four factors: habitat size and degree of fragmentation; the presence of invasive plants and later successional species; immediate threats such as ditching, draining, filling or excavating the wetland; and the type and extent of land use practice in the area. Where adequate data are available, sites are also ranked according to population size and evidence of recruitment.

By using this site-quality analysis in 1993 and 1994, the suitability of almost every known northern population site was assessed and ranked by individuals (the primary bog turtle researcher(s) in each state) most familiar with each site. The ranking process resulted in each site receiving a numerical score, and based on these scores each site was then ranked as good, fair or poor. These rankings represent the suitability of the available habitat needed to maintain a viable bog turtle population. The classification system was based on researchers' best professional judgments regarding site suitability. The classifications based upon these scores are conservative for several reasons. Threats from illegal collecting were not considered in the rankings. Rankings were often based on interpretation of old maps (more than 10 years old). Recent land use changes such as development were not considered, and at some sites the presence of turtles was not confirmed for over 10 years.

Occurrence refers to a documented specific bog turtle location (a single wetland or a road-crossing sighting), one or more of which are included in a site. Due to widespread wetland habitat fragmentation throughout the turtle's range, most sites are often comprised of only one small extant occurrence, often isolated from other such occurrences.

In 1994, there were 165 known extant bog turtle sites within the northern population, 35 were classified as good, 57 as fair and 73 as poor. Since 1994, an additional 38 sightings were reported, 24 of which occurred in the State of New Jersey. The state-by-state summaries given below present information primarily about the status and distribution of extant northern bog turtle populations/sites within each state.

In Connecticut, bog turtles are found in the northwestern corner of the State in Fairfield and Litchfield counties. All five remaining populations are found on private lands; four of these populations are classified as fair and one as poor (Julie Victoria, Connecticut Division of Wildlife, *in litt.* 1994).

In Delaware, bog turtles were historically reported from 11 localities in the piedmont and coastal plain of New Castle County (Arndt 1977). Presently, only four sites are known to support bog turtles; two occur on state lands and two on private property (Lisa Gelvin-Innvaer, Jay Greenwood and Bill Zawaki, Delaware Division of Fish and Wildlife, *in litt.* 1994).

All three known bog turtle populations in Massachusetts occur on private property in southern Berkshire County. Two of these sites receive some degree of protection through landowner conservation agreements. One population is considered good, one fair and one poor.

Maryland's 65 remaining extant bog turtle sites occur in the piedmont region of Baltimore, Carroll, Cecil and Harford counties, with approximately 97 percent of the habitat privately owned and the other 3 percent in state ownership (Scott Smith, Maryland Department of Natural Resources, *in litt.* 1994). Seventeen of these sites are classified as good, 23 as fair and 25 as poor. In 1995–1996, five additional bog turtle sightings were documented from Harford, Baltimore, and Carol counties. However, most of these documented occurrences are components of previously identified and ranked sites (Smith, *in litt.* 1996).

In New Jersey, there are 35 known remaining bog turtle sites in Burlington, Hunterdon, Monmouth, Morris, Ocean, Sussex and Warren counties (James Sciascia, New Jersey Department of Fish, Game and Wildlife, and Robert Zappalorti, Herpetological Associates, Inc., *in litt.* 1994). Ten of these sites are classified as good, 10 as fair and 15 as poor. Approximately 90 percent of the turtle habitat in New Jersey is privately owned, with the state and Federal governments owning 5 percent each (Siascia and Zappalorti, *in litt.* 1994).

Recent surveys conducted by the New Jersey Endangered and Nongame Species Program located an additional 24 bog turtle sites. From 1993–1995, the habitat suitability of 473 wetlands in Hunterdon, Somerset, Sussex, and Warren counties was assessed. Only 77 (16 percent) sites contained suitable habitat and bog turtles were found at only 8 of these wetlands (Sciascia 1996). In 1996, additional surveys conducted in Sussex County turned up 16 new bog turtle occurrences in calcareous fen habitats. These fens are restricted to a 40 square mile area in central Sussex and northern Warren counties. The 24 occurrences that were located between 1993 and 1996 were not evaluated using the Standardized Bog Turtle Site-quality Analysis. However, many of these new sightings are located near previously reported sites and are possibly parts of these sites (James Sciascia, New Jersey Department of Fish, Game and Wildlife, *in litt.* 1996).

The discovery of bog turtles in calcareous fen habitats is important to their conservation within this area of New Jersey and neighboring Pennsylvania. Fens are primarily shrub and herb communities formed in low-lying areas where groundwater percolates over limestone bedrock. This alkaline seepage water most likely retards the growth of canopy-closing trees such as red maple. This type of shrub/herb community can persist virtually unaltered, which could account for the presence of bog turtles (James Sciascia, New Jersey Department of Fish, Game and Wildlife, *in litt.* 1996).

The bog turtle's range in New York is concentrated primarily in the extreme southeastern corner of the state. Disjunct populations historically occurred in the Lake George area in eastern New York, in the Finger Lakes region in western New York, and in southcentral New York. The Lake George and southcentral populations have been extirpated, and only two extant bog turtle sites in Oswego and Seneca counties remain in the Finger Lakes region (Alvin Breisch and Michael Kallaji, New York Department of Environmental Conservation, and Paul Novak, New York Natural Heritage Program, *in litt.* 1994). Twenty-two potential sites remain in southeastern New York and only 17 are extant. Of the 19 remaining sites in New York (Oswego, Seneca, Columbia, Dutchess, Putnam, and Orange counties), 5 are considered good, 7 fair and 7 poor. Nearly all bog turtle habitat (99 percent) occurs on private lands; the remaining 1 percent is found on state lands (Breisch *et al., in litt.* 1994).

In Pennsylvania, bog turtles are still found in 13 of the 17 counties from which the species was previously reported (Adams, Berks, Bucks, Chester, Cumberland, Franklin, Lancaster, Lebanon, Lehigh, Monroe, Montgomery, Northampton and York). Of the 34 remaining sites, 2 sites are considered good, 8 fair and 24 poor. Approximately 85 percent of the bog turtle habitat is found on private lands, with the remainder occurring on state and Federal lands (10 percent and 5 percent, respectively) (Barton, *in litt.* 1994). Between 1994 and 1996, 9 new sightings were reported from Berks, Chester, and North Hampton counties. These sites have yet to be evaluated and appear to be small and marginal in quality.

Based in documented losses of bog turtles and their habitat, the northern population has declined by at least 50 percent over the last 20 years. Habitat destruction and illegal collecting for the pet trade are the primary threats to the species. Widespread alteration of bog turtle habitat has resulted in the draining, ditching, dredging, filling and flooding of wetlands for residential, urban and commercial development; road construction; agricultural activities; and, pond and reservoir construction. The proximity of many remaining bog turtle populations to rapidly developing areas also poses a significant threat to the species.

Previous Federal Action

The bog turtle was first recognized as a Category 2 candidate species by the Service in the December 30, 1982 Federal Register Notice of Review (47 FR 58454). It was later retained as a Category 2 species in subsequent notices of review (50 FR 37958 September 18, 1995; 54 FR 554 January 6, 1989; and 56 FR 58804 November 21, 1991). Reclassification of the bog turtle to Category 1 was reflected in the November 15, 1994 Animal Notice of Review (59 FR 58982). On February 28, 1996 (61 FR 7457), the Service published a notice of review that no longer included species formerly referred to as Category 2 candidate species. The notice revised the definition of the term ''candidate'' as taxa for which the Service has on file sufficient information on biological vulnerability and threats to list them and endangered or threatened species. The northern population of bog turtle was included as a candidate on this February 28 Notice of Review.

In the September 17, 1996, Notice (61 FR 48962) on priority guidance for Fiscal Year 1997, the guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. At this time, there is only one pending higher priority action in the Northeast Region and it will be handled by March, 1997. Thus, processing of this proposed rule to list the northern population of bog turtle as threatened is designated as a Tier 3 activity under the guidance and has been processed accordingly.

In 1975, the bog turtle was added to Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in order to monitor trade in the species. In 1991, the New York Zoological Society submitting a proposal to the Service requesting the transfer of the bog turtle from Appendix II to Appendix I of CITES (Anon. 1991). In response to a Notice (56 FR 33895); July 24, 1991) calling for changes to the CITES Appendices, a total of 13 comments were received concerning the bog turtle proposal. All commentors recommended transferring the bog turtle from Appendix II to Appendix I because: the increase number of bog turtles being advertised for sale, the increased being paid for individuals and pairs, and illegal trade was not being reported under CITES. In the March 4, 1992 Federal Register Notice (57 FR 7722), the Service announced that the Party members to CITES agreed to transfer the bog turtle from Appendix II to Appendix I; and on June 11, 1992, the species was officially added to Appendix I.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the bog turtle (*Clemmys muhlebergii) are as follows:*

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

Habitat loss is a major factor for the past and present decline of bog turtles throughout much of their range. Wetland habitats have been drained and filled for development, agriculture, road construction, and impoundments. These activities have also severely fragmented the remaining habitat and have created physical barriers to movement; thus isolating existing bog turtle populations from other such sites. Development and agriculture continue to cause indirect hydrological alterations of adjacent wetland habitats by changing the surface water flow into or out of occupied wetlands habitats. Stormwater retention basins in upland areas, if not maintained, lose their ability to store adequate stormwater for release into adjacent bog turtle habitat (Larry Torok, New Jersey Department of Environmental Protection and Energy, pers. comm. 1994). Development in the vicinity of wetlands also pose a threat when the water table is lowered due to the sinking of wells or if roads act as barriers to the normal flow of surface water (Klemens 1988, 1989). Urban and commercial development contribute to increased traffic (leading to increased bog turtle road kills), surface water pollution, and the accelerated succession of existing vegetation.

Untimely mowing or burning and the use of herbicides and pesticides on adjacent agricultural fields also degrade bog turtle habitat (klemens 1988). Many wetlands occupied by bog turtles are located in agricultural areas that are subject to frequent livestock grazing. Light to moderate grazing functions to impede plant succession by minimizing the encroachment of invasive native and exotic plant species. However, heavy grazing destroys bog turtle habitat by cropping and trampling vegetation that is necessary for turtle nesting, basking, foraging and cover.

Three of Connecticut's eight known bog turtle sites have already been extirpated. A Fairfield County population was obliterated by industrial development, and two Litchfield County populations were destroyed by pond construction. In addition, residential development and natural plant succession are responsible for the partial loss of two extant populations in Litchfield and Fairfield counties (Victoria, *in litt.* 1994).

Only a small fraction of Delaware's freshwater wetlands are potential bog turtle habitat, and between 40 and 60 percent of the state's freshwater wetlands have already been lost (Tiner 1985). The four remaining bog turtle populations are threatened by invasive exotic plant species, collecting, and development (Gelvin-Innvaer and Stetzar 1992).

Of the 178 bog turtle occurrences (Taylor *et al.* 1984) representing 90 sites in Maryland, 25 have been lost in the last 15 years (Smith, *in litt.* 1994). Plant succession and exotic plant invasions have caused the extirpation of turtles at several sites, but most sites were lost due to wetland destruction and alteration, and stream channelization. In

addition, heavy grazing has been implicated in the loss of at least six sites (Smith, *in litt.* 1994).

Of the remaining 65 sites, 17 are considered good, 23 fair and 25 poor. Habitat at 31 of these sites has been partially destroyed or degraded. Causes of habitat loss include pond construction (6 sites), filling of wetlands (1 site), heavy grazing (4 sites), and the ditching, draining, tiling and stream channelization (13 sites) (Smith, *in litt.* 1994). In addition, flooding of turtle habitat from beaver activity poses a threat to many of the remaining populations.

In Massachusetts, there are four recorded sites for the state; three extant and one historic. The historical population was lost when the fen was inundated after dam construction. Of the three remaining extant populations, one site is threatened by the encroachment of giant reed and another site is threatened both by residential development and invasion of giant reed and alder (Klemens 1988). Although there are conservation agreements in place to protect the above two sites, they do not address the threats to habitat quality. In 1986, the fen at the poor site was ditched and the water was diverted for cattle use. The water supply has subsequently been restored to the fen and the habitat partially restored. However, much of the suitable bog turtle habitat in the state continues to be threatened by annual burning, severe overgrazing and chemical pollution from agricultural runoff (Klemens 1986, 1988).

Bog turtles have been extirpated from 10 of the 17 New Jersey counties in which they occurred (Bergen, Camden, Cape May, Gloucester, Mercer, Middlesex, Passaic, Salem, Somerset and Union counties). Surveys conducted in 1988 and 1989 revealed that 44 of the 68 known historic sites no longer appear to support bog turtles (Anon. 1991). By 1994, at least 53 sites had been lost; 33 to urban and commercial development and wetland alteration, and the remainder to plant community succession and the invasion of exotic plants (Sciascia and Zappalorti 1989, Sciascia and Zappalorti, *in litt.* 1994). One bog turtle site was recently destroyed when stormwater runoff from a development cut a channel through the wetland; thus draining the wetland and changing its vegetative composition (Torok, pers. comm. 1994). Many of the remaining populations are close to urban and suburban areas (the Philadelphia, Camden, and Trenton areas, and the New York City area) and are imminently threatened by development and collecting. Of the 35 remaining bog turtle sites in New Jersey (Sciascia and Zappalorti, *in litt.* 1994), 10 are considered good, 10 fair and 15 poor.

Bog turtles were reported from 17 counties in New York, but have been eliminated from 11 counties (Albany, Genessee, Onondaga, Otsego, Rockland, Sullivan, Tompkins, Ulster, Warren, Wayne and Westchester) (Breisch *et al., in litt.* 1994). Of New York's 24 remaining sites, only 19 populations are extant; five are considered good, 7 fair and 7 poor. This represents a significant reduction in range and reflects the loss of at least 33 of 57 bog turtle sites.

The bog turtle's range in New York is now limited to the Lower Hudson River and Housatonic River drainages in the southeastern corner of the state, and to two sites in western New York. In western New York, five of the seven historic bog turtle sites have been lost. Two sites were eliminated due to plant community succession; one was destroyed by a sand and gravel operation; and two were eliminated due to plant succession and hydrological alteration associated with agricultural practices and construction of the Erie Canal (Breisch *et al., in litt*, 1994; Collins 1990). Loss of the disjunct population in the Lake George watershed is attributed to plant succession, while the loss of Susquehanna River drainage population was caused by the construction of an interstate highway (Breisch *et al., in litt.* 1994).

At least twenty-six known bog turtle sites have been lost in southeastern New York due primarily to road construction, impoundments, plant succession and development. In addition, the historic bog turtle sites on Staten Island were eliminated by development (Nemuras 1967). In western New York, the viability of the only two remaining sites is questionable. In 1989, no turtles were located during surveys conducted at the Oswego County site. The Seneca County site is threatened by over-collecting, plant succession and construction of an interstate highway through a wetland within 200 feet of existing bog turtle habitat (Breisch *et al., in litt.* 1994).

Of the remaining 24 bog turtle sites in New York, most are of poor habitat quality. The presence of bog turtles at 5 sites is highly questionable since turtles have not been reported from these sites for 15 to 25 years. Most of the existing sites suffer from habitat degradation due to residential and commercial development, road construction and vegetational succession. At least 99 percent of bog turtle habitat in New York occurs on private lands and all but two of the remaining populations are found in areas of high human population density.

In Pennsylvania, 28 of the 62 known bog turtle sites have been extirpated, especially in Mercer, Crawford, Delaware and Philadelphia counties. The reasons for the loss of a disjunct population represented by 3 historic locations in the northwestern counties, are unknown. However, much of the historic bog turtle habitat at Pymatuning Swamp was destroyed by construction of a dam.

Most bog turtle habitat is concentrated in the southeastern corner of the state, within portions of the Delaware and Susquehanna river drainages. Development and urbanization, road construction, and agriculture are largely responsible for the loss of bog turtle habitat in southeastern Pennsylvania and also several large cites are located in this area (Philadelphia, Harrisburg, Reading, Lancaster, and York). In the early 1960s, Robotham (*in* Nemuras 1967) documented the destruction of two bog turtle sites in Chester County (in the West Chester-Downingtown area). One site was destroyed after a road was constructed through the center of the marsh and the marsh was drained for development. The other site was destroyed by a road bypass, commercial development, and excavation of a lake.

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

The bog turtle is a target for pet collectors due to its rarity in the wild, distinctive coloration, and small size. Take (primarily illegal) both for the national and international commercial pet trade industry has occurred for many years. Collecting is a significant factor for the species decline and is an ongoing threat to its continued existence in the wild (Anon. 1991; Earley 1993; David Flemming, U.S. Fish and Wildlife Service, *in litt.* 1991; Herman 1990; Klemens *in press*; Stearns *et al.* 1990; Tryon 1990; Tryon and Herman 1990). During the last 5 to 10 years, an increasing number of bog turtles have been advertised for sale, and prices have increased substantially. This increase in price most likely reflects the increase in demand for the turtles; therefore, increasing the threats to the wild populations (Tryon and Herman 1990).

Atlanta Zoo personnel reported that from 1989 to early 1991, over 100 bog turtles were exported to Japan. These figures differ significantly from CITES data and represent a significant amount of unreported illegal trade (Anon. 1991). The World Wildlife Fund recently listed bog turtles as among the world's top 10

''most wanted'' endangered species (Earley 1993).

Due to the threats facing bog turtle populations, the Society for the Study of Amphibians and Reptiles adopted a resolution calling for the prohibition of collection from wild populations (Stearns *et al.* 1990). Due to the small size of existing populations and the low reproductive and recruitment potential of this species, the removal of even a few breeding adults can do irrevocable damage to a population (Tryon 1990). Over-collecting has caused the reduction or extirpation of several bog turtle populations in Delaware (Anon. 1991), Maryland (Anon. 1991; Smith, *in litt.* 1994), Massachusetts (Anon. 1991), New Jersey (Farrell and Zappalorti 1989; Zappalorti, pers. comm. 1994), New York (Breisch, *in litt.* 1993; Breisch *et al., in litt.* 1994; Collins 1990), and Pennsylvania (Ralph Pisapia, U.S. Fish and Wildlife Service, *in litt.* 1992). Many sites in these states have suitable habitat; but have a much-reduced bog turtle population, probably due to overcollecting.

Throughout its entire range, states regulate take through classification of the species as endangered (in Connecticut, Delaware, Massachusetts, New Jersey, New York, Pennsylvania and Virginia) or threatened (in Georgia, Maryland, North Carolina, South Carolina and Tennessee), yet trade in specimens continues.

Illegal trade is difficult to detect due to the questionable origin of turtles being offered for sale. Bog turtles are often ''laundered'' through states which either do not have native populations (e.g., West Virginia, Florida, California), or through states which have inadequate protection of their own bog turtle populations (Charles Bepler, U.S. Fish and Wildlife Service, *in litt.* 1993; Breisch, *in litt.* 1993; Michael Klemens, *in litt.* 1990). Hatchling and juvenile turtles marketed as ''captive-born'' are usually offspring from gravid adult females illegally brought into captivity and held until they deposit eggs. The eggs are then hatched in captivity, and the captive-born (but not captive-bred) offspring are then marketed or retained (Bepler, *in litt.* 1993).

A few specific instances of illegal bog turtle collecting and trade are reported below:

(1) An undercover office purchased eight bog turtles from a person who had collected them near Lancaster, Pennsylvania. Also, two additional bog turtles were recovered from persons who had gotten them from friends allegedly in the New York area (Bepler, *in litt.* 1993);

(2) An individual from New Jersey was arrested for bringing bog turtles from New Jersey to Florida and selling them as captive born. It is suspected that he collected about six turtles per year over a period of several years (Bepler, *in litt.* 1993);

(3) A reliable source in New York reported that over 2000 wild-caught bog turtles were shipped to Japan in a 2-year period (Murdock, *in litt.* 1990);

(4) Researchers found several turtle traps and a much diminished bog turtle population at an important bog turtle site in Pennsylvania (Pisapia, *in litt.* 1992); and,

(5) In 1993, a New Jersey resident purchased 47 bog turtles in Florida and since 1984 had also bought 20 additional bog turtles. This individual supposedly has an active breeding program for bog turtles (Terry Tarr, U.S. Fish and Wildlife Service, *in litt.* 1993).

The general consensus among bog turtle researchers, nongame biologists and law enforcement officials is that illegal collecting is occurring at a much greater rate than previously reported (Anon. 1991; Breisch, *in litt.* 1993; Flemming, *in litt.* 1991). Bog turtles are already extremely low in numbers throughout their range, and any additional take could eliminate marginal populations and hamper survival and recovery efforts.

Protecting existing sites for bog turtles can pose a threat when these specific sites are revealed and publicized. In addition to threats from the pet trade industry, bog turtles have been collected for exhibition at nature centers (Anon. 1991). Tryon and Herman (1990) report that on more than one occasion, landowners, fearing involvement from state or federal authorities, have drained (ditched) bog turtle habitat after researchers visited the site.

C. Disease or Predation

Bog turtles (particularly the eggs and young) are preyed upon by raccoons, opossums, skunks, foxes, snapping turtles, water snakes and large birds (Herman and George 1986). Predation by raccoons appears to increase in areas with high human density, since raccoons favor fragmented areas consisting of farmland, forests and residential development (Klemens 1989). In some cases, predation contributes to population declines by impairing reproductive recruitment so that the population age structure is skewed toward older individuals (Zappalorti and Rocco 1993).

D. The Inadequacy of Existing Regulatory Mechanisms

Bog turtles receive some degree of protection through state listings as endangered or threatened species and take from the wild within all range states requires a valid permit.

In Connecticut, the bog turtle is listed as endangered and the take of an endangered species is prohibited. Regulations require that any person owning or possessing a bog turtle, must register with the Wildlife Bureau of the Department of Environmental Protection. There are no special provisions for the protection of species of special concern under Connecticut's wetland laws and regulations and only about 10 percent of the permits issued by townships are checked for species of special concern (Doug Cooper, Connecticut Department of Environmental Protection, pers. comm. 1994).

The bog turtle is listed as endangered in Delaware and except under permit, it is unlawful to import, transport, possess or sell this species. Currently, there is no regulatory mechanism to protect wetland habitat since Delaware's wetland laws only address tidal wetlands.

In 1972, the bog turtle was listed as endangered in Maryland when only 5 of the 23 then known historic locations were extant. However, it was removed from the state endangered species list in 1982, after 173 new occurrences were discovered during surveys conducted between 1976 and 1978 (Smith 1994, Taylor *et al.* 1984). In 1992–1993, the Maryland Department of Natural Resources conducted follow-up surveys of the 178 locations documented to support bog turtle (Taylor *et al.* 1984). Of the 159 locations surveyed, bog turtle were found at 91 locations; this represents a 43 percent reduction of bog turtle occurrences over a 15-year period (Smith 1994). Based on the results of these recent surveys, bog turtles are now classified as threatened in Maryland. They also receive additional protection under the State's Reptile and Amphibian Possession and Permit Regulations, which regulate the possession, breeding, sale and trade of certain native reptiles and amphibians. Under these regulations, it is illegal to take bog turtles from the wild or to breed them in captivity. In addition, the regulations prohibit the possession, sale, offering for sale, trade or barter of any turtle with a carapace length less than 4 inches (which applies to most bog turtles due to their small size).

A portion of bog turtle habitat in Maryland receives some degree of

protection under the Nontidal Wetlands Protection Act. Habitat in agricultural areas receives little or no protection due to the Act's exemption of agricultural activities from permit requirements.

The species is classified as endangered in Massachusetts and it is unlawful to take or possess bog turtles without a permit. Currently no person in the state has a valid permit to possess bog turtles (Tom French, Massachusetts Department of Fisheries and Wildlife, pers. comm. 1994). Its habitat receives some degree of protection under the Massachusetts Wetlands Protection Act, which prohibits permitted projects from having an adverse effect on wetland habitat that support endangered and threatened species, or species of special concern. The Act also allows for a 100-foot buffer zone around such wetlands when activities in the buffer zone could result in the alteration of adjacent wetlands (Melvin and Roble 1990).

In New Jersey, the bog turtle is listed as endangered. It is unlawful to take, possess, transport, export, process, sell, offer for sale, or ship bog turtles without a permit. Bog turtle habitat receives some protection under the Exceptional Resource Value Wetland provision of New Jersey's Freshwater Wetland Protection Act. This Act allows for a 150-foot buffer zone around wetlands, a stringent permit review process, and prohibits activities that would likely jeopardize or destroy bog turtles habitat (Torok, pers. comm., 1994). Most agricultural activities are exempt from these regulations.

In New York, the bog turtle is listed as endangered and the animal and its parts (including eggs) are protected from unauthorized take, import, transport, possession, or sale. Wetlands occupied by an endangered or threatened species are classified as Class 1 Wetlands and they receive some protection from filling and excavation. Certain activities such as draining of wetlands for agriculture, are exempted from permitting requirements, as long as no excavations are required to accomplish the draining.

In Pennsylvania, the bog turtle is listed as endangered. It is illegal to catch, take, kill, possess, import, export, sell, offer for sale, or purchase any individual of this species, alive or dead, or any part thereof, without a special permit. Bog turtle habitat receives some degree of protection under state wetland regulations, which categorize wetlands that serve as habitat for endangered or threatened flora or fauna as ''exceptional value wetlands.'' Issuance of permits to alter such wetlands is contingent upon meeting specific requirements.

The U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act regulates the discharge of all fill into waters of the United States, including navigable waters and wetlands. The Clean Water Act requires that project proponents obtain a permit from the Corps before undertaking any activity that would result in the fill of waters under the Corps' jurisdiction.

The Corps has promulgated nationwide permits in order to provide some measure of regulatory relief. Nationwide permits pre-authorize certain activities which meet special regulatory conditions. A pre-determination is made that certain activities will have minimal cumulative and environmental effects. Massachusetts has revoked nationwide permits and has adopted a State Programmatic General Permit. This general permit further refines the criteria for which projects require individual review.

The Corps promulgated nationwide permit Number 26 (see 33 CFR 330.5(1)(26)) to address fill in isolated or headwater wetlands totalling less than 10 acres in size. Under this permit, proposals that involve the fill of wetlands less than one acre in size are automatically authorized. When fills adversely modify anywhere between 1 to 10 acres of wetland, the Corps circulates a predischarge notification to the Service and other interested parties for comment in order to determine whether a permit is required for a proposed fill and its associated impacts.

The review process for the issuance of individual permits is more rigorous than for nationwide permits. Individual permit applicants are require to undergo a mitigation sequencing process that includes avoidance, minimization and compensation for any adverse environmental impacts. Unlike nationwide permits, an analysis of cumulative wetland impacts is required. However, standards have not been set for cumulative effect thresholds beyond those for which permitting activities are already restricted.

For nationwide permits, the Corps has discretionary authority to require an applicant to seek an individual permit if the Corps deems that the resources are important, regardless of the wetland's size. The Corps rarely requires an individual permit when a project qualifies under a nationwide permit, unless a threatened or endangered species or other significant resources are adversely affected by a proposed activity.

The bog turtle could potentially be affected by a project requiring a permit from the Corps under section 404 of the Clean Water Act. The bog turtle is effected by agricultural practices which are exempt from regulation under section 404 of the statute. In addition to a Federal exemption for maintenance of existing agricultural drainage systems, other exempted activities include plowing, planting and harvesting in existing cropped wetlands as long as the activity is part of an on-going farming operation.

Finally, under section 401 of the Clean Water Act, all Federal permit actions, including section 404 activities, must also meet individual State Water Quality Standards. If a state views an activity as inconsistent with their Federally-approved standards, the state can deny certification.

While all range states have legislation protecting bog turtles from take, lack of uniform protection throughout the United States imperils the species by creating loopholes for illegal take and trade (Klemens, *in litt.* 1990). In addition, destruction and alteration of habitat are major factors for its decline, yet state and Federal provisions for protection of its habitat are non-existent. Wetlands inhibited by bog turtles are generally small, wet-vegetated, spring-fed bogs. These wetlands are often considered of low value and are drained, filled or converted into ponds, despite Federal and state wetland regulations. Due to provisions (agricultural exemptions, Nationwide Permits) in Federal and state wetland regulations, these wetlands are often given minimal regulatory protection.

On July 1, 1975, the bog turtle was added to Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and on June 11, 1992 (57 FR 20443), it was transferred from Appendix II to Appendix I. Both import and export permits are required from the importing and exporting countries before an Appendix I species can be transported, and an Appendix I species can not be exported for primarily commercial purposes. CITES permits are not issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Plant community succession and the invasion of wetland systems by exotic plant species have also contributed to the decline of the bog turtle. Wetland habitats are in a state of transition; unless set back by fire, beaver activity, light to moderate grazing, or periodic wet years. The habitat continues to succeed into wooded swampland and

becomes unsuitable for bog turtles. Various human activities, such as fire suppression, beaver control, fertilizer runoff, draining and ditching, and filling of wetlands accelerate both natural succession and the invasion of exotic plants (Gelvin-Innvaer and Stetzar 1992, Klemens 1984).

Development and agriculture adjacent to bog turtle habitat can result in soil disturbance and increases in the nutrient and sediment load, thus allowing for the invasion of exotic species, such as multiflora rose, purple loosestrife, giant reed and reed canary grass, as well as native species such as red maple and alder (Klemens 1984, 1989, and *in press*).

Beavers pose a threat to isolated bog turtle populations by flooding the remaining suitable habitat within a watershed. Smith (*in litt.* 1994) reported that flooding caused by beavers now poses a threat to three bog turtle populations in Maryland.

Thick deposits of iron bacteria, suggesting possible contamination from pollutants, have been found at three bog turtle sites in Maryland. Reptile and amphibian populations at these sites are much lower in numbers than one would expect based on the habitat characteristics (Smith, *in litt.* 1994). Wetland habitats are also vulnerable to pollutants (oil and grease) carried by stormwater runoff. Farrell and Zappalorti (1989) reported that one New Jersey wetland occupied by bog turtles was degraded by trash and motor oil that was carried through a storm drain.

The bog turtle is also vulnerable to local extirpation and rangewide reduction due to: (1) the small numbers of individuals within many populations; (2) the isolation of existing populations; (3) the delay in reaching sexual maturity; (4) low juvenile recruitment rates; and (5) relatively low mobility and small home ranges (Arndt 1977, Chase *et al.* 1989). Isolation of populations prevents gene flow which can result in an inbred population with low fecundity. Further, isolation/habitat fragmentation prevents recolonization of existing habitat or colonization/expansion into newly created habitats (Collins 1990).

Vehicles and livestock pose a direct threat to bog turtles by killing and injuring individuals. Roads near sites contribute significantly to mortality as is evidenced by the number of dead turtles found along roadsides. Roads that are adjacent to or within wetlands pose the greatest threat to bog turtles (Arndt 1977). Large numbers of livestock within a wetland can also pose a threat by actually stepping on bog turtles (M. Klemens, pers. comm., S. Smith, pers. comm.).

In developing this proposed rule, the Service has assessed the best available scientific and commercial information regarding the past, present and future threats faced by the species. Based on this evaluation, the preferred action is to list the northern population of the bog turtle as threatened and the southern population as threatened due to similarity of appearance. In spite of existing state protective regulations, the northern population has declined by approximately 50 percent over the past 20 years, and has experienced a significant decrease in its known range. Presently, less than 200 active sites remain in the north. Most of these consist of small wetlands isolated from one another and often in close proximity to human habitation. Critical habitat will not be proposed at this time for the northern population of bog turtles for the following reasons.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation means the use of all methods and procedures need to bring the species to the point at which listing under the Act is no longer required.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the bog turtle at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The publication of precise maps and descriptions of critical habitat in the Federal Register would increase the vulnerability of the bog turtle to collection. Listing of the bog turtle as threatened also elevates the awareness to the rarity of the species, thereby increasing the likelihood of take by private and commercial collectors. The listing could lead to increased illegal take and the risk of eggs being accidentally destroyed by collectors searching for adult turtles.

Designation of critical habitat could also increase the vulnerability of bog turtle habitat to intentional destruction by landowners who do not want a protected species on their property. Based on past and continuing threats to the bog turtle and its habitat from illegal collecting and vandalism, the designation of critical habitat at this time would significantly increase these threats. Therefore, the Service has determined that designation of critical habitat at this time is not prudent. Protection of bog turtle habitat will be addressed through the recovery and section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery action, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, state, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the states, and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed for listing or is listed as endangered or threatened and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action could affect

a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include Army Corps of Engineers (Corps) involvement in projects such as the construction of roads and bridges, and the permitting of wetland filling and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*); National Resources Conservation Service projects; U.S. Environmental Protection Agency authorized discharges under the National Pollutant Discharge Elimination System and U.S. Housing and Urban Development projects. In addition, Federal involvement under section 7 would be expected for management and other land use activities on Federal lands with bog turtle populations.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of there), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and state conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. For threatened species, permits also are available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

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

(1) Transferring individual turtles from roads to immediately adjacent habitat;

(2) Light to moderate livestock grazing that prevents or minimizes the encroachment of invasive native and exotic plant species;

(3) Possession of legally acquired bog turtles; and

(4) Actions that may affect bog turtles and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with section 7 of the Act.

With respect to both the northern and southern populations of the bog turtle, the following actions would be considered a violation of section 9:

(1) Take of bog turtles without a permit (this includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions). However, with respect solely to the southern population, incidental take (see special rule below) would not be considered a violation of section 9;

(2) Possess, sell, deliver, carry, transport, or ship illegally taken bog turtles:

(3) Interstate and foreign commerce (commerce across state and international boundaries) and import/export (as discussed earlier in this section) without prior obtaining a threatening species, similarity of appearance, or CITES permit.

With respect solely to the northern population, activities that the Service believes could result in the take of bog turtles include, but are not limited to:

(1) Destruction or alteration of the species habitat: by draining, ditching, discharging fill material, impoundment, water diversion, or activities that result in the destruction or severe degradation of wetland vegetation used by the turtles for nesting, basking, foraging or cover, except as outlined in (4) above; and

(2) Discharging or dumping of toxic chemicals or other pollutants into wetlands occupied by the species.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the appropriate Service Field Office as follows: in Pennsylvania, the Pennsylvania Field Office, 315 S. Allen Street, Suite 322, State College, PA 16801 (814/234–4090); in Maryland and Delaware, the Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, MD 21401 (410/224–2732); in New York, the New York Field Office, 3817 Luker Road, Cortland, NY 13045 (607/758–9334); in Massachusetts and Connecticut, the New England Field Office, 22 Bridge Street, Concord, NH 03301–4986 (603/225–1411); and, in New Jersey, the New Jersey Field Office, 927 North Main Street, Building D1, Pleasantville, NJ 08232 (609/747–0620). Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035 (telephone 413/253–8200; facsimile 413/253–8482).

Similarity of Appearance

Section 4(e) of the Act authorizes the treatment of a species (subspecies or population segment) as endangered or threatened even though it is not otherwise listed as endangered or threatened if: (a) The species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in differentiating between the listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (c) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act.

There are only slight morphological differences in this species throughout its range (Amato *et al.* 1993; Nemuras 1967), making it extremely difficult to differentiate where bog turtles are taken from. Presently, the origin and legality of a specimen (specific wetland, locality or state) cannot be determined. This poses a problem for Federal and state law enforcement agents trying to stem illegal trade in the threatened northern population. The listing of the southern population as threatened due to similarity of appearance eliminates the ability of commercial collectors to commingle northern bog turtles with southern ones or to misrepresent them as southern bog turtles for commercial purposes. For these reasons, the Service proposes to list the southern population (occurring in the states of Georgia, North Carolina, South Carolina, Tennessee and Virginia) as threatened due to similarity of appearance to the northern population.

The special rule exempts incidental take of the southern population of bog turtles. Incidental take is take that results from, but is not the purpose of, carrying out an otherwise lawful activity. For example, legal application of pesticides and fertilizers, livestock grazing and other farming activities, mowing, burning, water diversion, and any other legally undertaken actions

that result in the accidental take of a bog turtle will not be considered a violation of section 9 of the Endangered Species Act in the Southern states of Georgia, North Carolina, South Carolina, Tennessee, and Virginia. The Service does not consider the southern population of bog turtles to be biologically threatened or endangered and believes that listing the southern population under the similarity of appearance provision of the Act, coupled with the special rule, minimizes enforcement problems and helps to conserve the northern population. It is the intent of the special rule to treat bog turtles from the southern population in the same way as the threatened northern population with regard to permit requirements for pre-Act wildlife (50 CFR 17.4) or captive bred wildlife (50 CFR 17.21(g)).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade (legal and illegal), or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations or occurrences of this species;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species; and

(5) The number, origin, location and legal disposition of bog turtles in captivity and/or trade.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the Federal Register. Such requests must be made in writing and addressed to Field Supervisor (see **ADDRESSES** section).

Required Determinations

The Service has examined this proposed regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking is not subject to review by the Office of Management and Budget under Executive Order 12866.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, Pennsylvania Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Carole K. Copeyon (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under ''Reptiles,'' to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
REPTILES							
*	*	*	*	*	*		*
Turtle, bog (=Muhlenberg).	*Clemmys muhlenbergii.*	U.S.A. (CT, DE, GA, MD, MA, NC, NJ, NY, PA, SC, TN, VA).	Entire, except GA, NC, SC, TN, VA.	T	.....	NA	NA
Do	.....do	.....do	U.S.A. (GA, NC, SC, TN, VA).	T(S/A)	.....	NA	17.42(f)
*	*	*	*	*	*		*

3. Amend § 17.42 by adding paragraph (f) to read as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(f) Bog turtle (*Clemmys muhlenbergii*), southern population—(1) Definitions. For the purpose of this paragraph (f): bog turtle of the southern population shall mean any member of the species *Clemmys muhlenbergii*, within Georgia, North Carolina, South Carolina, Tennessee and Virginia, regardless of whether in the wild or captivity, and

shall also apply to the progeny of any such turtle.

(2) Except as provided in paragraph (f)(3) of this section, the provisions of § 17.31 (a) and (b) of this part shall apply to bog turtles of the southern population (see also 50 CFR part 23).

(3) Take. Incidental take, that is, take that results from, but is not the purpose of, carrying out an otherwise lawful activity, shall not apply to bog turtles of the southern population.

Dated: January 17, 1997.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–2101 Filed 1–28–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 678

[I.D. 092396B]

Atlantic Shark Fisheries; Extension of Comment Period

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

ACTION: Extension of comment period.

SUMMARY: NMFS extends the comment period for a proposed rule to adjust quotas and bag limits in the Atlantic Shark Fishery that was published in the Federal Register on December 20, 1996. The proposed rule would establish quotas and bag limits and implement prohibitions and requirements to reduce effective fishing mortality, facilitate enforcement, and improve management.

DATES: Written comments on the proposed rule must be received on or before February 7, 1997.

ADDRESSES: Written comments should be sent to William T. Hogarth, Chief, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Room 14853, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey or John Kelly, 301-713-2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: Although NMFS previously extended the comment period from January 21, 1997, to January 24, 1997 (62 FR 1872, January 14, 1997), NMFS has received requests from the affected public that more time is necessary to submit their comments on the Atlantic shark fishery proposed rule (61 FR 67295, December 20, 1996). The proposed rule, as published, would reduce commercial quotas and recreational bag limits; establish a quota for small coastal sharks; prohibit the directed commercial fishing for, and landing or sale of, five species of sharks; establish a recreational tag-and-release only fishery for white sharks; prohibit filleting of sharks at sea; and restate the requirement for species-specific identification by all owners or operators, dealers, and tournament operators of all sharks landed.

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

Dated: 23 January 1997.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–2107 Filed 1–24–97; 10:00 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 19
Wednesday, January 29, 1997

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

Office of the Secretary

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 1

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 44,607,955 kilograms (98,343,787 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 1, effective January 18, 1997, and is set forth in subheading 9903.52.01, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of January 18, 1997, and applies to upland cotton purchased not later than April 17, 1997 (90 days from the date the quota is established), and entered into the United States not later than July 16, 1997 (180 days from the date the quota is established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1–3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended October 24, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 1, effective January 18, 1997, is hereby established.

Because there were only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS at the time this quota was announced, only 20 such quotas could be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The special import quota described in this notice cannot take effect until HTS subheading 9903.52.01 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 1, effective July 22, 1996, through January 17, 1997. Therefore, the special import quota described in this notice opens on January 18, 1997, the day after the previous special import quota 1 ends.

The quota amount, 44,607,955 kilograms (98,343,787 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—July 1996 through September 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on January 22, 1997.

Dan Glickman,

Secretary.

[FR Doc. 97–2127 Filed 1–28–97; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 2

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 44,607,955 kilograms (98,343,787 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 2, effective January 25, 1997, and is set forth in subheading 9903.52.02, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of January 25, 1997, and applies to upland cotton purchased not later than April 24, 1997 (90 days from the date the quota is established), and entered into the United States not later than July 23, 1997 (180 days from the date the quota is established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended October 31, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 2, effective January 25, 1997, is hereby established.

Because there were only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS

at the time this quota was announced, only 20 such quotas could be in effect at one time. Each subheading corresponds to a Secretary of Agriculture's Special Cotton Import Quota Announcement specifying that a particular amount of upland cotton may be imported during a particular 180-day period. The special import quota described in this notice cannot take effect until HTS subheading 9903.52.02 becomes available upon the expiration of the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 2, effective July 29, 1996, through January 24, 1997. Therefore, the special import quota described in this notice opens on January 25, 1997, the day after the previous special import quota 2 ends.

The quota amount, 44,607,955 kilograms (98,343,787 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—July 1996 through September 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, DC., on January 22, 1997.

Dan Glickman,

Secretary.

[FR Doc. 97–2128 Filed 1–28–97; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 21

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 44,607,955 kilograms (98,343,787 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991, and Presidential Proclamation 6948 of October 29, 1996. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 21, effective November 13, 1996, and is set forth in subheading 9903.52.21, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of November 13, 1996, and applies to upland cotton purchased not later than February 10, 1997 (90 days from the date the quota is established), and entered into the United States not later than May 11, 1997 (180 days from the date the quota is established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended November 7, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 21, effective November 13, 1996, is hereby established.

Previously there were only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS. Therefore, at most, only 20 such quotas could be in effect at one time and any additional quota which had been triggered could not become effective until the earliest of the 20 quotas ended. However, Presidential Proclamation 6948 dated October 29, 1996, added six new HTS subheadings for quotas—21 through 26. A maximum of 26 quotas may now be in effect at one time.

To be effective as soon as possible, Quota 21 is established as of November 13, 1996, and applies to upland cotton purchased not later than February 10, 1997, and entered into the United States not later than May 11, 1997. The quota amount, 44,607,955 kilograms (98,343,787 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—July 1996 through September 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on January 22, 1997.

Dan Glickman,

Secretary.

[FR Doc. 97–2129 Filed 1–28–97; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 22

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 44,607,955 kilograms (98,343,787 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991, and Presidential Proclamation 6948 of October 29, 1996. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 22, effective November 20, 1996, and is set forth in subheading 9903.52.22, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of November 20, 1996, and applies to upland cotton purchased not later than February 17, 1997 (90 days from the date the quota is established), and entered into the United States not later than May 18, 1997 (180 days from the date the quota is established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern

Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended November 14, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 22, effective November 20, 1996, is hereby established.

Previously there were only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS. Therefore, at most, only 20 such quotas could be in effect at one time and any additional quota which had been triggered could not become effective until the earliest of the 20 quotas ended. However, Presidential Proclamation 6948 dated October 29, 1996, added six new HTS subheadings for quotas—21 through 26. A maximum of 26 quotas may now be in effect at one time.

To be effective as soon as possible, Quota 22 is established as of November 20, 1996, and applies to upland cotton purchased not later than February 17, 1997, and entered into the United States not later than May 18, 1997. The quota amount, 44,607,955 kilograms (98,343,787 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—July 1996 through September 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on January 22, 1997.

Dan Glickman,

Secretary.

[FR Doc. 97–2130 Filed 1–28–97; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 23

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 44,522,887 kilograms (98,156,244 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991, and Presidential Proclamation 6948 of October 29, 1996. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 23, effective November 27, 1996, and is set forth in subheading 9903.52.23, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of November 27, 1996, and applies to upland cotton purchased not later than February 24, 1997 (90 days from the date the quota is established), and entered into the United States not later than May 25, 1997 (180 days from the date the quota is established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended November 21, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 23, effective November 27, 1996, is hereby established.

Previously there were only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS. Therefore, at most, only 20 such quotas could be in effect at one time and any additional quota which had been triggered could not become effective until the earliest of the 20 quotas ended. However, Presidential Proclamation 6948 dated October 29, 1996, added six new HTS subheadings for quotas—21 through 26. A maximum of 26 quotas may now be in effect at one time.

To be effective as soon as possible, Quota 23 is established as of November 27, 1996, and applies to upland cotton purchased not later than February 24, 1997, and entered into the United States not later than May 25, 1997. The quota amount, 44,522,887 kilograms (98,156,244 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—August 1996 through October 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on January 22, 1997.

Dan Glickman,

Secretary.

[FR Doc. 97–2131 Filed 1–28–97; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 24

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 44,522,887 kilograms (98,156,244 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991, and Presidential Proclamation 6948 of October 29, 1996. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 24, effective December 4, 1996, and is set forth in subheading 9903.52.24, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of December 4, 1996, and applies to upland cotton purchased not later than March 3, 1997 (90 days from the date the quota is established), and entered into the United States not later than June 1, 1997 (180 days from the date the quota is established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and

announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended November 28, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 24, effective December 4, 1996, is hereby established.

Previously there were only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS. Therefore, at most, only 20 such quotas could be in effect at one time and any additional quota which had been triggered could not become effective until the earliest of the 20 quotas ended. However, Presidential Proclamation 6948 dated October 29, 1996, added six new HTS subheadings for quotas—21 through 26. A maximum of 26 quotas may now be in effect at one time.

To be effective as soon as possible, Quota 24 is established as of December 4, 1996, and applies to upland cotton purchased not later than March 3, 1997, and entered into the United States not later than June 1, 1997. The quota amount, 44,522,887 kilograms (98,156,244 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—August 1996 through October 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on January 22, 1997.

Dan Glickman,

Secretary.

[FR Doc. 97–2132 Filed 1–28–97; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 25

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 44,522,887 kilograms (98,156,244 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991, and Presidential Proclamation 6948 of October 29, 1996. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 25, effective December 11, 1996, and is set forth in subheading 9903.52.25, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of December 11, 1996, and applies to upland cotton purchased not later than March 10, 1997 (90 days from the date the quota is established), and entered into the United States not later than June 8, 1997 (180 days from the date the quota is established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1 3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended December 5, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 25, effective December 11, 1996, is hereby established.

Previously there were only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS. Therefore, at most, only 20 such quotas could be in effect at one time and any additional quota which had been triggered could not become effective until the earliest of the 20 quotas ended. However, Presidential Proclamation 6948 dated October 29, 1996, added six new HTS subheadings for quotas—21 through 26. A maximum of 26 quotas may now be in effect at one time.

To be effective as soon as possible, Quota 25 is established as of December 11, 1996, and applies to upland cotton purchased not later than March 10, 1997, and entered into the United States not later than June 8, 1997. The quota amount, 44,522,887 kilograms (98,156,244 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—August 1996 through October 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on January 22, 1997.

Dan Glickman,

Secretary.

[FR Doc. 97–2133 Filed 1–28–97; 8:45 am]

BILLING CODE 3410–05–P

Secretary of Agriculture's Special Cotton Import Quota Announcement Number 26

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: A special import quota for upland cotton equal to 44,522,887 kilograms (98,156,244 pounds) is established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991, and Presidential Proclamation 6948 of October 29, 1996. The quota is referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 26, effective December 18, 1996, and is set forth in subheading 9903.52.26, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: The quota is effective as of December 18, 1996, and applies to upland cotton purchased not later than March 17, 1997 (90 days from the date the quota is established), and entered

into the United States not later than June 15, 1997 (180 days from the date the quota is established).

FOR FURTHER INFORMATION CONTACT: Janise Zygmont, Farm Service Agency, United States Department of Agriculture, Stop 0515, P.O. Box 2415, Washington, DC 20013–2415 or call (202) 720–8841.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1–3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 1.25 cents per pound. This condition was met during the consecutive 10-week period that ended December 12, 1996. Therefore, a quota referenced as the Secretary of Agriculture's Special Cotton Import Quota Announcement Number 26, effective December 18, 1996, is hereby established.

Previously there were only 20 subheadings available for designating upland cotton special import quotas in subchapter III of chapter 99 of the HTS. Therefore, at most, only 20 such quotas could be in effect at one time and any additional quota which had been triggered could not become effective until the earliest of the 20 quotas ended. However, Presidential Proclamation 6948 dated October 29, 1996, added six new HTS subheadings for quotas—21 through 26. A maximum of 26 quotas may now be in effect at one time.

To be effective as soon as possible, Quota 26 is established as of December 18, 1996, and applies to upland cotton purchased not later than March 17, 1997, and entered into the United States not later than June 15, 1997. The quota amount, 44,522,887 kilograms (98,156,244 pounds), is equal to 1 week's consumption of upland cotton by domestic mills at the seasonally-adjusted average rate of the most recent 3 months for which data are available—August 1996 through October 1996. The special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to Extra Long Staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on January 22, 1997.

Dan Glickman,

Secretary.

[FR Doc. 97–2134 Filed 1–28–97; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

[No. LS–97–004]

Beef Promotion and Research: Certification and Nomination for the Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is accepting applications from State cattle producer and general farm organizations as well as beef importers who desire to be certified to nominate producers or importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board (Board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. Previously certified organizations do not need to reapply. Notice is also given that vacancies will occur on the Board and that during a period to be established, nominations will be accepted from eligible organizations and individual importers.

DATES: Applications for certification must be received by close of business February 28, 1997.

ADDRESSES: Certification forms as well as copies of the certification and nomination procedures may be requested from Ralph L. Tapp, Chief; Marketing Programs Branch—STOP 0251; Livestock and Seed Division; AMS, USDA; Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch on 202/720–1115.

SUPPLEMENTARY INFORMATION:

The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 et seq.), enacted December 23, 1985, authorizes the implementation of a Beef Promotion and Research Order (Order). The Order, as published in the July 18, 1986, Federal Register (51 FR 26132), provides for the establishment of a Board. The current Board consists of 104 cattle producers and 7 importers appointed by the Secretary. The duties and responsibilities of the Board are specified in the Order.

The Act and the Order provide that the Secretary shall either certify or otherwise determine the eligibility of State or importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle, beef, or beef products. Individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of the Secretary that they are in fact importers of cattle, beef, or beef products, pursuant to § 1260.143(b)(2) of the Order [7 CFR 1260.143(b)(2)]. Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process including the beginning and ending dates of the established nomination period and required nomination forms and background information sheets. Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1986, Federal Register (51 FR 11557) and currently appear at 7 CFR § 1260.500 through § 1260.640. Organizations which have previously been certified to nominate members to the Board do not need to reapply for certification to nominate producers and importers for the existing vacancies.

The Act and the Order provide that the members of the Board shall serve for terms of 3 years. The Order also requires USDA to announce when a Board vacancy does or will exist. The following States have one or more members whose terms will expire in early 1998:

State or unit	Number of vacancies
Arizona	1
California	2
Colorado	1
Iowa	2
Kansas	2
Louisiana	1
Michigan	1
Minnesota	1
Mississippi	1
Missouri	1
Nebraska	2
New Mexico	1
North Carolina	1
Oklahoma	1
South Carolina	1

State or unit	Number of vacancies
South Dakota	2
Tennessee	1
Texas	4
Utah	1
Wisconsin	2
Wyoming	1
Mid-Atlantic Unit	1
Northeast Unit	1
Western Unit (Oregon-Nevada Region)	1
Importer Unit	2

Since there are no anticipated vacancies on the Board for the remaining States' positions, or for the positions of the Northwest unit, nominations will not be solicited from certified organizations or associations in those States or units.

Uncertified eligible producer organizations in all States that are interested in being certified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official ''Application for Certification of Organization or Association,'' which must be received by close of business February 28, 1997. Uncertified eligible importer organizations that are interested in being certified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form but should provide the requested information by letter as provided for in 7 CFR § 1260.540(b). Applications from States or units without vacant positions on the Board and other applications not received within the 30-day period after publication of this Notice in the Federal Register will be considered for eligibility to nominate producers or importers for subsequent vacancies on the Board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR § 1260.530 are eligible for certification. Those criteria are:

(a) For State organizations or associations:

(1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.

(2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit.

(3) There must be a history of stability and permanency.

(4) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(b) For organizations or associations representing importers, the determination by the Secretary as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (i.e., beef or cattle importers, etc.).

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle.

(3) The stability and permanency of the importer organization or association.

(4) The number of years in existence.

(5) The names of the countries of origin for cattle, beef, or beef products imported.

All certified organizations and associations, including those which were previously certified in the States or units having vacant positions on the Board, will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms and background information sheets.

The names of qualified nominees received by the established due date will be submitted to the Secretary of Agriculture for consideration as appointees to the Board.

The information collection requirements referenced in this notice have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., Chapter 35 and have been assigned OMB No. 0581–0093, except Board member nominee information sheets are assigned OMB No. 0505–0001.

Authority: 7 U.S.C. 2901 *et seq.*

Dated: January 23, 1997.

Lon Hatamiya,

Administrator.

[FR Doc. 97–2126 Filed 1–28–97; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

Environmental Impact Statement, Crystal Creek Timber Harvest on the Petersburg Ranger District, Stikine Area, Tongass National Forest, Petersburg, Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Stikine Area of the USDA Forest Service proposes to harvest approximately 16 million board feet of timber in the Crystal Creek project area, which is near Thomas Bay on the Southeast Alaska mainland. A variety of harvest methods and silvicultural prescriptions will be used. This project would include the necessary road construction for transport of timber. The existing log transfer site would be reconstructed at Thomas Bay.

The purpose and need for this project is to make available for harvest approximately 16 million board feet of timber. This will:

1. Implement direction in the Tongass Land Management Plan,

2. Contribute to providing a sustained volume of wood to meet local and national demand, and

3. Provide local and regional employment opportunities.

There may also be opportunities to maintain or enhance forage for moose habitat to sustain a huntable population in the area. Activities such as commercial and pre-commercial thinning of second growth stands, and geographically distributing timber harvest over time and habitat will be considered toward achieving this goal.

A variety of resources and values will be maintained through the application of ecosystem management principles in the design of the project.

A range of alternatives will respond to environmental and social issues. The no-action alternative will not harvest timber in the area. The Thomas Bay log transfer facility will be reconstructed and required roads will be constructed or reconstructed as needed.

The decision to be made is:

1. Whether or not timber harvest will occur in the Crystal Creek project area;

2. How much timber will be harvested;

3. Location and design of harvest units;

4. Location and design of road construction and reconstruction; and

5. What mitigation measures and monitoring will be implemented.

EFFECTIVE DATE: The Draft Environmental Impact Statement should be available for public review by June, 1997. The final Environmental Impact Statement is scheduled to be completed by November, 1997.

FOR FURTHER INFORMATION: Questions, written comments, and suggestions concerning the analysis should be sent to Bruce Sims, Team Leader, Petersburg Ranger District, P.O. Box 1328, Petersburg, AK 99833, phone (907) 772–3871, fax (907) 772–5995.

SUPPLEMENTARY INFORMATION: All appropriate agencies will be contacted and all required permits will be received before the proposed action is implemented. The following permits are anticipated in order to implement the proposed action:

• U.S. Army Corps of Engineers approval under Section 404 of the Clean Water Act,

• State of Alaska, Department of Natural Resources tideland permit and lease or easement, and

• State of Alaska, Department of Environmental Conservation authorization under Section 401 of the Clean Water Act.

Public Comment

Federal, State, and local agencies, potential contractors, and other individuals or organizations who may be interested in, or affected by, the decision are invited to participate in the scoping process. This process will include:

1. Identification of potential issues;
2. Identification of issues to be analyzed in depth;
3. Determination of potential cooperating agencies and assignment of responsibility; and
4. Examination of various alternatives.

The Forest Supervisor will hold public meetings during the planning process. Interested people are invited to comment. The comment period on the Draft EIS will be 45 days from the date the Notice of Availability appears in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several draft environmental impact statements must structure their participation in the environmental review process. First, reviewers of the draft environmental impact statements must structure their participation in the environmental review of the proposal so it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 [1978]). Also, environmental objections that could have been raised at the Draft EIS stage may be waived if not raised until after the completion of the final environmental impact statement or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 [9th Cir. 1986] and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so substantive comments and objections are made available to the Forest Service at the time when we can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environment Policy Act in 40 CFR 1503.3 while addressing these points.

The responsible official for the decision is Abigail R. Kimbell, Forest Supervisor, Stikine Area, Tongass National Forest, Alaska Region, Petersburg, Alaska.

Dated: January 13, 1997.

Abigail R. Kimbell,

Forest Supervisor.

[FR Doc. 97–2120 Filed 1–28–97; 8:45 am]

BILLING CODE 3410–11–M

Rural Housing Service

Refinancing Community Facilities Loans

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice describes the Rural Housing Service (RHS) Community Facilities (CF) loan program refinancing policies, informs commercial lenders of the availability of a list of eligible CF borrowers who have the potential to refinance outstanding debt, and invites cooperative and private credit sources to participate in refinancing loans. This action ensures that CF loan program borrowers are aware of lenders that are willing to provide reasonable rates and terms for refinancing. The intended effect of this action is to increase the number of cooperative or private credit sources which are actively involved with RHS's refinancing efforts.

FOR FURTHER INFORMATION CONTACT: Chadwick O. Parker, Loan Specialist, Rural Housing Service, USDA, Room 6314, South Agriculture Building, 1400 Independence Avenue SW., Washington, D.C. 20250, Telephone: (202) 720–1502.

SUPPLEMENTARY INFORMATION:

Program Affected

This action affects the RHS program listed in the Catalog of Federal Domestic Assistance as 10.766 Community Facilities Loans.

Discussion of Notice

The RHS CF loan program provides credit to public entities such as municipalities, counties, special-purpose districts, Indian tribes, and nonprofit corporations. Eligible CF loan purposes are to construct, enlarge, extend, or otherwise improve community facilities providing essential services. The loan program is administered in a manner which ensures that it does not compete with credit available from private sources. Loan agreements require financially capable borrowers to refinance debts owed to the RHS when other credit is available at reasonable rates and terms from a cooperative or private credit source.

The RHS would like to further develop its public/private partnerships while enhancing its refinancing efforts. As part of these efforts, each Rural Development State Office, which administers the CF loan program in the field, will maintain a current listing of borrowers who have the potential to refinance. The RHS will also maintain a national list on its World Wide Web site at http://www.rurdev.usda.gov/agency/rhs/cf/cf.htm.

The RHS will develop a unified database of lenders interested in this refinancing initiative as part of their ongoing effort to establish a stronger alliance with private sector lenders. The RHS requests that interested lenders contact the State Office in each State where they have active lending operations.

Dated: January 21, 1997.

Jan Shadburn,

Acting Administrator, Rural Housing Service.

[FR Doc. 97–2197 Filed 1–28–97; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 961213356–6356–01]

RIN 0607–XX25

Census Tract Program for Census 2000—Proposed Criteria

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of proposed program revisions and request for comments.

SUMMARY: Census tracts are relatively permanent small-area geographic divisions of a county or statistically

equivalent entity [1] defined for the tabulation of decennial census data and selected other statistical programs. The primary goal of the census tract program is to provide a geographic unit that has stable boundaries between decennial censuses. Other goals include the identification of geographic areas that represent meaningful geographic divisions of a county based on economic or social interaction, significant topographic differences within a county, or a certain degree of demographic homogeneity at the time of original delineation. The Census Bureau uses census tracts to tabulate and disseminate a wide variety of data. For Census 2000, census tracts will be established across the entire area of the United States, Puerto Rico, and the Island Areas (American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands of the United States).

Census tracts first appeared in the 1910 census when local officials in eight of the larger cities delineated these areas. In the 1910, 1920, and 1930 censuses, the Census Bureau published census tract data as special tabulations; in 1940, the Census Bureau began including census tract data in its standard publications. The number of data subjects and the amount of data, as well as the number of counties containing census tracts, increased in every census through 1990. For the 1990 census, the Census Bureau inaugurated complete nationwide coverage and statistics for census tracts or statistically equivalent entities known as block numbering areas (BNAs.) For Census 2000, the Census Bureau will combine the similar programs into a single census tract program.

To determine the boundaries and identification numbers of census tracts, the Census Bureau offers a program to local participants, such as locally identified agencies and American Indian tribal officials, whereby they can review and update the boundaries of the census tracts and BNAs delineated for the 1990 census and suggest revisions according to the criteria developed and promulgated by the Census Bureau. The Census Bureau will then review the resulting Census 2000 census tract plans for conformance to these criteria.

As the first step in this process, the Census Bureau requests comments on its proposed criteria for the delineation of census tracts in conjunction with Census 2000. These criteria will apply to the 50 states, the District of Columbia, American Indian and Alaska Native areas, Puerto Rico, and the Island Areas. The Census Bureau may modify and, if necessary, reject proposals for census tracts that do not meet the criteria established following this notice.

Besides the proposed criteria, this notice includes a description of the changes from the criteria used for the 1990 census and a list of definitions of key terms used in the criteria.

DATE: Any suggestions or recommendations concerning the proposed criteria should be submitted in writing by February 28, 1997.

ADDRESS: Director, Bureau of the Census, Washington, DC 20233–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Joel Morrison, Chief, Geography Division, Bureau of the Census, Washington, DC 20233–7400, telephone (301) 457–1132, or e-mail to ''joel.morrison@census.gov.''

SUPPLEMENTARY INFORMATION: The census tract delineation criteria have evolved over the past nine decades in response to decennial census practices and the preferences of local participants and data users. After each decennial census, the Census Bureau, in consultation with past participants and data users, reviews and revises these criteria. Then, before the next decennial census, the Census Bureau offers state, tribal, and local officials an opportunity to correct, update, and otherwise improve the universe of census tracts.

In July and August 1995, the Census Bureau issued invitations to local groups and agencies to participate in the delineation of statistical geographic areas for Census 2000. These groups and agencies included regional planning agencies, councils of governments, county planning agencies, officials of Federally recognized American Indian tribes, and officials of the 12 nonprofit Alaska Native Regional Corporations.

In 1997, the Census Bureau will provide materials and detailed guidelines to program participants for the review and delineation of census tracts for Census 2000.

A. Criteria for Delineating Census Tracts for Census 2000

The Census Bureau proposes the following criteria for use in delineating Census 2000 census tracts.

1. General Characteristics

- A census tract must meet the population and boundary feature criteria and comprise a reasonably compact, continuous land area internally accessible to all points by road; the only exceptions are:

(a) where the tract is defined to include a specific legal or land-use area that itself is discontinuous, in which case discontinuity is allowed.

(b) where a discontinuous area or inaccessible area would not meet population size requirements for a separate census tract, in which case the discontinuous or inaccessible area must be combined within an adjacent or proximate census tract.

(c) where the topography or geographic patterns of settlement are not compact, but are irregularly shaped, in which case a census tract shape can depart from the compactness requirement.

- A county boundary always must be a census tract boundary. This criterion takes precedence over all other criteria or requirements except for the population threshold criteria for census tracts on American Indian reservations (AIRs) in multiple counties.
- Census tracts must cover the entire land and inland water area of each county. In coastal waters, territorial seas, and the Great Lakes, the Census Bureau recommends creating in each county a single census tract covering such water bodies to provide for complete census tract coverage.

2. Identification

- A census tract has a basic census tract number composed of no more than four digits and may have a two-digit decimal suffix.
- Census tract numbers must be unique within each county.
- The range of acceptable basic census tract numbers for Census 2000 is 1 to 9989; census tracts delineated specifically to complete coverage in territorial seas and the Great Lakes will use the number 0000 in each county.
- Census tracts delineated within or to encompass an AIR that crosses county or state and county boundaries, where the intent is for the census tract to ignore the county or state boundary for tabulation in an American Indian geographic hierarchy, will use numbers 9400 to 9499.
- The range of acceptable census tract suffixes is .01 to .98. The Census Bureau reserves the .99 suffix to identify civilian and military ships as ''crews-of-vessels'' census tracts.

3. Boundary Features

The Census Bureau recommends that most census tract boundaries follow visible and identifiable features. This makes the location of census tract boundaries less ambiguous. The Census

[1] Includes parishes in Louisiana; boroughs and census areas in Alaska; independent cities in Maryland, Missouri, Nevada, and Virginia; that portion of Yellowstone National Park in Montana; districts in American Samoa and the Virgin Islands of the United States; municipalities in the Northern Mariana Islands; municipios in Puerto Rico; and the entire area constituting the District of Columbia; and Guam. This notice will refer to all these entities collectively as ''counties.''

Bureau also permits the use of legal boundaries in some states and situations to allow for census tract-to-governmental unit relationships where the governmental boundaries tend to remain unchanged between censuses. The following features are acceptable as census tract boundaries for Census 2000:

- All state and county boundaries (always required).
- Visible, perennial natural and cultural features, such as roads, rivers, canals, railroads, above-ground high-tension power lines, and so forth.
- All minor civil division (MCD) boundaries (generally towns or townships) in Connecticut, Indiana, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.
- Those MCD boundaries not coincident with the boundaries of incorporated places that themselves are MCDs (being either coextensive with an MCD or independent of MCDs) in Illinois (townships only, not election precincts), Iowa, Kansas, Michigan, Minnesota, Missouri (governmental townships only), Nebraska (townships only, not election precincts), North Dakota, Ohio, South Dakota, and Wisconsin.
- Barrio, barrio-pueblo, and subbarrio boundaries in Puerto Rico, census subdistrict boundaries in the Virgin Islands of the United States, MCD-county and island boundaries in American Samoa, and municipal district boundaries in the Northern Mariana Islands.
- All incorporated place boundaries in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.
- Conjoint incorporated place boundaries in other states; that is, the boundary separating two different incorporated places.
- AIR boundaries.
- American Indian trust land, Alaska Native village statistical area, and Alaska Native Regional Corporation boundaries, at the discretion of the Census Bureau, insofar as such boundaries are unambiguous for allocating living quarters as part of Census 2000 activities.

When the features listed above are not available for selection, the Census Bureau may, at its discretion, approve other nonstandard visible features, such as ridge lines, pipelines, intermittent streams, fence lines, and so forth. The Census Bureau also may accept, on a case-by-case basis, the boundaries of selected nonstandard and potentially nonvisible features such as the boundaries of National Parks and National Forests, cemeteries, or other special land-use properties, the straight-line extensions of visible features, and other lines of sight.

4. Population Thresholds

The Census Bureau proposes the following population criteria for census tracts (see Table 1):

- In the United States, Puerto Rico, and the Virgin Islands of the United States: 1,500 to 8,000 inhabitants, with an optimum of 4,000 inhabitants.
- In American Samoa, Guam, and the Northern Mariana Islands: 1,500 to 8,000 inhabitants, with an optimum of 2,500 inhabitants.
- On American Indian reservations: 1,000 to 8,000 inhabitants, with an optimum of 2,500 inhabitants. (The population criteria for AIRs apply to the entire reservation, including AIRs in multiple counties or states).
- In all counties, for census tracts delineated to enclose an institution, a military installation, or other ''special place'' population: at least 1,000 inhabitants, with no optimum average or maximum (no change from 1990). (A special place includes facilities with resident population, such as correctional institutions, military installations, college campuses, workers' dormitories, hospitals, nursing homes, and group homes. A special place includes the entire facility including nonresidential areas and staff housing units, as well as all group quarters population.)

TABLE 1.—POPULATION THRESHOLDS FOR CENSUS 2000 CENSUS TRACTS

Area description	Population thresholds		
	Optimum	Minimum	Maximum
United States, Puerto Rico, Virgin Islands of the U. S.	4,000	1,500	8,000
American Samoa, Guam, Northern Mariana Islands	2,500	1,500	8,000
American Indian reservation	2,500	1,000	8,000
Special place census tract	none	1,000	none

5. Comparability and Implementation

As in previous censuses, the Census Bureau generally will not accept newly proposed census tracts that do not meet the required minimum population. However, with appropriate justification, the Census Bureau may grant exceptions on a case-by-case basis. For example, to facilitate census tract comparability over time, any 1990 census tract or BNA (except a ''sliver'' census tract/BNA—see 6. Sliver Census Tracts) that is virtually unchanged (that is, having less than five percent of the 1990 population affected by a boundary revision) may be recognized as a Census 2000 census tract even if its population falls below the minimum required population or above the maximum allowable population. The Census Bureau, however, recommends combining low population census tracts and splitting large population census tracts to meet the goal of providing meaningful small-area data.

6. Sliver Census Tracts

The Census Bureau will not retain, or continue to recognize for Census 2000, any 1990 ''sliver'' census tracts or BNAs. After the Census Bureau inserted the 1990 census tracts into the TIGER data base, sliver census tracts resulted from:

- County boundary changes or corrections.
- Special land-use boundary changes or corrections (military reservations, National Parks, and so forth).
- Local requests to correct errors in the insertion of 1990 areas into the TIGER data base.

Sliver census tracts usually cover a very small area, and in most cases involve little or no population or housing. The Census Bureau has adopted new rules for establishing tabulation geographic areas in Census 2000 by separating the collection areas from the tabulation areas. This change will eliminate the need for such sliver census tracts in Census 2000.

In 1990, the Census Bureau established rules to assign special numerical suffixes to identify sliver census tracts, generally beginning with .98 and continuing in descending order. The Census Bureau applied the suffix to both the original census tract that lost

territory and the newly created sliver census tract. For Census 2000, we recommend that local participants dispense with the sliver suffix for legitimate census tracts, but will not require a change if specifically requested by the local participant for comparability purposes.

B. Changes to the Criteria for Census 2000

Most provisions of the census tract criteria remain unchanged from those used in conjunction with the 1990 census, with the few exceptions summarized below:

1. The Census Bureau is combining the census tract and BNA programs to create a single census tract program. The major differences between the 1990 census tracts and BNAs were: (1) representatives of the states or Census Bureau staff were responsible for the delineation of BNAs rather than local census statistical areas committees, and (2) census tracts were delineated mainly according to population criteria, while BNAs were delineated to meet data collection criteria based on the number of housing units rather than population. For Census 2000, the Census Bureau will contact local officials for the delineation of census tracts, and there will not be a housing unit criterion, thus bringing both areas under a single standard.

2. The Census Bureau is increasing the number of governmental units that have boundaries acceptable to use as census tract boundaries. The added areas are: all MCDs in Indiana and selected MCDs in Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin; the MCD-county and island areas of American Samoa; and villages in New York.

3. The Census Bureau now allows officials of Federally recognized AIRs meeting the 1,000 minimum population threshold to delineate census tracts without regard to state or county boundaries. Although the Census Bureau will tabulate data for each state-county-census tract part, it also plans to provide summed data for all components of each census tract bearing the same numeric identifier within a Federally recognized AIR.

4. The Census Bureau will use census tracts only as tabulation areas, thus allowing late corrections to census tract boundaries as a result of legal county boundary changes or to correct errors without having to create unique sliver census tracts for such areas.

Definitions of Key Terms

Alaska Native Regional Corporation (ANRC)—A corporate entity established under the Alaska Native Claims Settlement Act of 1972, Public Law 92–203, as amended by Public Law 92–204, to conduct both the business and nonprofit affairs of Alaska Natives. Twelve ANRCs cover the entire State of Alaska except for the Annette Islands Reserve.

Alaska Native Village statistical area (ANVSA)—A statistical entity containing the densely settled extent of an Alaska Native village that constitutes an association, band, clan, community, group, tribe, or village recognized pursuant to the Alaska Native Claims Settlement Act of 1972, Public Law 92–203, as amended by Public Law 92–204.

American Indian reservation (AIR)—A Federally recognized American Indian entity with boundaries established by treaty, statute, and/or executive or court order and over which American Indians have governmental jurisdiction. Along with reservation, designations such as colonies, communities, pueblos, rancherias, and reserves apply to AIRs.

Block numbering area (BNA)—A small-area, statistical geographic division of a county or statistically equivalent area delineated in 1990 instead of and generally geographically equivalent to census tracts. For Census 2000, the Census Bureau is merging the BNA program into the census tract program.

Coastal water—Water bodies between territorial seas and inland water, the encompassing headlands being more than one mile apart and less than 24 miles apart.

Conjoint—A description of a boundary shared by two adjacent geographic entities.

Continuous—A description of areas sharing common boundaries, such that the areas, when combined, form a single piece of territory. Discontinuous areas form disjoint pieces.

Crews-of-vessels census tract—A census tract created at the time of enumeration for allocating the shipboard population of merchant and military ships and identified with a special numeric suffix equal to .99.

Great Lakes' waters—Water area beyond one mile wide headland embayments located in any of the five Great Lakes: Erie, Huron, Michigan, Ontario, or Superior.

Incorporated place—A type of governmental unit, sanctioned by state law as a city, town (except in New England, New York, and Wisconsin), village, or borough (except in Alaska and New York), having legally prescribed limits, powers, and functions.

Inland water—Water bodies entirely surrounded by land or at the point where their opening to coastal waters, territorial seas, or the Great Lakes is less than one mile across.

Minor civil division (MCD)—The primary governmental or administrative division of a county in 28 states, Puerto Rico and the Island Areas having legal boundaries, names, and descriptions. MCDs represent many different types of legal entities with a wide variety of characteristics, powers, and functions depending on the state and type of MCD. In some states, some or all of the incorporated places also constitute MCDs.

Nonvisible feature—A map feature that is not visible on the ground such as a city or county boundary through space, a property line, a short line-of-sight extension of a road, or a point-to-point line of sight.

Special place—A specific location requiring special enumeration because the location includes people not in households or the area includes special land use. Special places include facilities with resident populations, such as correctional institutions, military installations, college campuses, workers' dormitories, hospitals, nursing homes, group homes, and land-use areas such as National Parks. A special place includes the entire facility, including nonresidential areas and staff housing units, as well as all group quarters population.

Territorial seas—Water bodies not included under the rules for inland water, coastal water, or Great Lakes' waters, see above.

Visible feature—A map feature that one can see on the ground such as a road, railroad track, above-ground transmission line, stream, shoreline, fence, sharply defined mountain ridge, or cliff. A nonstandard visible feature is a feature that may not be clearly defined on the ground (such as a ridge), may be seasonal (such as an intermittent stream), or may be relatively impermanent (such as a fence). The Census Bureau generally requests verification that nonstandard features pose no problem in their location during field work.

Dated: December 18, 1996.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 97–2185 Filed 1–28–97; 8:45 am]

BILLING CODE 3510–07–P

International Trade Administration

[A–549–813]

Canned Pineapple Fruit From Thailand: Extension of Time Limit of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results in the administrative review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand, covering the period January 11, 1995, through June 30, 1996, since it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930 (the Act), as amended, 19 U.S.C. 1675(a)(3)(A).

EFFECTIVE DATE: January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0186.

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.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1996, the Department initiated an administrative review of the antidumping duty order on CPF from Thailand, covering the period January 11, 1995, through June 30, 1996 (61 FR 42417). Based on the August 15, 1996, initiation notice, we intended to issue the preliminary results of this review no later than April 2, 1997, and the final results no later than July 31, 1997.

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to issue the preliminary results in 245 days, section 751(a)(3)(A) allows the Department to extend this time period to 365 days.

We determine that it is not practicable to issue the preliminary results within 245 days because there are novel legal issues to address in this first review of this antidumping duty order under the new law. In addition, on December 31, 1996, the Department issued supplemental questionnaires to the three respondents with respect to third-country market selection. In order to allow the Department an opportunity to analyze the responses and select the appropriate comparison market for each respondent, we find that additional time is needed to make our preliminary determination.

Accordingly, the deadline for issuing the preliminary results of this review is now no later than July 31, 1997. The deadline for issuing the final results of this review will be 120 days from the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 14, 1997.

Barbara R. Stafford,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 97–2212 Filed 1–28–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by a U.S. importer of the subject merchandise to the United States and by petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on porcelain-on-steel (POS) cooking ware from the People's Republic of China (PRC). The review covers two manufacturers/exporters of subject merchandise to the United States and the period December 1, 1993 through November 30, 1994. We have preliminarily determined that sales have been made at less than fair value. The Department has calculated these margins based on the best information available.

If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Judy Kornfeld or Kelly Parkhill, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1986, the Department published, in the Federal Register, the antidumping duty order on POS Cooking Ware from the PRC (51 FR 43414). On December 6, 1994, the Department published, in the Federal Register, a notice of opportunity to request an administrative review of this antidumping duty order (59 FR 62710). On December 21, 1994, in accordance 19 C.F.R. 353.22(a)(1), a U.S. importer, CGS International, Inc. (CGS), requested that we conduct an administrative review of Clover Enamelware Enterprise, Ltd. (Clover), a PRC manufacturer/exporter of the subject merchandise, and its third-country reseller in Hong Kong, Lucky Enamelware Factory Ltd. (Lucky). On December 29, 1994, in accordance with 19 CFR 353.22(a), petitioner, General Housewares Corp. (GHC), requested that we conduct an administrative review of China National Light Import and Export Corporation (China Light), Shanghai Branch, through Amerport (H.K.), Ltd. We published the initiation of this antidumping duty administrative review covering the period December 1, 1993 through November 30, 1994, on January 13, 1995 (60 FR 3192). The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Collapsing

The Department collapses related firms (*i.e.*, treats them as a single entity for review purposes and assigns them a single dumping margin) where the type and degree of relationship is so significant that we find there is a strong possibility of price manipulation. *See Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Administrative Review* (61 FR 53711, 53712; October 15, 1996). *See*

also Nihon Cement Co. Ltd. v. United States, 17 CIT 400 (CIT 1993).

Clover is two-thirds owned by Lucky and therefore Lucky holds controlling interest in Clover. Due to Lucky's ownership interest in Clover, and the fact that the same individual is the general manager at both companies, we consider Clover and Lucky (hereafter Clover/Lucky) to be related pursuant to section 771(13) of the Act. As such, and consistent with prior reviews of this order, we have calculated only one rate for both of these companies. For a further discussion of this issue, *see Memorandum from Case Analyst to the File Regarding Status as Related Parties* dated January 17, 1997, which is a public document on file in the Central Records Unit (room B–009 of the Department of Commerce).

Scope of Review

Imports covered by this review are shipments of POS cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the HTS item 7323.94.00. HTS item numbers are provided for convenience and Custom purposes. The written description remains dispositive.

Market-Oriented Industry

Clover/Lucky submitted, with its June 20, 1995 questionnaire response, a request that we treat the POS cooking ware industry as a market-oriented industry (MOI) and therefore use PRC prices for material and non-material inputs for valuing the inputs used to produce POS cooking ware. Clover/Lucky claims that it is subject to market discipline and pays market rates for production process inputs. Further, it claims that it operates as a fully independent entity, responsible to private owners rather than central planners. The Department has previously interpreted section 773(c)(1)(B) of the Act to mean that FMV can be based on a non-market economy (NME) exporter's prices or costs, despite the fact that the country may otherwise be considered an NME, if sufficient market forces are at work. *See Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From the People's Republic of China* (58 FR 7537, 7538; February 8, 1993).

The following three conditions must be met for an MOI to exist: (1) For the merchandise under review, there must be virtually no government involvement in setting prices or amounts to be produced; (2) the industry producing the merchandise under review should be characterized by private or collective ownership; and (3) market-determined prices must be paid for all significant inputs, whether material or non-material (*e.g.*, labor and overhead), and for all but an insignificant portion of all the inputs accounting for the total value of the merchandise under review. (*See Amendment to Final Determination of Sales at Less than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China* (57 FR 15054, April 24, 1992) (*Lug Nuts*).)

The production of POS cooking ware requires a number of significant inputs including chemicals, electricity and labor. In the past, the Department has considered the prices of these inputs to be subject to pricing controls by the PRC government. *See Lug Nuts.* Clover/Lucky has not provided any information on the record of this review that would cause the Department to reconsider its determination with respect to these inputs. Because Clover/Lucky has not demonstrated that market-determined prices are paid for all significant inputs, we do not need to consider whether (1) there is state-required production of the subject merchandise and (2) there is substantial state ownership in the POS cooking ware industry. *See Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China* (57 FR 29705, 29706; July 6, 1992). We therefore find preliminarily in this review that the POS cooking ware industry does not constitute an MOI. Accordingly, we have calculated FMV in accordance with section 773(c) of the Act. For a more detailed discussion of the Department's preliminary determination that the POS cooking ware industry does not constitute an MOI, *see* Decision Memorandum to Barbara E. Tillman, Director of the Office of CVD/AD Enforcement VI, dated January 17, 1997, ''Market-Oriented Industry Request in the 1993–1994 Administrative Review of POS Cooking Ware from the People's Republic of China,'' which is a public document on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Verification

We conducted verification of the information provided by Clover/Lucky. We used 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* of Clover and Lucky dated January 13, 1997, which are on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Separate Rates

AMEREX, the parent company of AMERPORT, China Light's related Hong Kong sales agent, informed the Department in writing that AMERPORT was in the process of corporate liquidation and that the company had no further interest in this matter. Hence, it did not submit a response to the Department's questionnaire, including the section regarding separate rates and, therefore, we have not given China Light a separate rate.

Lucky is located outside the PRC and there is no PRC ownership of the company. Therefore, we determine that no separate rates analysis is required for this third-country reseller because it is beyond the jurisdiction of the PRC government. *See Final Determination of Sales at Less Than Fair Value; Disposable Pocket Lighters from the People's Republic of China* (60 FR 22359, 22361; May 5, 1995). Clover is partially owned by a PRC government company and therefore a separate rates analysis is necessary to determine whether this exporter is independent from government control.

To establish whether a company is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588; May 6, 1991) (*Sparklers*), as amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585; May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in non-market-economy (NME) countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.

1. Absence of De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Clover's submissions pertaining to legislative enactments and the terms of its Enterprise Legal Person Operation License demonstrate the absence of *de jure* control. (*See* Memorandum from Kelly Parkhill to Barbara E. Tillman, dated January 17, 1997, ''Assignment of Separate Rate for Clover/Lucky in the 1993–1994 and 1994–1995 Administrative Reviews of POS Cooking Ware from the People's Republic of China'' (*Separate Rate Memorandum*), which is a public document on file in Central Records Unit (room B–009 of the Department of Commerce).

2. Absence of De Facto Control

De facto absence of government control with respect to exports is based on four criteria: (1) whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts. *See Silicon Carbide* at 22587.

With respect to *de facto* absence of government control, the information submitted by Clover in the questionnaire response indicates the following: (1) no government entity exercises control over its export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, utilizing profits to provide dividends to shareholders, and it has the authority to seek out loans at market interest rates. This information supports the finding that there is *de facto* absence of governmental control of export functions. Consequently, we have determined that Clover/Lucky has met the criteria for the application of separate rates according to the criteria identified in *Sparklers* and *Silicon Carbide*. For a further discussion of this issue, *see Separate Rate Memorandum*.

Best Information Available

We preliminarily determine, in accordance with sections 776(b) and (c) of the Act, that the use of best information available (BIA) is appropriate for China Light and Clover/Lucky. (*See* ''Memorandum for Jeffrey P. Bialos from Barbara E. Tillman Regarding Use of Best Information Available'' dated January 16, 1997, which is a public document on file in the Central Records Unit (room B–099 of the Main Commerce Building).) Section 776(b) of the Act states that the Department shall use BIA whenever it is unable to verify the information submitted. Section 776(c) of the Act states that the Department shall use BIA whenever a company refuses or is unable to produce information in a timely manner and in the form required, or significantly impedes an investigation or review.

In deciding what to use as BIA, section 353.37(b) of the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information or impedes a proceeding. Thus, the Department determines on a case-by-case basis what is BIA. The Department uses a two-tiered approach in its choice of BIA. When a company refuses to provide the information requested in the form required or otherwise significantly impedes the Department's review (first tier), the Department will normally assign to that company the higher of (1) the highest rate found for any firm in the less-than-fair-value (LTFV) investigation or a prior administrative review; or (2) the highest rate found in the current review for any firm. When a company has cooperated with the Department's request for information but fails to provide information requested in a timely manner or in the form required such that margins for certain sales cannot be calculated (second tier), the Department will normally assign to those sales the higher of (1) the highest rate applicable to that company for the same class or kind of merchandise from any previous review or the original investigation; or (2) the highest calculated margin for any respondent in the current review. *See Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of An Antidumping Duty Order: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et. al.* (58 FR 39729, July 26, 1993). This practice has been upheld in *Allied-Signal Aerospace Co. v. United States*, 996 F.2d 1185 (Fed. Cir. 1993), and *Krupp Stahl AG et al.* v. *United States*, 822 F. Supp. 789 (CIT 1993).

As mentioned above, China Light did not respond to our questionnaire. As non-cooperative, first-tier BIA, and in accordance with section 776(c) of the Act, we have applied the highest margin calculated in the LTFV investigation, prior administrative reviews, or in this review, which is 66.65 percent. Further, China Light was not found eligible for a separate rate in this review. Consequently, China Light is part of the single NME entity in this review, which has been assigned the PRC country-wide rate (*see, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*; 67 FR 15218; April 5, 1996 at 15221, and discussion below).

Clover/Lucky cooperated with our requests for information and agreed to undergo verification. From July 17 through July 29, 1995, the Department attempted verification of the company's questionnaire response at Lucky's sales offices in Hong Kong and Clover's factory in Shenzhen, PRC. As a result of these verification efforts with respect to Clover's questionnaire response, we discovered significant discrepancies and were unable to verify substantial sections of the questionnaire response, including the statutorily required factors of production information, such as the number of labor hours worked and the per unit quantities consumed of primary material inputs. These discrepancies are detailed in Clover's *verification report*, dated January 13, 1997.

As a result, the Department has determined that the data the company submitted is unverifiable. Therefore, in accordance with section 776(b) of the Act, there is no basis to accept the integrity of the factors of production information submitted in the questionnaire response, constituting a verification failure. *See, Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From the People's Republic of China* (61 FR 1708; January 13, 1997). Because the respondent failed verification, the Department must use BIA. Since Clover/Lucky was cooperative, we have applied second-tier BIA. The second-tier BIA rate is the highest rate applicable to the company from a previous review or the original LTFV investigation, which in this case is 66.65 percent, the rate Clover/Lucky received in the 1990/91 administrative review.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Rate (percent)
Clover/Lucky	66.65
PRC-Wide Rate (including China Light)	66.65

The PRC-wide rate applies to all entries of subject merchandise except for entries from manufacturers and exporters that are individually identified above. The Department

implements a policy in NME cases whereby all exporters or producers are presumed to comprise a single entity, the ''NME entity.'' The U.S. Court of International Trade has upheld our NME policy in previous cases. *See*, e.g., *UCF America, Inc.* v. *United States*, 870 F. Supp. 1120, 1126 (CIT 1994); *Sigma Corp.* v. *United States*, 841 F. Supp. 1255, 1266–67 (CIT 1993), and; *Tianjin Machinery Import & Export Corp.* v. *United States*, 806 F. Supp. 1008, 1013–15 (CIT 1992). Thus, we assign the NME rate to the NME entity just as we assign an individual rate to a single exporter or producer operating in a market economy. As a result, all exporters and producers that are part of the NME entity are assigned the ''NME-wide'' rate. Because the ''NME-wide'' rate is the equivalent of a company-specific rate, it changes only when we review the NME entity (*i.e.*, all NME producers and exporters that have not qualified for a separate rate). To qualify for a separate rate, as discussed under the *Separate Rates* section of this notice, an NME exporter or producer must provide evidence showing both *de jure* and *de facto* absence of government control over export activities. Until such evidence is presented, a company is presumed to be part of the NME entity and receives the ''NME-wide'' rate. All exporters or producers will either qualify for a separate company-specific rate, or be part of the NME entity and receive the ''NME-wide'' rate. In this review, Clover/Lucky qualifies for a separate rate as discussed in the ''Separate Rates'' section of this notice. Because China Light does not qualify for a separate rate, it remains part of the NME entity, which is subject to the new PRC-wide rate established in the final results of this administrative review.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. *See* section 353.38(d) of the Department's regulations. Parties who submit arguments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of POS cooking ware from the PRC 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 rate for the reviewed company named above which has a separate rate, Clover/Lucky, will be the rate for that company established in the final results of this administrative review; (2) for all other PRC exporters, the cash deposit rate will be the highest rate from the LTFV investigation, this review, or any prior administrative reviews, which is the PRC (country-wide) rate; and (3) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: January 21, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–2211 Filed 1–28–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–538–802]

Shop Towels From Bangladesh; Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Review.

SUMMARY: On October 23, 1996, the Department of Commerce (the Department) issued the final results of administrative review of the antidumping duty order on Shop Towels from Bangladesh, which published on October 30, 1996 in the Federal Register.

The review covered six manufacturers/exporters. The review period is March 1, 1994, through February 28, 1995. Based on the correction of a ministerial error, we are amending the final results with respect to Greyfab (BD) Limited (Greyfab)

EFFECTIVE DATE: January 29, 1997.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi or Kris Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–5760; (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 1996, the Department published the final results of the administrative review of Shop Towels from Bangladesh in the Federal Register (61 FR 55957). The review covers six manufacturers/exporters. The review period is March 1, 1994 through February 28, 1995.

On November 21, 1996, the Department released disclosure materials to the parties in accordance with 19 CFR 353.28. Within the time limits set forth under 19 CFR 353.28, in a submission dated November 25, 1996, Greyfab contended that, in the final results, the Department inadvertently made a ministerial error in the margin calculation of one sales transaction by assigning a positive dumping margin to this sale despite the fact that the Department's calculations indicate that there was no dumping on this sale. No parties to this proceeding filed with the Department any replies to Greyfab's November 25, 1996 submission. We agree that this is a ministerial error as defined by 19 CFR 353.28 and have corrected this error. As a result,

Greyfab's margin changed from 0.70 percent to 0.02 percent.

Amended Final Results of Review

As a result of our correction of this ministerial error, we have determined that the following percentage weighted-average margin exists for the period March 1, 1994 through February 28, 1995:

Manufacturer/exporter	Margin percent
Greyfab (BD) Limited	0.02

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the export price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions on the exporter directly to the Customs Service.

Furthermore, a cash deposit of zero percent will be required for all shipments by Greyfab of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these amended final results of administrative review, as provided by section 751(a)(1) of the Tariff Act of 1930.

This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to the importer of its responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with 19 CFR 353.28.

Dated: January 23, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–2213 Filed 1–28 97; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as ''Export Trade Certificate of Review, application number 97–00001.'' A summary of the application follows.

Summary of the Application

Applicant: Dairy Marketing Information Association (''DMIA''), 30 West Mifflin Street, Suite 401, Madison, Wisconsin 53703.

Contact: Donald M. Barnes, Esquire.

Telephone: (202) 326–1500.

Application No.: 97–00001.

Date Deemed Submitted: January 17, 1997.

Members (in addition to applicant): Land O'Lakes, Inc., Minneapolis, MN; Foremost Farms USA, Baraboo, WI; Mid-America Dairymen, Inc., Springfield, MO; Ellsworth Cooperative Creamery Association, Ellsworth, WI; Darigold Farms, Seattle, WA; Associated Milk Producers, Inc. (AMPI), San Antonio, TX; Alto Dairy Cooperative, Waupun, WI; Swiss Valley Farms, Co., Davenport, IA; First District Association, Litchfield, MN; and Dairymen's Cooperative Creamery Association, Tulare, CA.

DMIA seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

Products: Dry sweet whey; 35% whey protein concentrate (''WPC''), and edible grade lactose (Standard Industrial Classified Code 202–2023).

Export Trade Facilitation Services (as They Relate to the Export of Products and Services)

Export Trade Facilitation Services including professional services in the areas of consulting, marketing and trade promotion, legal assistance, communication and processing of sales leads and export orders, and negotiation of price to be paid by foreign buyer.

Export Markets

All parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

DMIA seeks to:

1. Enter into joint discussions, negotiations, and bidding with foreign buyers regarding the purchase of the products specified herein.

2. Act jointly to negotiate and establish export prices for the products specified herein to be marketed through DMIA's services, in connection with actual or potential bona fide export opportunities, provided that each DMIA

Member remains free to deviate from the joint export price in independently exporting its commodities not dedicated to DMIA.

3. Act jointly to establish sales strategies in the Export Markets.

4. Process export orders on behalf of DMIA Members.

5. Exchange information regarding export transactions, including:

a. information that is already available to the dairy industry or to the general public;

b. information that is already exchanged among DMIA Members pursuant to the Cooperative Marketing Act of 1926, 7 U.S.C. Section 455;

c. information on costs specific to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents, commissions, export sales documentation and service, and export sales financing);

d. information about U.S. and foreign legislation and regulation affecting sales to Export Markets;

e. information about the price, quantity, and delivery dates of products supplied by DMIA Members for export through DMIA's services;

f. information about terms and conditions of contracts for sales in the Export Markets to be considered by DMIA Members, including specifications from particular customers as well as customary terms and conditions;

g. information about DMIA's international marketing efforts and promotional activities undertaken by DMIA on behalf of its Members;

h. information about orders received by DMIA; and

i. information about the independent export operations of DMIA Members regarding the products specified herein, including but not limited to, sales and distribution networks established by DMIA Members, and prior export sales (including foreign customer and export price information).

6. Jointly sponsor promotional, sales and marketing efforts aimed at developing existing or new Export Markets.

7. Provide through DMIA Export Trade Facilitation Services to assist the export of Members' specified dairy commodities.

8. Share among the Members, on a proportionate basis, the profits or losses resulting from an export sale through DMIA, and the cost of Export Trade Facilitation Services.

9. Select a member to negotiate and arrange for transportation of the subject commodity.

10. Reimburse through DMIA the transport costs expended by the DMIA Member responsible for transporting the commodities for a particular export sale transacted through DMIA's clearing services, where such transport costs are shared by the Members on a proportional basis.

11. Meet to engage in the activities described in paragraphs one through ten above.

12. Utilize staff of the Wisconsin Federation of Cooperatives or, as needed the staff of a similar outside organization to implement the activities described in paragraphs one through eleven above.

13. Refuse to provide export clearing services and participation in the other activities described in paragraphs one through twelve above to non-members.

Dated: January 23, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–2112 Filed 1–28–97; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[Docket No. 970114007–7007–01; I.D. 010897C]

RIN 0648–ZA26

Financial Assistance for Research and Development Projects in the Gulf of Mexico and Off the U.S. South Atlantic Coastal States; Marine Fisheries Initiative (MARFIN)

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

ACTION: Notice.

SUMMARY: Subject to the availability of funds, NMFS issues this notice describing funding to assist persons in carrying out research and development projects that optimize the use of fisheries in the Gulf of Mexico and off the South Atlantic States of North Carolina, South Carolina, Georgia, and Florida involving the U.S. fishing industry (recreational and commercial), including fishery biology, resource assessment, socio-economic assessment, management and conservation, selected harvesting methods, and fish handling and processing. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications will be selected for funding. Areas of this Marine Fisheries Initiative (MARFIN) emphasis were formulated from recommendations received from non-Federal scientific and technical experts, and NMFS research and operations officials.

DATES: Applications for funding under this program will be accepted between January 29, 1997 and 5 p.m. eastern daylight time on March 31, 1997. Applications received after that time will not be considered for funding. No facsimile applications will be accepted.

Applications may be inspected at the NMFS Southeast Regional Office (see **ADDRESSES**) from April 4, 1997 through April 7, 1997.

ADDRESSES: Send applications to: Ellie Francisco Roche, Competitive Programs Manager, Cooperative Programs Division, Southeast Regional Office, NMFS, 9721 Executive Center Drive, N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Ellie Francisco Roche, 813–570–5324.

SUPPLEMENTARY INFORMATION:

I. Authority

The Secretary of Commerce (Secretary) is authorized under 15 U.S.C. 713c–3(d) to carry out a national program of research and development addressed to such aspects of U.S. fisheries (including, but not limited to harvesting, processing, marketing and associated infrastructures), if not adequately covered by projects assisted under subsection (c) of this section, as the Secretary deems appropriate.

II. Catalog of Federal Domestic Assistance (CFDA)

This program is described in the ''Catalog of Federal Domestic Assistance'' (CFDA) under program number 11.433, Marine Fisheries Initiative.

III. Program Description

MARFIN is a competitive Federal assistance program that promotes and endorses programs that seek to optimize research and development benefits from U.S. marine fishery resources through cooperative efforts that involve the best research and management talents to accomplish priority activities. Projects funded under MARFIN are focused into cooperative efforts that provide answers for fishery needs covered by the NMFS Strategic Plan, available from the Southeast Regional Office (see **ADDRESSES**), particularly those goals relating to rebuilding overfished marine fisheries, maintaining currently productive fisheries, and integrating conservation of protected species and fisheries management.

Applications from multiple cooperating applicants that address

conservation and management needs over a wide range of a fishery or fishery organism are encouraged. Emphasis will be placed upon funding projects that have the greatest probability of recovering, maintaining, improving, or developing fisheries; improving the understanding of factors affecting recruitment success; and/or generating increased values and recreational opportunities from fisheries. Projects will be evaluated as to the likelihood of achieving these benefits through both short- and long-term research efforts, with consideration of the magnitude of the eventual economic or social benefits that may be realized. Short-term projects that may yield more immediate benefits and projects yielding longer-term benefits will receive equal consideration.

IV. Funding Availability

This solicitation announces that funding of approximately $1.10 million may be available in FY 1997. MARFIN financial assistance started in FY 1986 and, for FY 1986 through FY 1995, awards totaled about $16.8 million for financial assistance to conduct research for fishery resources in the Gulf of Mexico and off the South Atlantic states of North Carolina, South Carolina, Georgia, and Florida. There is no guarantee that sufficient funds will be available to make awards for all approved projects.

Project proposals accepted for funding for a project period over 1 year that include multiple project components and severable tasks to be funded during each budget period will not compete for funding in subsequent budget periods within the approved project period. However, funding for subsequent project components is contingent upon the availability of funds from Congress and satisfactory performance and will be at the sole discretion of the agency. Publication of this notice does not obligate NMFS to award any specific cooperative agreement or to obligate all or any parts of the available funds.

V. Matching Requirements

Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required for the MARFIN program. However, cost-sharing is encouraged and, in case of a tie in considering proposals for funding, cost-sharing may affect the final decision. The appropriateness of all cost-sharing will be determined on the basis of guidance provided in applicable Federal cost principles. If an applicant chooses to cost-share, and if that application is selected for funding, the applicant will be bound by the percentage of the cost share reflected in the cooperative agreement award.

The non-Federal share may include the value of in-kind contributions by the applicant or third parties or funds received from private sources or from state or local governments. Federal funds may not be used to meet the non-Federal share of matching funds, except as provided by Federal statute. Third party in-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project and use of real or personal property owned by others (for which consideration is not required) in carrying out the projects.

The total cost of a project begins on the effective award date of an authorized cooperative agreement between the applicant and the NOAA Grants Officer and ends on the date specified in the award. Accordingly, time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to the award, are neither reimbursable nor recognizable as part of the recipient's cost share.

VI. Type of Funding Instrument

The cooperative agreement has been determined to be the appropriate funding instrument. NMFS is substantially involved in developing program research priorities, conducting cooperative activities with recipients, and evaluating the performance of recipients for effectiveness in meeting national and regional goals for fishery research in the southeastern United States.

VII. Eligibility Criteria

A. Applications for cooperative agreements for MARFIN projects may be made, in accordance with the procedures set forth in this notice, by:

1. Any individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands.

2. Any corporation, partnership, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (46 app. U.S.C. 802).

3. Colleges, universities, and game and fish departments of the several states.

B. Federal agencies, Federal instrumentalities, and Federal employees, including NOAA employees (full-time, part-time, and intermittent personnel or their immediate families), and NOAA offices or centers are not eligible to submit an application under this solicitation or aid in the preparation of an application during the 60-day solicitation period, except to provide information about the MARFIN program and the priorities and procedures included in this solicitation. However, NOAA employees are permitted to provide information about ongoing and planned NOAA programs and activities that may have implication for an application. Potential applicants are encouraged to contact Ellie Francisco Roche at the NMFS Southeast Regional Office (see **ADDRESSES**) for information on NOAA programs.

VIII. Award Period

The award period for the project may be made for more than 1 year consisting of one, two, or three budget periods that correspond to the funding for the proposed project components. The award period will depend upon the duration of funding requested by the applicant in the Application for Federal Assistance, the decision of the NMFS selecting official on the amount of funding, the results of post-selection negotiations between the applicant and NOAA officials, and pre-award review of the application by NOAA and Department of Commerce (DOC) officials. Normally, each project budget period may be no more than 18 months in duration. NOAA policy limits the total duration of a project to 3 years.

IX. Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 25 percent of the Federal share of the total proposed direct costs dollar amount in the application, whichever is less. Institutions with indirect cost rates above 25 percent may use the amount above the 25–percent level as part of the non-Federal share. A copy of the current, approved, negotiated Indirect Cost Agreement with the Federal Government must be included with the application.

X. Profit or Fees

Profit or management fees paid to for-profit or commercial organization grantees are allowable at the discretion of NOAA. However, they shall not exceed 7 percent of the total estimated direct costs. There must be no profit or fees to the recipient in any overhead charge. Payment of fees or profit is based on successful completion of project objectives.

XI. Application Forms and Kit

Before submitting an application under this program, applicants should contact the NMFS Southeast Regional Office for a copy of this solicitation's MARFIN Application Package (see **ADDRESSES**).

Applications for project funding under this program must be complete and in accordance with instructions in the MARFIN Application Package. They must identify the principal participants and include copies of any agreements describing the specific tasks to be performed by participants. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to managing and enhancing the use of Gulf of Mexico and/or South Atlantic fishery resources, and cost estimates as they relate to specific aspects of the project. Budgets must include a detailed breakdown, by category of expenditures, with appropriate justification for both the Federal and non-Federal shares. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application. Applications are not to be bound in any manner and must be one-sided. All incomplete applications will be returned to the applicant. Ten copies (one original and nine copies) of each application are required and should be submitted to the NMFS Southeast Regional Office, Cooperative Programs Division (see **ADDRESSES**). OMB has approved 10 copies, under Approval #0648–0175.

XII. Project Funding Priorities

A. Proposals for FY 1997 should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multidisciplinary. Coordinated efforts involving multiple institutions or persons are encouraged. The areas of special emphasis are listed below, but proposals in other areas will be considered on a funds-available basis.

In addition to referencing specific area(s) of special interest as listed below, proposals should state whether the research will apply to the Gulf of Mexico only, the South Atlantic only, or to both areas. Successful applicants may be required to collect and manage data in accordance with standardized procedures and formats approved by NMFS and to participate with NMFS in specific cooperative activities that will be determined by consultations between NMFS and successful applicants before project grants are awarded. All recipients of financial assistance under this program shall include funding in their applications for the principal investigator to participate in an annual MARFIN Conference in Tampa, FL, at the completion of the project.

1. Bycatch

The bycatch of biological organisms (including interactions with sea turtles and marine mammals) by various fishing gears can have wide-reaching impacts from a fisheries management and an ecological standpoint, with the following major concerns:

a. *Shrimp trawl fisheries.* Studies are needed to contribute to the regional shrimp trawler bycatch program (including the rock shrimp fishery) being conducted by NMFS in cooperation with state fisheries management agencies, commercial and recreational fishing organizations and interests, environmental organizations, universities, Councils, and Commissions. Specific guidance and research requirements are contained in the Cooperative Bycatch Plan for the Southeast, available from NMFS (see **ADDRESSES**). In particular, the studies should address:

(1) Data collection and analyses to expand and update current bycatch estimates, temporally and spatially emphasizing areas of greatest impact by shrimping. Sampling effort should include estimates of numbers, weight, and random samples of size (age) structure of associated bycatch complex, with emphasis on those overfished species under the jurisdiction of the Councils.

(2) Assessment of the status and condition of fish stocks significantly impacted by shrimp trawler bycatch, with emphasis given to overfished species under the jurisdiction of the Councils. Other sources of fishing and nonfishing mortality should be considered and quantified as well.

(3) Identification, development, and evaluation of gear, non-gear, and tactical fishing options to reduce bycatch.

(4) Improved methods for communicating with and improving technology and information transfer to the shrimp industry.

b. *Pelagic longline fisheries.* Several pelagic longline fisheries exist in the Gulf and South Atlantic, targeting highly migratory species such as tunas, sharks, billfish, and swordfish. Priority areas include:

(1) Development and evaluation of gear and fishing tactics to minimize bycatch of undersized and unwanted species, including sea turtles, marine mammals, and overfished finfish species/stocks.

(2) Assessment of the biological impact of longline bycatch on related fisheries.

c. *Reef fish fisheries.* The reef fish complex is exploited by a variety of fishing gear and tactics. The following research on bycatch of reef fish species is needed:

(1) Development and evaluation of gear and fishing tactics to minimize the bycatch of undersized and unwanted species, including sea turtles and marine mammals.

(2) Characterization and assessment of the impact of longline, bandit gear and trap bycatch of undersized target species, including release mortality.

d. *Finfish trawl fisheries.* Studies are needed on quantification and qualification of the bycatch in finfish trawl fisheries, such as the flounder and fly-net fisheries in the South Atlantic.

e. *Gillnet fisheries.* Studies are needed on quantification and qualification of the bycatch in coastal and shelf gillnet fisheries for sciaenids, scombrids, bluefish and other dogfish sharks of the South Atlantic and Gulf of Mexico (particularly interaction with sea turtles and marine mammals).

2. Reef Fish

Some species within the reef fish complex are showing signs of being overfished, either through directed efforts or because they are bycatch of other fisheries. The ecology of reef fish makes them vulnerable to overfishing, because they tend to concentrate over specific types of habitat with patchy distribution. This behavior pattern can make traditional fishery statistics misleading. Priority research areas include:

a. *Collection of basic biological data for species in commercially and recreationally important fisheries.* (1) *Age and growth of reef fish.* (a) Description of age and growth patterns, especially for red, vermilion, gray, and cubera snappers; gray triggerfish; gag; black grouper; spottail pinfish; hogfish; red porgy; and other less dominant forms in the management units for which data are lacking.

(b) Contributions to the development of annual age-length keys and description of age structures for exploited populations for all species in the complex addressed in the Reef Fish and Snapper/Grouper Management Plans for the Gulf and South Atlantic, respectively, prioritized by importance in the total catch.

(c) Design of sampling systems to provide a production-style aging program for the reef fish fishery. Effective dockside sampling programs are needed over a wide geographic

range, especially for groupers, to collect information on reproductive state, size, age, and sex.

(2) *Reproduction studies of reef fish.* (a) Maturity schedules, fecundity, and sex ratios of commercially and recreationally important reef fish, especially gray triggerfish, gag, and red porgy in the Gulf and South Atlantic.

(b) Studies of all species to characterize the actual reproductive contribution of females by age.

(c) Identification and characterization of spawning aggregations by species, area, size group and season.

(d) Effects of fishing on changes of sex ratios for gag, red grouper, and scamp, and disruption of aggregations.

(e) Investigations of the reproductive biology of gag, red grouper and other grouper species.

(3) *Recruitment of reef fish.* (a) Source of recruitment in Gulf and South Atlantic waters, especially for snappers, groupers, and amberjacks.

(b) Annual estimation of the absolute or relative recruitment of juvenile gag, gray snapper, and lane snapper to estuarine habitats off the west coast of Florida and to similar estuarine nursery habitats along the South Atlantic Bight; development of an index of juvenile gag recruitment for the South Atlantic based on historical databases and/or field studies.

(c) The contribution of live-bottom habitat and habitat areas of particular concern (*Oculina* banks) off Fort Pierce, FL, to reef fish recruitment.

(4) *Stock structure of reef fish.* (a) Movement and migration patterns of commercially and recreationally valuable reef fish species, especially gag in the Gulf and South Atlantic and greater amberjack between the South Atlantic and Gulf.

(b) Biochemical/immunological and morphological/meristic techniques to allow field separation of lesser amberjack, almaco jack, and banded rudderfish from greater amberjack to facilitate accurate reporting of catch.

(c) Stock structure of wreckfish in the South Atlantic and of greater amberjack in the Gulf and South Atlantic.

b. *Population assessment of reef fish.* (1) Effect of reproductive mode and sex change (protogynous hermaphroditism) on population size and characteristics, with reference to sizes of fish exploited in the fisheries and the significance to proper management.

(2) Source and quantification of natural and human-induced mortalities, including release mortality estimates for charter boats, headboats, and private recreational vessels, especially for red snapper and the grouper complex.

(3) Determination of the habitat and limiting factors for important reef fish resources in the Gulf and South Atlantic.

(4) Description of habitat and fish populations in the deep reef community and the prey distributions supporting the community.

(5) Development of statistically valid indices of abundance for important reef fish species in the South Atlantic and Gulf, especially red grouper, jewfish, and Nassau grouper.

(6) Assessment of tag performance on reef fish species, primarily snappers and groupers. Characteristics examined should include shedding rate, effects on growth and survival, and ultimately, the effects of these characteristics on estimations of vital population parameters.

(7) Stock assessments to establish the status of major recreational and commercial species. Innovative methods are needed for stock assessments of aggregate species, including the effect of fishing on genetic structure and the incorporation of sex change for protogynous hermaphrodites into stock assessment models.

(8) Assessment of Florida Bay recovery actions on reef fish recruitment and survival.

c. *Management of reef fish.* (1) Research in direct support of management, including catch-and-release mortalities, by gear and depth.

(2) Evaluation of the use of reef fish marine reserves as an alternative or supplement to current fishery management measures and practices, especially in the South Atlantic. Field studies should focus on the Experimental Oculina Reef Reserve and Florida Keys National Marine Sanctuary sites and contrast these with control open sites.

(3) Characterization and evaluation of biological impacts (e.g., changes in age or size structure of reef fish populations in response to management strategies).

(4) Evaluation of vessel log data for monitoring the fishery and for providing biological, economic, and social information for management; and methods for matching log data to Trip Information Program samples for indices of effort.

3. Sharks

The Secretarial Fishery Management Plan for Sharks of the Atlantic Ocean (FMP) identifies a number of research needs, including:

a. Characterization of the commercial and recreational fisheries from historical and current databases. Emphasis should be on species composition, bycatch, stock identification, size, sex ratios, and catch-per-unit-effort by season, area, and gear type.

b. Collection and analysis of basic biological data on movements, habitats, growth rates, mortality rates, age structure, and reproduction parameters. These data are of particular importance for blacktip and sandbar sharks.

c. Development of species profiles and stock assessments for sharks taken in significant quantities by commercial, recreational, and bycatch fisheries. Assessments can be species-specific or for species groups, following those identified in the FMP.

d. Identification of nursery area and methods to protect young sharks.

e. Evaluation of present regulations and improvement of methods to determine landings.

4. Coastal Migratory Pelagic Fisheries

The commercial and recreational demand for migratory coastal pelagics has led to overfishing for certain species, including some stocks of king and Spanish mackerel. Additionally, some are transboundary with Mexico and other countries and may ultimately demand international management attention. Current high priorities include:

a. Recruitment indices for king and Spanish mackerel, cobia, dolphin, and bluefish, primarily from fishery-independent data sources.

b. Assessment and management models for coastal pelagic resources that are dominated by single year classes, such as Spanish mackerel, dolphin, and bluefish.

c. Fishery-independent methods of assessing stock abundance of king and Spanish mackerel.

d. Release mortality data for all coastal pelagic species.

e. Improved catch statistics for all species in Mexican waters, with special emphasis on king mackerel. This includes length-frequency and life history information.

f. Information on populations of coastal pelagics overwintering off the Gulf of Mexico and the South Atlantic States of North Carolina, South Carolina, Georgia, and Florida, especially concerning population size, age and movement patterns.

g. Development of a practical method for aging dolphin.

h. Basic biostatistics for cobia and dolphin to develop age-length keys and maturation schedules for stock assessments.

i. Impact of bag limits on total catch and landings of king and Spanish mackerel.

j. Demand and/or supply functions for private recreational and commercial

king mackerel fisheries, including baseline cost and return data. Emphasis should be on changes in marginal values of producer and consumer surplus, since the studies would be used in allocation frameworks where total values are not necessarily required.

k. Determination of the stock structure of king mackerel from South Atlantic and Gulf waters.

l. Sociological and anthropological surveys of coastal pelagic fisheries.

5. Highly Migratory Pelagic Species

Several fisheries exist in the Gulf and South Atlantic that target highly migratory species, such as tuna and billfish. Changes in the temporal and spatial components of fishing effort and fishing gear and tactics need to be characterized and the effects quantified. Priority areas include:

a. Characterization of specific longline fisheries, including targeted species, stock identification, catch-per-unit effort, and biological parameters (e.g., sex ratios and reproductive state) by gear type, area, and season.

b. Evaluation of vessel log data for monitoring the fisheries.

c. Dependence of vessels and persons engaged in pelagic longlining on other fisheries. Particular emphasis should be placed on the extent to which the capital and/or labor engages in other fisheries at particular times of the year and reasons for this switching behavior.

6. Groundfish and Estuarine Fishes

Substantial stocks of groundfish and estuarine species occur in the Gulf and South Atlantic. Most of the database for assessments comes from studies conducted by NMFS and state fishery management agencies. Because of the historic and current size of these fish stocks, their importance as predator and prey species, and their current or potential use as commercial and recreational fisheries, more information on their biology and life history is needed. General research needs are:

a. *Red drum*. (1) Size and age structure of the offshore adult stock in the Gulf.

(2) Life history parameters and stock structure for the Gulf and the South Atlantic: Migratory patterns, long-term changes in abundance, growth rates, and age structure. Specific research needs for Atlantic red drum are estimates of fecundity as a function of length and weight and improved coastwide coverage for age-length keys.

(3) Catch-and-release mortality rates from inshore and nearshore waters.

b. Life history and stock structure for weakfish, menhaden, spot, and croaker in the Gulf and the South Atlantic: Migratory patterns, long-term changes in abundance, growth rates, and age structure and comparisons of the inshore and offshore components of recreational and commercial fisheries.

c. Improved catch-and-effort statistics from recreational and commercial fisheries, including development of age-length keys for size and age structure of the catch, to develop production models.

7. General

There are many other areas of research that need to be addressed for improved understanding and management of fishery resources. These include methods for data collection, management, analysis, and better conservation. Examples of high-priority research needs include:

a. Update existing economics information on the for-hire fisheries (charter boats, headboats and guide boats) A study covering the year-round activities of the for-hire industry from Texas to North Carolina.

b. Development of improved methods and procedures for transferring technology and educating constituency groups concerning fishery management and conservation programs. Of special importance are programs concerned with controlled access and introduction of conservation gear.

c. Compilation of baseline socio-demographic data for describing the social and cultural framework of managed fisheries.

d. Design and evaluation of innovative approaches to fishery management with special attention given to those approaches that control access to specific fisheries.

B. Priority in program emphasis will be placed upon funding projects that have the greatest probability of recovering, maintaining, improving, or developing fisheries; improving the understanding of factors affecting recruitment success; and generating increased values and recreational opportunities from fisheries. Projects will be evaluated as to the likelihood of achieving these benefits through short- and long-term research efforts, with consideration given to the magnitude of the eventual economic benefits that may be realized.

XIII. Evaluation Criteria

Successful applicants generally will be recommended within 210 days from the date of publication of this notice. The earliest start date of awards will be about 90 days after each project is selected and after all NMFS/applicant negotiations of cooperative activities have been completed (the earliest start date of awards will be about 300 days after the date of publication of this notice). Applicants should consider this selection and processing time in developing requested start dates for their applications. Proposed projects will be evaluated and ranked as follows:

A. Cooperatively developed applications that propose activities of two or more qualified applicants to address important fishery conservation and management issues or problems identified in the Project Funding Priorities for this solicitation may be evaluated as a group by NMFS. If selected for funding, individual cooperative awards may be made to each individual applicant. Application procedures for this type of proposal are also included in the FY 1997 MARFIN Application Package.

B. Unless otherwise specified by statute, in reviewing applications for cooperative agreements, including those that include consultants and contracts, NOAA will make a determination regarding the following:

1. Is the involvement of the applicant necessary to the conduct of the project and the accomplishment of its goals and objectives?

2. Is the proposed allocation of the applicant's time reasonable and commensurate with the applicant's involvement in the project?

3. Are the proposed costs for the applicant's involvement in the project reasonable and commensurate with the benefits to be derived from the applicant's participation?

4. Is the project proposal substantial in character and design?

C. Applications meeting the above requirements will be forwarded for technical evaluation. Applicants submitting applications not meeting the above requirements will be notified. Evaluations normally will involve experts from non-NOAA as well as NOAA organizations. Comments submitted to NMFS by each evaluator will be taken into consideration in the ranking of projects. NMFS will provide point scores on proposals, based on the following evaluation criteria:

1. Does the proposal have a clearly stated goal(s) with associated objectives that meet the needs outlined in the Project Narrative? (30 points)

2. Does the proposal clearly identify and describe, in the Project Outline and Statement of Work, scientifically valid methodologies and analytical procedures that will adequately address project goals and objectives? (30 points)

3. Do the principal investigators provide a scientifically realistic timetable to enable full accomplishment

of all aspects of the Statements of Work? (20 points)

4. Do the principal investigators define how they will maintain stewardship of the project performance, finances, cooperative relationships, and reporting requirements for the proposal? (10 points)

5. Are the proposed costs appropriate for the scope of work proposed? (10 points)

XIV. Selection Procedures

All applications will be ranked by a NMFS scientific panel into two groups: Recommended, and Not Recommended. Proposals ranked as Not Recommended will not be given further consideration for selection and funding. Recommended rankings will be presented to a panel of non-NOAA fishery experts who will individually consider the significance of the problem addressed in each project proposal, the technical evaluation, and need for funding. These panel members will provide individual recommendations to NMFS on each proposal classified as Recommended.

The non-NOAA panel members' individual comments, recommendations and evaluations, and recommendations of the NMFS scientific panel and NMFS Southeast Program Officer will be considered by the Regional Administrator, Southeast Region, NMFS (Regional Administrator). The Regional Administrator, in consultation with the Assistant Administrator for Fisheries, will: (a) Determine which projects do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other Federal offices, (b) select the projects to be funded, (c) determine the amount of funds available for each project, and (d) determine which components of the selected projects shall be funded. The exact amount of funds awarded, the final scope of activities, the project duration, and specific NMFS cooperative involvement with the activities of each project will be determined in pre-award negotiations between the applicant, the NOAA Grants Office, and the NMFS Program Staff. Projects must not be initiated by recipients until a signed award is received from the NOAA Grants Office.

NMFS will make project applications available for review as follows:

A. *Consultation with members of the fishing industry, management agencies, environmental organizations, and academic institutions*: NMFS shall, at its discretion, request comments from members of the fishing and associated industries, groups, organizations, and institutions who have knowledge in the subject matter of a project or who would be affected by a project.

B. *Consultation with Government agencies*: Applications will be reviewed by the NMFS Southeast Region Program Office in consultation with the NMFS Southeast Fisheries Science, including appropriate operations and laboratory personnel, the NOAA Grants Officer and, as appropriate, DOC bureaus and other Federal agencies.

XV. Other Requirements

A. *Federal policies and procedures*. Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards. Women and minority individuals and groups are encouraged to submit applications under this program.

B. *Past performance*. Any first-time applicant for Federal grant funds is subject to a pre-award accounting survey prior to execution of the award. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

C. *Pre-award activities*. If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of DOC to cover pre-award costs.

D. *No obligation of future funding*. If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

E. *Delinquent Federal debts*. No award of Federal funds shall be made to an applicant or to its subrecipients who have any outstanding delinquent Federal debt or fine until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to DOC are made.

F. *Name check review*. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity. Potential non-profit and for-profit recipients may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

G. *Primary applicant certifications*. All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

1. *Nonprocurement debarment and suspension*. Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

2. *Drug-free workplace*. Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, Subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. *Anti-lobbying*. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, contracts for more than $100,000, loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. *Anti-lobbying disclosures*. Any applicant who has paid or will pay for lobbying using any funds must submit a Form SL-LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

H. *Lower tier certifications*. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower-tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form SF-LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. A form SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

I. *False statements*. A false statement on the application is grounds for denial

or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

J. *Intergovernmental review*. Applications under this program are subject to the provisions of E.O. 12372, ''Intergovernmental Review of Federal Programs.''

K. *Requirement to buy American-made equipment and products*. Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

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

Cooperative agreements awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

Federal participation under the MARFIN Program may include the assignment of DOC scientific personnel and equipment.

Reasonable, negotiated financial compensation will be provided under awards for the work of eligible grantee workers.

Information-collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB Control No. 0648–0175) under the provisions of the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. Public reporting burden for agency-specific collection-of-information elements, exclusive of requirements specified under applicable OMB circulars, is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this reporting burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**).

Authority: 15 U.S.C. 713c–3(d)

Dated: January 22, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–2109 Filed 1–28–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 012197B]

Gulf of Mexico Fishery Management Council; Meeting

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

ACTION: Notice of meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of its Personnel Committee.

DATES: This meeting will be held from 8:00 a.m. to 10:00 a.m. on February 6, 1997.

ADDRESSES: This meeting will be held at the Radisson Bay Harbor Inn, 7700 Courtney Campbell Causeway, Tampa, FL; telephone: 813–281–8900.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne E. Swingle, Executive Director; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to discuss personnel issues (CLOSED SESSION).

Dated: January 23, 1997.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–2108 Filed 1–28–97; 8:45 am]

BILLING CODE 3510–22–F

National Weather Service Proposed Automation and Closure Certifications

SUMMARY: On January 7, 1997 (62 FR 981), the National Weather Service (NWS) published a notice and opportunity for public comment for 43 proposed automation and closure certifications. Since that time, it has been determined that at six of these sites, NWS is not ready to proceed with the proposed certifications. Accordingly, this notice is to advise that these six proposed automation and closure certifications are being withdrawn.

ADDRESSES: Inquiries regarding these withdrawals should be directed to Tom Beaver, Room 09356, 1325 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 X151.

SUPPLEMENTARY INFORMATION: In compliance with Public Law 102–567, the Secretary of Commerce must certify that automating, consolidating, relocating, and closing any field office will not result in any degradation of service to the affected areas of responsibility. Further, the Secretary must publish the proposed certification in the Federal Register for a 60-day public comment period. This certification authority has been delegated to the Under Secretary for Oceans and Atmosphere.

On January 7, 1997, the NWS published 43 proposed automation and closure certifications (62 FR 981). Since that time, it has been determined that at six of these sites, NWS is not ready to proceed with the proposed certifications. Accordingly, to avoid any confusion and ensure that the public does not waste time submitting comments unnecessarily, the NWS is withdrawing the following six proposed automation and closure certifications:

(1) The residual Boston Weather Service Office (WSO);

(2) Bridgeport, Connecticut WSO;

(3) The residual Portland, Maine WSO;

(4) Providence, Rhode Island WSO;

(5) Hartford, Connecticut WSO; and

(6) Worcester, Massachusetts WSO.

The NWS will propose these certifications for a 60-day public comment period at a later date.

Dated: January 23, 1997.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 97–2077 Filed 1–28–97; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0076]

Comment Request Entitled Novation/ Change of Name Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0076).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Novation/Change of Name Requirements. This OMB clearance currently expires on April 30, 1997.

DATES: *Comment Due Date:* March 31, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0076, Novation/Change of Name Requirements, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

When a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts or (2) a name change, it must submit certain documentation to the Government.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *27.5* 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.

The annual reporting burden is estimated as follows: Respondents, *1,000;* responses per respondent, *1;* total annual responses, *1,000;* preparation hours per response, *.458;* and total response burden hours, *458.*

Dated: January 23, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–2167 Filed 1–28–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 191. This bulletin lists revisions in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 191 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: February 1, 1997.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 190. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the Federal Register now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

BILLING CODE 5000–04–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:				
ADAK NAVAL AIR STATION 2/	75	60	135	02/01/97
ADAK NAVAL SECURITY GRP ACT 2/	75	60	135	02/01/97
ANCHORAGE				
05/01 -- 09/30	147	66	213	02/01/97
10/01 -- 04/30	81	60	141	02/01/97
ANCHORAGE NAVAL RESERVE CENTER				
05/01 -- 09/30	147	66	213	02/01/97
10/01 -- 04/30	81	60	141	02/01/97
BARROW	110	76	186	03/01/96
BETHEL	93	61	154	02/01/97
CORDOVA	74	72	146	02/01/97
CRAIG				
05/01 -- 08/31	97	96	193	03/01/96
09/01 -- 04/30	75	94	169	03/01/96
DELTA JUNCTION	75	64	139	02/01/97
DUTCH HARBOR-UNALASKA	110	75	185	02/01/97
EARECKSON AIR STATION	75	60	135	02/01/97
EIELSON AFB				
05/16 -- 09/14	121	60	181	02/01/97
09/15 -- 05/15	75	55	130	02/01/97
ELMENDORF AFB				
05/01 -- 09/30	147	66	213	02/01/97
10/01 -- 04/30	81	60	141	02/01/97
FAIRBANKS				
05/16 -- 09/14	121	60	181	02/01/97
09/15 -- 05/15	75	55	130	02/01/97
FT. GREELY	75	64	139	02/01/97
FT. RICHARDSON				
05/01 -- 09/30	147	66	213	02/01/97
10/01 -- 04/30	81	60	141	02/01/97
FT. WAINWRIGHT				
05/16 -- 09/14	121	60	181	02/01/97
09/15 -- 05/15	75	55	130	02/01/97
HOMER				
05/01 -- 09/30	116	64	180	02/01/97
10/01 -- 04/30	90	61	151	02/01/97
JUNEAU	89	79	168	02/01/97
KENAI-SOLDOTNA				
05/01 -- 09/30	94	61	155	02/01/97
10/01 -- 04/30	74	59	133	02/01/97

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KETCHIKAN				
05/01 -- 09/30	99	77	176	02/01/97
10/01 -- 04/30	83	75	158	02/01/97
KING COVE	85	69	154	03/01/96
KING SALMON	77	68	145	03/01/96
KLAWOCK				
05/01 -- 08/31	97	96	193	03/01/96
09/01 -- 04/30	75	94	169	03/01/96
KODIAK	88	72	160	02/01/97
KULIS AGS				
05/01 -- 09/30	147	66	213	02/01/97
10/01 -- 04/30	81	60	141	02/01/97
MURPHY DOME				
05/16 -- 09/14	121	60	181	02/01/97
09/15 -- 05/15	75	55	130	02/01/97
NOME	93	76	169	02/01/97
PETERSBURG	82	58	140	02/01/97
SEWARD				
05/01 -- 09/15	114	74	188	02/01/97
09/16 -- 04/30	78	71	149	02/01/97
SITKA-MT. EDGECOMBE				
04/01 -- 10/31	97	63	160	02/01/97
11/01 -- 03/31	86	62	148	02/01/97
SKAGWAY				
05/01 -- 09/30	99	77	176	02/01/97
10/01 -- 04/30	83	75	158	02/01/97
SPRUCE CAPE	88	72	160	02/01/97
TANANA	93	76	169	02/01/97
VALDEZ				
05/15 -- 09/15	105	65	170	02/01/97
09/16 -- 05/14	84	64	148	02/01/97
WASILLA	89	65	154	02/01/97
WRANGELL				
05/01 -- 09/30	99	77	176	02/01/97
10/01 -- 04/30	83	75	158	02/01/97
[OTHER]	75	60	135	02/01/97
AMERICAN SAMOA:				
AMERICAN SAMOA	73	48	121	11/01/94
GUAM:				
ANDERSEN AFB 2/	190	85	275	05/01/96
GUAM	190	85	275	05/01/96
NAVAL AIR STATION 2/	190	85	275	05/01/96
NAVAL COMM STATION 2/	190	85	275	05/01/96

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
NAVAL STATION 2/	190	85	275	05/01/96
US NAVAL HOSPITAL 2/	190	85	275	05/01/96
HAWAII:				
CAMP H M SMITH	110	70	180	07/01/96
EASTPAC NAVAL COMP TELE AREA	110	70	180	07/01/96
FT. DERUSSEY	110	70	180	07/01/96
FT. SHAFTER	110	70	180	07/01/96
HICKAM AFB	110	70	180	07/01/96
HONOLULU NAV & MC RESERVE CTR	110	70	180	07/01/96
ISLE OF HAWAII: HILO	74	60	134	07/01/96
ISLE OF HAWAII: OTHER	105	63	168	07/01/96
ISLE OF KAUAI	114	75	189	07/01/96
ISLE OF KURE	10	8	18	07/01/96
ISLE OF MAUI				
04/16 -- 12/14	100	63	163	07/01/96
12/15 -- 04/15	113	65	178	07/01/96
ISLE OF OAHU	110	70	180	07/01/96
KANEOHE BAY MC BASE	110	70	180	07/01/96
KEKAHA PACIFIC MISSILE RANGE FAC	114	75	189	07/01/96
KILAUEA MILITARY CAMP	74	60	134	07/01/96
LULUALEI NAVAL MAGAZINE	110	70	180	07/01/96
NAS BARBERS POINT 2/	110	70	180	07/01/96
PEARL HARBOR AFLOAT TNG GRP, MIDDLE	110	70	180	07/01/96
PEARL HARBOR NAVAL COMPLEX	110	70	180	07/01/96
PEARL HARBOR NAVAL SUBMARINE BASE	110	70	180	07/01/96
PEARL HARBOR NAVY PUBLIC WORKS CTR	110	70	180	07/01/96
SCHOFIELD BARRACKS	110	70	180	07/01/96
WHEELER ARMY AIRFIELD	110	70	180	07/01/96
[OTHER]	79	62	141	06/01/93
JOHNSTON ATOLL:				
JOHNSTON ATOLL	22	24	46	07/01/96
MIDWAY ISLANDS:				
MIDWAY ISLAND NAVAL AIR FACILITY	60	13	73	02/01/97
MIDWAY ISLANDS	60	13	73	02/01/97
NORTHERN MARIANA ISLANDS:				
ROTA	83	90	173	05/01/96
SAIPAN	138	89	227	05/01/96
TINIAN	61	72	133	06/01/95

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LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
[OTHER]	20	13	33	12/01/90
PUERTO RICO:				
BAYAMON				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
CAROLINA				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
DORADO				
04/01 -- 12/21	164	83	247	10/01/96
12/22 -- 03/31	300	96	396	10/01/96
FAJARDO [INCL CEIBA, LUQUILLO & HUMACAO]				
05/01 -- 11/23	70	64	134	10/01/96
11/24 -- 04/30	114	68	182	10/01/96
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
LUIS MUNOZ MARIN IAP AGS				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
MAYAGUEZ	90	58	148	02/01/97
PONCE	107	58	165	10/01/96
ROOSEVELT ROADS				
05/01 -- 11/23	70	64	134	10/01/96
11/24 -- 04/30	114	68	182	10/01/96
ROOSEVELT ROADS NAS 2/				
05/01 -- 11/23	70	64	134	10/01/96
11/24 -- 04/30	114	68	182	10/01/96
SABANA SECA				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
SABANA SECA US NAVAL SEC GRP ACT				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
SAN JUAN				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
SAN JUAN US NAVAL RESERVE STATION				
05/01 -- 12/14	102	60	162	10/01/96
12/15 -- 04/30	130	63	193	10/01/96
[OTHER]	70	50	120	10/01/96
VIRGIN ISLANDS (U.S.):				
ST. CROIX	127	78	205	08/01/96

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ST. JOHN				
04/16 -- 12/21	242	89	331	08/01/96
12/22 -- 04/15	391	100	491	08/01/96
ST. THOMAS				
04/12 -- 12/15	168	93	261	08/01/96
12/16 -- 04/11	268	103	371	08/01/96
WAKE ISLAND:				
WAKE ISLAND	40	35	75	10/01/96

Dated: January 23, 1997

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–2078 Filed 1–28–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Notice of Intent to Grant an Exclusive or Partially Exclusive License to TRS Ceramics, Inc.

AGENCY: U.S. Army Research Laboratory.

ACTION: Notice of intent.

SUMMARY: In compliance with 37 CFR 40-4 *et seq.*, the Department of the Army hereby gives notice of its intent to grant to TRS Ceramics, Inc., a corporation having its principle place of business at Suite J, 2820 East College Ave., State College, PA 16801; an exclusive or partially exclusive license to manufacture under U.S. Patents 5,486,491, issued 23 Jan. 1996, entitled ''Ceramic Ferroelectric Composite Material—BSTO–ZRO_2; 5,312,790, issued 17 May 1994, entitled ''Ceramic Ferroelectric Material''; and 5,427,988, issued 27 Jun 1995, entitled ''Ceramic Ferrolectric Composite Material—BSTO–MGO''. Anyone, wishing to object to the granting of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 459, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–2136 Filed 1–28–97; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Intracoastal Waterway (IWW) Locks, Louisiana, Feasibility Study

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

ACTION: Notice of Intent.

SUMMARY: A reconnaissance study of the locks on the Gulf Intracoastal Waterway in Louisiana determined that the Bayou Sorrel Lock has the most immediate need for an increase in capacity to pass navigation traffic and needs to be modified or replaced to provide sufficient height to pass a project flood in the Atchafalaya Basin. The Bayou Sorrel Lock is located along the Morgan City to Port Allen alternate route near the town of Bayou Sorrel and allows navigation traffic to pass through the East Atchafalaya Basin Protection Levee. The DEIS will address alternatives for replacement of the existing Bayou Sorrel Lock.

FOR FURTHER INFORMATION CONTACT: Questions concerning the DEIS should be addressed to Mr. Richard Boe at (504) 862–1505. Questions about the feasibility study should be addressed to Mr. Kevin Wagner at (504) 862–2509. Their address is U.S. Army Corps of Engineers, Planning Division (CELMN–PD), P.O. Box 60267, New Orleans, Louisiana 70160–0267.

SUPPLEMENTARY INFORMATION:

1. *Authority.* The feasibility study is authorized by two Congressional resolutions. The first resolution was adopted by the Committee on Public Works of the U.S. Senate on September 29, 1972, and the second was adopted by the Committee on Public Works of the U.S. House of Representatives on October 12, 1972. Both resolutions requested the Board of Engineers for Rivers and Harbors to investigate the Gulf Intracoastal Waterway to determine the advisability of modifying the existing project.

2. *Proposed Action.* The proposed action is to determine the feasibility of replacing the Bayou Sorrel Lock with a larger, more efficient lock. Various sizes, alignments, and construction techniques will be investigated for the replacement lock. The DEIS will discuss these alternatives and disclose the impacts of the alternatives for which detailed investigations are made.

3. *Alternatives.* A variety of alternatives for replacement of the lock, as well as the no-action alternative, are under investigation. Alternatives include concrete shell design, earthen chamber design, and lock sizes from 75 to 110 feet wide and up to 1,200 feet long. Associated with any lock replacement plan is the necessity to dispose of large quantities of dredged material. Investigations are being conducted to minimize the environmental impact of dredged material disposal and to mitigate for unavoidable impacts.

4. *Scoping.* Scoping is the process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. For this study, a scoping input request letter will be sent to all parties believed to have an interest. The scoping input request will invite comments on study alternatives and other significant study-related issues to be addressed in the DEIS. The scoping input request will also serve as an invitation to a public scoping meeting to be held in the town of Bayou Sorrel in early 1997. All interested parties are invited to comment at this time, and anyone interested in this study should request to be included in the study mailing list.

5. *Significant Issues.* The tentative list of issues and resources to be evaluated in the DEIS includes: forested wetlands (including wildlife resources), aquatic resources (including water quality), threatened and endangered species, recreation resources, cultural resources, socioeconomic resources.

6. *Cooperating Agencies.* Non-Federal cost sharing will be provided through the Inland Waterway Trust Fund, administered by the Inland Waterway Users Board. No cooperating agencies have been designated.

7. *Environmental Consultation and Review.* The U.S. Fish and Wildlife Service (Service) is assisting in identification of impacts and in the development of mitigation plans. The Service will provide a Fish and Wildlife Coordination Act report. Consultation will also be accomplished with the Service concerning threatened and endangered species. The DEIS will be distributed to all interested agencies, organizations, and individuals.

8. *Estimated Date of Availability.* The DEIS is scheduled to be distributed to the public in July 1998.

Dated: January 10, 1997.

William L. Conner,

Colonel, U.S. Army, District Engineer.

[FR Doc. 97–2137 Filed 1–28–97; 8:45 am]

BILLING CODE 3710–84–M

Department of Army, Corps of Engineers

Intent to Prepare a Feasibility Study and Draft Environmental Impact Statement (DEIS) for the Anacostia River and Tributaries Phase 2 Feasibility Study in Montgomery County, Maryland

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

ACTION: Notice of Intent.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Baltimore District, U.S. Army Corps of Engineers is initiating the Anacostia River and Tributaries (Phase 2) Feasibility Study on the Montgomery County, Maryland portion of the Northwest Branch watershed. The riparian and aquatic environmental integrity of the Northwest Branch watershed has been severely degraded by urbanization, inadequate infrastructure and industrial encroachment. The Phase 2 study will

result in detailed designs for stream restoration, stormwater management, and stormwater retrofit projects. These projects are expected to restore stream habitat, provide wetland habitat, and improve water quality. A DEIS will be integrated into the feasibility study to document existing conditions, project actions, and project effects and products. Montgomery County and the Maryland National Capital Park and Planning Commission are the non-Federal sponsors for the project.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be addressed to Ms. April Perry, Study Manager, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–P, P.O. Box 1715, Baltimore Maryland 21203–1715, telephone (410) 962–0684. E-mail address: april.s.perry@ccmail.nab.usace.army.mil

SUPPLEMENTARY INFORMATION:

1. The U.S. House of Representatives, Committee on Public Works and Transportation, authorized the Anacostia River and Tributaries Reconnaissance Study in a resolution dated September 8, 1988. It was further authorized in the June 25, 1990 Statement of New Environmental Approaches by the Assistant Secretary of the Army (Civil Works), which gave fish and wildlife restoration the status of a priority project output.

2. The Anacostia River and Tributaries Phase 1 Feasibility Study produced by the Corps in 1994 determined that previous Corps activity in the Anacostia Watershed has had a detrimental impact to the eocsystem of the Anacostia. The study recommended that additional feasibility studies focusing on environmental restoration be pursued. Following the completion of the 1994 Phase 1 feasibility report, the Baltimore District Corps of Engineers and Montgomery County Department of Environmental Protection identified the potential for additional environmental restoration opportunities within the Anacostia watershed.

3. In September of this year, the Corps and Montgomery County executed a feasibility cost-sharing agreement for a Phase 2 Feasibility study. The area proposed for environmental restoration is known as the Northwest Branch of the Anacostia River and is located in the western portion of Montgomery County. The watershed has several environmental problems including channel instability, erosion, and sedimentation that adversely impact the existing habitat and threaten planned restoration measures. The Phase 2 study will identify areas with such problems and recommend projects for specific sites that will be selected. It is anticipated that the study will result in a combination of stream restoration and stormwater management projects.

4. The planning goals of the Phase 2 study are to restore acquatic and riparian habitat, improve water quality, and contribute to the restoration of the Anacostia River ecosystem by stabilizing stream channels that make significant contributions to stream channel erosion and sedimentation and by reducing stormwater runoff rates, velocities, and pollutant loads. To achieve this goal, the Corps will further define the problems and opportunities in the Northwest Branch watershed; analyze and forecast environmental resource conditions; formulate, evaluate, and compare alternative plans for multiple sites; develop detailed designs and costs at selected sites; and recommend a cost-effective plan for the Montgomery County portion of the Northwest Branch watershed.

5. The decision to implement these actions will be based on an evaluation of the probable impact of the proposed activities on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal will be balanced against its reasonably foreseeable costs. The Baltimore District is preparing a DEIS which will describe the impacts of the proposed projects on environmental and cultural resources in the study area and the overall public interest. The DEIS will be in accordance with NEPA and will document all factors which may be relevant to the proposal, including the cumulative effects thereof. Among these factors are habitat restoration, channel and erosion control, improvements to water quality, and stormwater management. If applicable, the DEIS will also apply guidelines issued by the Environmental Protection Agency, under the authority of Section 404(b)(1) of the Clean Water Act of 1977 (Pub. L. 95–217).

6. The public involvement program will include workshops, meetings, and other coordination with interested private individuals and organizations, as well as with concerned Federal, state and local agencies. Coordination letters and newsletters have been sent to appropriate agencies, organizations, and individuals on an extensive mailing list. Additional public information will be provided through print media, mailings, radio and television announcements.

7. In addition to the Corps, Montgomery County, the Maryland National Capital Park and Planning Commission, other participants that will be involved in the study and DEIS process include the following: U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; U.S. Forest Service; U.S. Geological Survey; Natural Resource Conservation Service; and the U.S. National Park Service. The Baltimore District invites potentially affected Federal, state, and local agencies, and other organizations and entities to participate in this study.

8. The Anacostia Phase 2 Feasibility Study and integrated DEIS are tentatively scheduled for public review in March 1999.

Harold L. Nelson,

Acting Chief, Planning Division.

[FR Doc. 97–2135 Filed 1–28–97; 8:45 am]

BILLING CODE 3710–41–M

Department of the Navy

Notice of Availability of Invention for Licensing; Government Owned Invention

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Copies of the patent cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $3.00 each. Requests for copies of the patent should include the patent number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

U.S. Patent No. 5,552.93: AUDIO INFORMATION APPARATUS FOR PROVIDING POSITION INFORMATION, patented September 3, 1996.

Dated: January 14, 1997.

D.E. Koenig, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–2123 Filed 1–28–97; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Resolution of Potential Conflict of Interest

The Defense Nuclear Facilities Safety Board (Board) has identified and resolved potential conflicts of interest situations related to its proposed

contractor, Mr. Lary M. McGrew. This Notice, which is a summary of the facts related to this decision, satisfies the requirements of 10 CFR 1706.8(e) with respect to publication in the Federal Register. Under the Board's Organizational and Consultant Conflicts of Interests Regulation, 10 CFR part 1706 (OCI Regulations), an organizational or consultant conflict of interest (OCI) means that because of other past, present or future planned activities or relationships, a contractor or consultant is unable, or potentially unable, to render impartial assistance or advice to the Board, or the objectivity of such offeror or contractor in performing work for the Board is or might be otherwise impaired, or such offeror or contractor has or would have an unfair competitive advantage. While the OCI Regulations provide that contracts shall generally not be awarded to an organization where the Board has determined that an actual or potential OCI exists and cannot be avoided, the Board may waive this requirement in certain circumstances.

The Board's mission is to provide advice and recommendations to the Department of Energy (DOE) regarding public health and safety matters related to DOE's defense nuclear facilities. This includes the review and evaluation of the content and implementation of health and safety standards including DOE orders, rules, and other safety requirements, relating to the design, construction, operation, and decommissioning of DOE defense nuclear facilities. In late 1991, Congress amended the Board's enabling Act, broadening the Board's jurisdiction over defense nuclear facilities to include the assembly, disassembly, and testing of nuclear weapons. With this increase in responsibility, the Board revised its priorities to include reviews of additional facilities, including, principally, the Pantex Plant (Pantex), Nevada Test Site (NTS), and additional facilities at Oak Ridge Y–12 Plant. Further, the Board recognized the need to direct its attention to the activities of the weapons' design laboratories such as Los Alamos National Laboratory (LANL), Lawrence Livermore National Laboratory (LLNL), and Sandia National Laboratory (Sandia) as they are actively involved in developing procedures and processes for the weapons assembly and disassembly operations at DOE facilities.

Two matters of primary concern to the Board were, and continue to be, the safety of weapons disassembly operations and maintenance of the capability to safely conduct nuclear testing operations. While the DOE had been engaged in these activities for decades, significant and abrupt changes in the national security posture required dramatic shifts in emphasis within DOE. Unprecedented numbers of simultaneous nuclear weapons retirements required DOE to immediately develop and implement safe and well-engineered dismantlement procedures. Further, a nuclear testing moratorium, which is still in effect, removed the primary mechanism (i.e., an active, ongoing testing program) by which the capability to execute tests safely was exercised and ensured.

Additionally, the weapons programs at the DOE Laboratories have lost, and continue to lose, skilled and experienced personnel due to retirement, downsizing, and reassignments. Consequently, the Board implemented a number of initiatives to meet its oversight responsibilities including the identification and selection of staff and outside experts with experience in conventional and nuclear explosive technology and safety, nuclear materials handling and storage, criticality safety, and nuclear weapons assembly, storage and testing.

Since 1992, the Board has been actively involved in these activities, especially at Pantex. It remains convinced that effective oversight of weapons disassembly operations and related efforts, requires a comprehensive understanding of weapons design and technical features. However, while the Board has acquired staff with basic knowledge in these areas, and technical support from various outside experts with direct experience with LLNL designed weapons, it requires an individual with knowledge and experience of the weapons designed and developed at LLNL. Based on a search for potential candidates, the Board has identified Mr. Lary McGrew as an individual with this unique experience. Mr. McGrew retired from LLNL in 1996 after 37 years of continuous service in nuclear weapons development programs in the Weapons Engineering Division. Additionally, during his final two years at LLNL, he developed and participated in numerous weapons dismantlement procedures and processes for these activities at Pantex. Further, Mr. McGrew has provided extensive technical briefings to LLNL staff on the older weapons systems as they are being retired. Consequently, based on this experience, Mr. McGrew will be useful to the Board due to his direct knowledge of the design features of the LLNL weapons and those features generic to all weapons which must be considered during disassembly, reassembly, surveillance testing and dismantlement. His knowledge of weapons testing and the data from those test will be useful in the ongoing surveillance program and in the planning and conduct of non-nuclear testing at NTS. Most importantly, Mr. McGrew can provide invaluable assistance to the Board to help ensure that Laboratory design criteria are properly incorporated into every aspect of ongoing operations and facility readiness at both Pantex and Nevada Device Assembly Facility. Therefore, the Board believes that this comprehensive and unique knowledge of the LLNL weapons will significantly enhance its technical capabilities with respect to health and safety oversight matters associated with weapons dismantlement and testing issues.

During a routine preaward review, Mr. McGrew informed the Board of a potential conflict of interest situation arising from his current and past association with DOE and its weapons program. As a condition of his retirement, he has agreed to hold no paid position or assignment at LLNL for a period of one year from August 16, 1996. However, Mr. McGrew has a continuing relationship as a non-paid consultant and has been provided a ''Q'' Clearance site access badge as a ''Participating Guest.'' He is currently assisting the Weapons Division with archival work to retain historical information on the warhead systems he helped develop during his career at LLNL. The goal of this project is to develop an index of the numerous classified and unclassified documents for each weapons system. He is also providing assistance to the Laboratory Archive in the cataloging of historical documents involving the engineering portions of the nuclear weapons developments at LLNL. The support he provides is limited to these areas and will not include any work involving the stockpiling, surveillance or dismantlement of warheads. Further, he will not be involved with any work at DOE facilities or related activities such as document preparation, review, or conduct of any of the work associated with the weapons programs. The other concern relates to this most recent work prior to retirement. During the past two years at LLNL, he was directly involved in the development of weapons dismantlement procedures and related activities at Pantex.

Consequently, the Board had concerns regarding actual or potential conflicts of interest based primarily on two issues. First, would Mr. McGrew's continuing relationship with LLNL affect his ability to provide impartial assistance or advice to the Board. Second, would Mr. McGrew be placed in a situation as a

consultant to the Board where he would be reviewing his own work on the process of weapons dismantlement which occurred within the last few years prior to his retirement.

The Board reviewed this situation and concluded that, even if the circumstances could give rise to a potential conflict of interest situation, it is nonetheless in the best interests of the Government to have Mr. McGrew provide this support for the reasons described below. Mr. McGrew's comprehensive knowledge of weapons assembly and disassembly procedures of nuclear weapons gained through 37 years of direct experience, is invaluable to the Board in its health and safety reviews of weapons disassembly and related activities and thus is vital to the Board's oversight program. Although past reviews have been conducted by various Board staff, Mr. McGrew's technical expertise will enhance the Board's ability to perform these reviews more effectively. Furthermore, the Board recognized that it is unlikely that the work to be performed by Mr. McGrew could be satisfactorily performed by anyone whose experience and affiliations would not give rise to a conflict of interest question. That is because the individuals who have the requisite expertise in this area could only have obtained such expertise through previous or current employment or consulting relationship with one or more of the weapons design laboratories. The pertinent experience of other qualified individuals would therefore likely raise similar conflicts questions.

Finally, as the Board is required under its OCI Regulations, where reasonably possible, to initiate measures which attempt to mitigate an OCI, Mr. McGrew and the Board have agreed to the following restrictions during contract performance. The Board will not have Mr. McGrew review the adequacy or effectiveness of the dismantlement procedures he developed or critique any other activity he was directly involved with. Rather, the Board will use his expertise to understand the unique aspects of the LLNL weapons' development process and how well Pantex is following these procedures during dismantlement. Also, technical staff will oversee the work of Mr. McGrew to ensure that all of his resultant work products are impartial and contain full support for any findings and conclusions issued thereunder. Further, in accordance with the Board's OCI Regulations, Mr. McGrew is required to promptly inform the Board of any new consulting or other contractual arrangements which could give rise to an OCI. This includes new work, or his acceptance of a paid position with LLNL.

Accordingly, on the basis of the determination described above and pursuant to the applicable provisions of 10 CFR part 1706, the Chairman of the Board granted a Waiver of any conflicts of interests (and the pertinent provisions of the OCI Regulations) with the effort to be performed by Mr. McGrew under contract to the Board that might arise out of his current and past association with LLNL.

Dated: January 23, 1997.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 97–2205 Filed 1–29–97; 8:45 am]

BILLING CODE 3670–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 28, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 22, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Educational Research and Improvement

Type of Review: New.

Title: Eisenhower National Clearinghouse for Mathematics and Science Education.

Frequency: One Time.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting Burden and Recordkeeping:

Responses: 1,600

Burden Hours: 520

Abstract: This submission contains four versions of an instrument to be used in data collection for the summative evaluation of the Eisenhower National Clearinghouse (ENC) dissemination model. Subjects for two of the surveys will be selected through stratified random sampling of U.S. schools to obtain representative samples of principals and teachers, the largest target audience for ENC information and resources. The other two surveys will target known users of ENC services, these individuals being sub-classified as single- and multiple-instance users. The instruments will be distributed by mail in a single data collection effort. All responses are voluntary. Information yielded will form one part of the National Evaluation, and will be included in the Evaluation Report to the U.S. Department of Education.

Office of the Under Secretary

Type of Review: New.

Title: Title III Performance Measurement Study Survey and Case Studies.

Frequency: One time only.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Burden:

Responses: 375

Burden Hours: 1,884

Abstract: The Department of Education needs to collect information on the activities funded under Parts A and B of the Title III program, the outcomes of these activities, and the availability of performance measurement data for funded activities. The data resulting from the survey and case studies will be used to develop an annual performance reporting system for all Part A and B grantees, in keeping with the requirements of the Government Performance and Results Act.

[FR Doc. 97–2204 Filed 1–28–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Presolicitation Conference for Waste Acceptance and Transportation Services

AGENCY: Office of Civilian Radioactive Waste Management, U.S. Department of Energy.

ACTION: Notice of Presolicitation Conference for Waste Acceptance and Transportation Services.

SUMMARY: The Office of Civilian Radioactive Waste Management (OCRWM) announced the availability of a Draft Request for Proposals (RFP) for Waste Acceptance and Transportation Services in the December 23, 1996 Commerce Business Daily (Section V, page 10) and in the December 27, 1996 Federal Register (page 68250). The draft is also available via the Internet on the OCRWM Home Page and the Headquarters Procurement Operations Current Business Opportunities Home Page. The addresses are http://www.rw.doe.gov/ and http://www.pr.doe.gov./solicit.html, respectively.

OCRWM now plans to hold a presolicitation conference as a follow-on to the release of the Draft RFP to receive comment from potential offerors and other interested parties. The presolicitation conference is a preliminary step in the acquisition process that may result in an actual RFP at a later date.

DATE AND LOCATION: The presolicitation conference will be held on Tuesday, February 25, 1997, from 9:00 a.m. to 4:00 p.m. in the auditorium of the Department of Commerce, 14th and Constitution Ave. N.W., Washington, D.C. 20230 (14th Street entrance). Individuals are requested to preregister by contacting Corinne Macaluso, Waste Acceptance and Transportation Division, at (202) 586–2837 or by fax at (202) 586–1207. Individuals can also preregister by contacting Michelle Miskinis (DOE/HR–561.21), 202–634–4413 or Beth Tomasoni (DOE/HR–561.21), 202–634–4408, (telefax) 202–634–4419.

This notice should not be construed (1) as a commitment by the Department to enter into any agreement with any entity submitting comments in response to this Notice or participating in the presolicitation conference, (2) as a commitment to issue any RFP concerning the subject of this Notice, or (3) as a request for proposals.

A copy of the draft RFP may be obtained by submitting a written request to the following address: Michelle Miskinis, Contracting Officer, U.S. Dept. of Energy, 1000 Independence Ave. SW, Attention: HR–561.21, Draft RFP Number DE–RP01–97RW–00320, Washington, D.C. 20585.

Issued in Washington, D.C. on January 17, 1997.

Scott E. Sheffield,

Acting Associate Deputy Assistant, Secretary for Headquarters Procurement Operations.

[FR Doc. 97–2176 Filed 1–28–97; 8:45 am]

BILLING CODE 6450–01–P

[Docket Nos. EA–138 and EA–139]

Applications to Export Electric Energy; Global Energy Services, LLC

AGENCY: Office of Fossil Energy, DOE.

SUMMARY: Global Energy Services, LLC (GES), a limited liability company, has submitted applications to export electric energy to Mexico and Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before February 28, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–52), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On January 14, 1997, GES filed two applications with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Mexico (Docket EA–138) and Canada (Docket EA–139), as a power marketer, pursuant to section 202(e) of the FPA. Specifically, GES has proposed to transmit to Mexico and Canada electric energy purchased from electric utilities and federal power marketing agencies.

GES would arrange for the exported energy to be transmitted to Mexico over one or more of the international transmission or subtransmission lines owned by San Diego Gas & Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad. For electricity exports to Canada, GES would arrange for the exported energy to be transmitted over facilities owned by Basin Electric, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Main Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Company, Minnkota Power, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power and Vermont Electric Transmission Company. Each of the transmission facilities, as more fully described in the application, has previously been issued a Presidential permit pursuant to Executive Order 10485, as amended.

As noted above, GES proposes to export electricity to Mexico over lines owned and operated by the El Paso Electric Company (EPE) and permitted under Presidential Permits Nos. PP–48, as amended, and PP–92. On October 29, 1996, the Secretary of Energy signed Delegation Order No. 0204–163 which delegated and assigned to the Federal Energy Regulatory Commission (FERC) authority to carry out such functions vested in the Secretary to regulate access to, and the rates, terms and conditions for, transmission services over the facilities of EPE. This authority was delegated to FERC for the sole purpose of authorizing FERC to take any actions necessary to effectuate open

access transmission over the United States portion of EPE's electric transmission lines connecting the Diablo and Ascarate substations in the United States with the Insurgentes and Riverena substations in Mexico. Notice and a copy of the Delegation Order were published in the Federal Register on November 1, 1996, at 61 FR 56525.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Comments on GES's request to export to Mexico should be clearly marked with Docket EA–138. Comments on GES's request to export to Canada should be clearly marked with Docket EA–139. Additional copies are to be filed directly with: Peter G. Esposito; Daniel A. King, John, Hengerer and Esposito, 1200 17th St., NW, Suite 600, Washington, DC 20036–3006, (202) 429–8808 *and* Edward J. Faneuil, Global Energy Services, LLC , Watermill Center, 800 South Street, Waltham, Massachusetts 02254–9161, (617) 894–8800.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on January 23, 1997.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–2170 Filed 1–28–97; 8:45 am]

BILLING CODE 6450–01–P

[Docket No. EA–140]

Application To Export Electric Energy; Public Service Company of New Mexico

AGENCY: Office of Fossil Energy, DOE.

SUMMARY: Public Service Company of New Mexico (PNM), a regulated public utility, has submitted an application to export electric energy to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before February 28, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–52), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On January 16, 1997, PNM filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Comision Federal de Electricidad (CFE), the Mexican national electric utility, or other power customers in Mexico, for a term of five years, pursuant to section 202(e) of the FPA. Specifically, PNM has proposed to engage in open-ended transactions to transmit and exchange wholesale electric energy under terms and contracts to be negotiated in the future.

PNM asserts that a series of State regulatory actions have left the utility with 170 megawatts (MW) of excess generating capacity that could be dedicated for the sale in the wholesale market. PNM further asserts that it will schedule all power consistent with the reliability criteria, standards, and guides of the North American Electric Reliability Council and the Western Systems Coordinating Council.

The electric energy PNM proposes to sell to CFE would be delivered to Mexico using San Diego Gas & Electric Company's two 230-kilovolt transmission facilities at Miguel and Imperial Valley, California. The construction and operation of these international transmission lines was previously authorized by Presidential Permit numbers PP–68 and PP–79, respectively.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with: John T. Stough, Jr., Long, Aldridge & Norman, L.L.P., 701 Pennsylvania Ave., N.W., Suite 600, Washington, D.C. 20004 And Patrick T. Ortiz, Secretary and General Counsel, Public Service Company of New Mexico, Alvarado Square, Albuquerque, N.M. 87158.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on January 23, 1997.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 97–2171 Filed 1–28–97; 8:45 am]

BILLING CODE 6450–01–P

Certification of the Radiological Condition of the General Motors Site in Adrian, Michigan

AGENCY: Department of Energy.

ACTION: Notice of certification.

SUMMARY: The Department of Energy (DOE) has completed remedial actions to decontaminate the General Motors site in Adrian, Michigan. Formerly, the property was found to contain quantities of residual radioactive material resulting from activities conducted by DOE's predecessors at the former Bridgeport Brass Specialty Metals Plant. Radiological surveys show that the property now meets applicable requirements for radiologically unrestricted use, and the certification docket is now available.

ADDRESSES: The certification docket is available at the following locations:

Public Reading Room, Room 1E–190, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585;

Public Document Room, Oak Ridge Operations Office, U.S. Department of Energy, 200 Administration Road, Oak Ridge, Tennessee 37831;

Adrian Public Library, 143 East Maumee Street, Adrian, Michigan 49221.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Acting Director, Office of Eastern Area Programs, Office of Environmental Restoration (EM–42), U.S. Department of Energy 19901 Germantown Road (Cloverleaf Building), Germantown, Maryland 20874–1290, (301) 903–2328, Fax: (301) 903–2385.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE), Office of Environmental Management, has conducted remedial action at the General Motors site, formerly the Bridgeport Brass Specialty Metals Plant, under the Formerly Utilized Sites Remedial Action Program (FUSRAP). The objective of the program is to identify and remediate or otherwise control sites where residual radioactive contamination remains from activities carried out under contract to the Manhattan Engineer District/Atomic Energy Commission (MED/AEC) during the early years of the nation's atomic energy program. During the 1950s, the Bridgeport Brass Company operated a Special Metals Extrusion Plant at the site in Adrian, Michigan, under contract AT-(30–1)-1405 with the AEC. The plant was operated to extrude uranium metal, which was used to make reactor fuel elements for AEC nuclear reactors at the Hanford site in Washington and the Savannah River site in South Carolina. In July 1988, the former Bridgeport Brass Specialty Metals Plant, now called the General Motors site, was designated for cleanup under FUSRAP.

At the completion of work by the Bridgeport Brass Company, one large extrusion press was shipped to Reactive Metals, Inc., in Ashtabula, Ohio, and put into operation there. All other equipment was dismantled and scrapped; its final disposition is unknown. The Adrian, Michigan, plant was eventually sold to Martin Marietta in the early 1960s and then to General Motors, Inland Fisher Guide Division, in 1974. No records exist from 1961 until 1976 to document residual radioactive contamination levels on the floor, walls, fixtures, and structural members of the building or the interim decontamination efforts performed. However, in subsequent surveys, residual uranium contamination in excess of applicable standards was found, and further cleanup of the site was determined to be warranted. DOE conducted remedial action at the site from April to July 1995.

Post-remedial action surveys have demonstrated, and DOE has certified, that the subject property is in compliance with the Department's radiological decontamination criteria and standards. The standards are established to protect members of the general public and occupants of the property and to ensure that future use of the property will result in no radiological exposure above applicable guidelines. These findings are supported by the Department's ''Certification Docket for the Remedial Action Performed at the General Motors Site, Adrian, Michigan.'' Accordingly, this property is released from FUSRAP.

The certification docket will be available for review between 9:00 a.m.–4:00 p.m., Monday through Friday (except Federal holidays) in the Department's Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Copies of the certification docket will also be available in the DOE Public Document Room, U.S. Department of Energy, Oak Ridge Operations Office, Oak Ridge, Tennessee, 37831 and at the Adrian Public Library, 143 East Maumee Street, Adrian, Michigan, 49221.

DOE, through the Oak Ridge Operations Office, Former Sites Restoration Division, has issued the following statement:

Statement of Certification: General Motors Site in Adrian, Michigan

The Department of Energy (DOE), Oak Ridge Operations Office, Former Sites Restoration Division, has reviewed and analyzed the radiological data obtained following remedial action at the General Motors site (Property XAO–100–0152–00, Liber 788, Page 688 in the records of the County of Lenawee). Based on analysis of all data collected, including post-remedial action surveys, DOE certifies that any residual contamination which remains onsite falls within current guidelines for use without radiological restrictions. This certification of compliance provides assurance that reasonably foreseeable future use of the property will result in no radiological exposure above current radiological guidelines established to protect members of the general public as well as occupants of the site.

Property owned by: General Motors, Inland Fisher Guide Division, 1450 Beecher Street, Adrian, Michigan.

Issued in Washington, D.C. on January 17, 1997.

James J. Fiore,

Acting Deputy Assistant Secretary for Environmental Restoration.

[FR DOC. 97–2172 Filed 1–28–97; 8:45 am]

BILLING CODE 6450–01–P.

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Hunter Energy and Technology Inc. From the DOE Vented Home Heating Equipment Test Procedure (Case No. DH–009)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice grants an Interim Waiver to Hunter Energy and Technology Inc. (Hunter) from the Department of Energy (DOE or Department) test procedure for vented home heating equipment. The Interim Waiver concerns pilot light energy consumption for Hunter's models FI25H, HDS2000, HDV30E, HDV2500, PW20, PW35, PW50, HFI30, HFS40, HWF15, and HWF30 vented heaters.

Today's notice also publishes a ''Petition for Waiver'' from Hunter. Hunter's Petition for Waiver requests DOE to grant relief from the DOE vented home heating equipment test procedure relating to the use of pilot light energy consumption in calculating the Annual Fuel Utilization Efficiency (AFUE). Specifically, Hunter seeks to delete the required pilot light measurement (Q_p) in the calculation of AFUE when the pilot is off. The Department solicits comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than February 28, 1997.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. DH–009, Mail Stop EE–43, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7140.

FOR FURTHER INFORMATION CONTACT:

William W. Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Stop EE–43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9145; or

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for

Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, as amended (EPCA), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including vented home heating equipment. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making informed purchasing decisions. These test procedures appear at Title 10 CFR Part 430, Subpart B.

The Department amended the test procedure rules to provide for a waiver process by adding § 430.27 to Title 10 CFR Part 430. 45 FR 64108, September 26, 1980. Subsequently, DOE amended the waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. Title 10 CFR Part 430, § 430.27(a)(2).

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until amendments to the test procedures resolve the problem that is the subject of the waiver.

An Interim Waiver will be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or if the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. Title 10 CFR Part 430, § 430.27(g). An Interim Waiver remains in effect for a period of 180 days, or until DOE issues a determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On October 22, 1996, Hunter filed an Application for Interim Waiver and a Petition for Waiver regarding pilot light energy consumption.

Hunter seeks an Interim Waiver of the DOE test provisions in section 3.5 of Title 10 CFR Part 430, Subpart B, Appendix O, which requires measurement of energy input rate of the pilot light (Q_P), and in section 4.2.6, which requires the use of this data for the calculation of AFUE, where:

$$AFUE = [4400\eta_{SS}\eta_u Q_{in\text{-}max}] / [4400\eta_{SS}Q_{in\text{-}max} + 2.5(4600)\eta_u Q_p]$$

instead, Hunter requests that, in essence, it be allowed to delete QP and accordingly, the $[2.5(4600)\eta_u Q_P]$ term in the calculation of AFUE. Hunter states that instructions to turn off the transient pilot by the user when the heater is not in use are in the User Instruction Manual and on a label adjacent to the gas control valve. Since the current DOE test procedure does not address pilot light energy savings, and since others have received the same waiver under the same circumstances, Hunter asks that the Interim Waiver be granted.

Previous Petitions for Waiver to exclude the pilot light energy input term in the calculation of AFUE for vented heaters with a manual transient pilot control have been granted by DOE to Appalachian Stove and Fabricators, Inc., 56 FR 51711, October 15, 1991; Valor Incorporated, 56 FR 51714, October 15, 1991; CFM International Inc., 61 FR 17287, April 19, 1996; Vermont Castings, Inc., 61 FR 17290, April 19, 1996; Superior Fireplace Company, 61 FR 17885, April 23, 1996; Vermont Castings, Inc., 61 FR 57857, November 8, 1996; and HEAT-N-GLO Fireplace Products, Inc., 61 FR 64519, December 5, 1996.

Thus, it appears likely that Hunter's Petition for Waiver concerning pilot light energy consumption for vented heaters will be granted. In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Hunter an Interim Waiver for its model FI25H, HDS2000, HDV30E, HDV2500, PW20, PW35, PW50, HFI30, HFS40, HWF15, and HWF30 vented heaters. Hunter shall be permitted to test these models of its vented heaters on the basis of the test procedures specified in Title 10 CFR Part 430, Subpart B, Appendix O, with the following modifications:

(i) Delete paragraph 3.5 of Appendix O.

(ii) Delete paragraph 4.2.6 of Appendix O and replace with the following paragraph:

4.2.6 Annual Fuel Utilization Efficiency. For manually controlled vented heaters, calculate the Annual Fuel Utilization Efficiency (AFUE) as a percent and defined as:

$AFUE = \eta_u$

Where:

η_u=as defined in section 4.2.5 of this appendix.

(iii) With the exception of the modification set forth above, Hunter shall comply in all respects with the procedures specified in Appendix O of Title 10 CFR Part 430, Subpart B.

This Interim Waiver is based upon the presumed validity of all statements and allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

This Interim Waiver is effective on the date of issuance by the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy. The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Hunter's Petition for Waiver requests DOE to grant relief from the portion of DOE test procedure for vented home heating equipment that relates to measurement of energy consumption by the pilot light. Specifically, Hunter seeks to exclude the pilot light energy consumption from the calculation of AFUE. Pursuant to paragraph (b) of Title 10 CFR Part 430.27, the Department is hereby publishing the ''Petition for Waiver'' in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the Petition.

Issued in Washington, DC, January 22, 1997.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

October 22, 1996.

Christine A. Ervin,

Assistant Secretary of Energy Efficiency and Renewable Energy, United States Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585

Subject: Petition for Waiver to Title 10, Code of Federal Regulations 430.27

Dear Secretary Ervin, Please accept this letter as a Petition for Waiver from the test procedures outlined in 10 CFR, part 430, subpart B, Appendix O—Uniform Test Method for Measuring the Energy Consumption of Vented Home Heating Equipment.

There are two sections for which the waiver is requested. Section 3.5—Pilot Light Measurement and Section 4.2.6—Annual Fuel Utilization Efficiency.

These sections require the measurement of energy input of the pilot and this measurement to be included in the calculation of the AFUE for the appliance.

Hunter is requesting that the pilot energy consumption be waived from the AFUE calculation for each of the models listed below. Each of these models are presently listed in the GAMA Directory.

—F125H
—HDS2000
—HDV30E
—HDV2500
—PW20
—PW35
—PW50
—HF130
—HFS40
—HWF15
—HWF30

The combination gas control valves that are used in these appliances can be manually turned off when the appliance is not in use. When the gas control knob is in the ''OFF'' position, both the pilot and main burner is off. To operate the appliance, the pilot must be re-lit and the gas control knob turned to the ''ON'' position and both the pilot and main burner will be in operation.

The Lighting Instructions in the appliance Instruction Manual and the Lighting Instructions label affixed to the appliance will require the user to turn the gas control knob on the valve to the ''OFF'' position when the appliance is not in use.

The U.S. Department of Energy has previously granted this same waiver to a number of manufacturers. Hunter requests that the U.S. Department of Energy grant Hunter Energy and Technology Inc. this same waiver.

If you have any questions or require any additional information regarding the above subject matter, please contact me anytime at (705) 325–6111.

Sincerely,

Don Leslie,

Design and Development Engineering Manager.

[FR Doc. 97–2174 Filed 1–28–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–232–000]

Amoco Production Company, et al.; Notice of Complaint

January 23, 1997.

Take notice that on January 17, 1997, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Commission, 18 CFR Section 385.206, Amoco Production Company and Amoco Energy Trading Corporation (collectively, Amoco) tendered for filing a Verified Complaint, Request For Show Cause Order, Request For Interim Relief And Request For Shortened Answer Period against Natural Gas Pipeline Company of America (Natural).

Amoco alleges that Natural has been engaged in a continuous pattern of undue discrimination and undue favoritism in favor of its affiliate, MidCon Gas Services Corporation (MidCon Gas) in violation of Sections 4, 5, 8, and 10 of the Natural Gas Act (NGA), 15 U.S.C. §§ 717c, 717d, 717g and 717i, Sections 311 (a)(1) and (c) of the Natural Gas Policy Act (NGPA), 15 U.S.C. §§ 3371 (a)(1) and (c), Order No. 636, Order No. 497, Order No. 566 and the Commission's policies and principles on which those orders are based.

Natural's pattern of discriminatory conduct, Amoco argues, is demonstrated through several of Natural's actions: (1) Natural fails to follow its currently effective tariff procedures for the awarding of available capacity; (2) Natural fails to make available unsubscribed capacity and to post adequate, timely and usable information on unsubscribed capacity; (3) Natural retains for itself absolute discretion in how it will weigh bid criteria and award capacity on any given day; (4) Natural awards capacity to its affiliated marketer, MidCon Gas, on terms not made available to nonaffiliated shippers; (5) Natural periodically uses an auction procedure—not contemplated by Natural's Tariff and not used on a consistent or regular basis—that ensures that MidCon Gas can acquire available capacity to the exclusion of nonaffiliated shippers; (6) Natural releases MidCon Gas from capacity commitments on a discriminatory basis; (7) Natural has cycled employees to its affiliated gas marketer and maintained during the period in which it allocated the vast majority of its uncommitted firm capacity to MidCon Gas an entangled organizational structure that violates Order Nos. 497 and 566; (8) Natural violates numerous of the Commission's Order Nos. 497 and 566 Standards of Conduct codified at 18 CFR § 161.3; and (9) Natural fails to post information on its transactions with its affiliated marketer, MidCon Gas as required by Order Nos. 497 and 566.

In addition, Amoco asks that the Commission order Natural to show cause why (1) each of its currently effective contracts with its affiliate MidCon Gas should not be terminated as each is the result of undue discrimination in violation of Sections 4 and 5 of the NGA and Section 311(a)(1) of the NGPA; (2) Section 5.1 of its General Terms and Conditions is not in violation of the Commission's regulations, and why Natural should not be ordered to include specific bid evaluation criteria; (3) its Tariff is not in violation of Commission posting requirements, and why it should not be ordered to post all available capacity on its EBB; (4) its systematic and pervasive undue discrimination and violations of Order Nos. 497 and 566 should not be remedied with a Commission order divorcement whereby MidCon Gas is precluded from recontracting for firm capacity on Natural; and (5) it should not be subject to the maximum civil penalties of $5,000 per day per violation for its violations of the NGPA. Amoco also asks that the Commission require Natural to demonstrate that its organizational structure has been in compliance with the Order Nos. 497 and 566 requirements of the separation of operating personnel.

Any person desiring to be heard or protest said Complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with section 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before February 24, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make a protestant party 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. Answers to this complaint are due on or before February 24, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2118 Filed 1–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–228–000]

CNG Transmission Corporation; Notice of Section 4 Filing

January 23, 1997.

Take notice that on January 15, 1997, CNG Transmission Corporation (CNG) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services which CNG currently provides on uncertificated gathering facilities which are being abandoned in place or sold. CNG states that no contracts for transportation service with CNG will be terminated. CNG asserts that the receipt meters will be located downstream where gas will feed CNG's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. Under section 154.210 of the Commission's Regulation, all such motions or protests should be filed on or before January 27, 1997. 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. 97–2117 Filed 1–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–408–017]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 23, 1997.

Take notice that on January 17, 1997, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets set forth on Appendix A to the filing, to become effective on February 1, 1997.

On December 31, 1996, Columbia filed with the Federal Energy Regulatory Commission (Commission) to move pursuant to Section 4(e) of the Natural Gas Act to place into effect on February 1, 1997, the rates set forth in its November 22, 1996 Offer of Settlement in this proceeding, contingent upon approval and implementation of the Settlement. The Settlement rates were set forth in Appendix A of the December 31, 1996 motion rate filing. It has come to Columbia's attention that the minimum commodity rate applicable to both firm and interruptible gathering services shown on First Revised Ninth Revised Sheet No. 30 in the motion rate filing is incorrect due strictly to an advertent clerical error. Columbia is submitting the instant filing to correct this error. Columbia is also reflecting on this sheet the processing charges that result from the Settlement effective as of February 1, 1997.

Certain other rate tariff sheets are being refiled to indicate in a footnote that a customer's acceptance and payment of invoices based on the Settlement rates shall constitute such customer's agreement to pay the surcharge (subject to refund) if the Settlement is not approved and implemented. This language was indicated in the transmittal letter to the Initial Settlement motion filing of December 31, 1996, but inadvertently omitted from the tariff sheets.

Columbia states that copies of its filing have been mailed to Columbia's customers and all affected state commissions, as well as to all parties on the official service list to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 27, 1997. 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. 97–2115 Filed 1–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–231–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 23, 1997.

Take notice that on January 17, 1997, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing a completely new and revised FERC Gas Tariff, Second Revised Volume No. 1, reflecting restructured services, rates, and general terms and conditions, proposed to become effective on May 1, 1997 or the effective date of Eastern Shore's Part 284 blanket certificate, whichever is later.

Eastern Shore states that pursuant to Section 4 of the Natural Gas Act, and Sections 154.7, 154.301, et seq. of the Regulations of the Commission, Eastern Shore is also filing revisions to certain statements and schedules which were initially filed in Docket No. RP97–32–000, Eastern Shore's Section 4 general rate increase filing, in which it filed as a closed merchant pipeline. Such statements and schedules have been revised to reflect Eastern Shore's proposed status as an open access transportation pipeline.

Eastern Shore states that it requests that the Commission permit the rates and charges proposed for all of the jurisdictional services to be provided by Eastern Shore to become effective as conditional rates and charges that may be subject to subsequent adjustment by Commission order after the rates and charges proposed in the instant filing are permitted to become effective.

Eastern Shore further requests that the Commission, in its order on the instant filing, expressly give notice that the conditional rates and charges which are permitted to become effective may be subsequently adjusted by Commission order retroactive to the date on which such rates and charges are permitted to become effective.

Eastern Shore states that the purpose of this conditional rate determination is to give notice to all that the provisional rates and charges may be subject to retroactive adjustment at a later date.

Eastern Shore states that copies of the filing have been served upon the parties listed on the Commission's official service list in Docket Nos. RP97–32–000 and CP96–128–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practices and Procedure (18 CFR Section 385.211 and Section 385.214). All such motions or protests must be filed on or about February 7, 1997. 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. 97–2119 Filed 1–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–366–003]

Florida Gas Transmission Company; Notice of Compliance Filing

January 23, 1997.

Take notice that on January 21, 1997, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the following tariff sheet to become effective April 1, 1997:

Second Substitute First Revised Sheet No. 163F

FGT states that on December 10, 1996 FGT filed a Stipulation and Agreement of Settlement and Request for Waiver (Settlement) which resolved certain

tariff issues which were set for a technical conference by Commission order issued September 30, 1996 in Docket No. RP96–366–000. The Settlement provided for certain changes to the operating provisions in FGT's currently effective tariff and modified or withdrew tariff changes originally proposed by FGT's August 30, 1996 filing in Docket No. RP96–366–000. All active parties either supported or did not oppose the Settlement but one party requested that a provision included in the Settlement be incorporated into FGT's Tariff. By order issued January 16, 1996 (January 16 Order) the Commission approved the Settlement and required FGT to incorporate a Settlement provision regarding a recorded phone message into its Tariff. FGT states that instant filing is in compliance with the January 16 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must 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 filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2116 Filed 1–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–143–040]

Great Lakes Gas Transmission Limited Partnership; Notice of Revenue Sharing Report November 1995–October 1996

January 23, 1997.

Take notice that on January 17, 1997, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed its Interruptible/Overrun (I/O) Revenue Sharing Report with the Federal Energy Regulatory Commission (Commission) in accordance with the Stipulation and Agreement (Settlement) filed on September 24, 1992, and approved by the Commission's February 3, 1993 order issued in Docket No. RP91–143–000, et al.

Great Lakes states that this report reflects application of the revenue sharing mechanism and remittances made to firm shippers for I/O revenue collected for the November 1, 1995 through October 31, 1996 period, in accordance with Article IV of the Settlement. Great Lakes states that such remittances, totaling $107,789, were made to Great Lakes' firm shippers on December 18, 1996.

Great Lakes states that copies of the report were sent to its firm customers, parties to this proceeding and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Great Lakes further states the amounts remitted are based on implementation of the Commission's orders in Docket Nos. RP91–143, RS92–63 and RP95–422, et al. The amounts remitted may be adjusted at a future date in accordance with the provisions of Articles III and V of the Settlement, as certain of the Commission's orders referenced above are under Petitions for Review in the United States Court of Appeals for the D.C. Circuit in Rochester Gas and Electric Company v. FERC Nos. 96–1136, et al. Great Lakes states it will adjust the amounts remitted to comply with any further Commission action or judicial review resulting from disposition of the aforementioned court 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 Rules and Regulations. All such motions or protests must be filed on or before January 30, 1997. 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 Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2114 Filed 1–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–852–000]

Ontario Hydro Interconnected Markets Inc. Notice of Filing

January 23, 1997.

Take notice that on January 3, 1997, Ontario Hydro Interconnected Markets Inc. tendered for filing an amendment to its prior filing in this docket, consisting of Attachment B (''Methodology To Assess Available Transmission Transfer Capability'') to the ''Ontario Hydro Proposed Transmission Reservation Tariff For Transactions Out Of And Through The Province of Ontario,'' that was previously filed in this docket. Ontario Hydro Interconnected Markets Inc. states that the attachment was inadvertently omitted from some of the copies of its filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 31, 1997. 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. 97–2160 Filed 1–28–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL97–21–000, et al.]

Southern California Edison Company v. San Diego Gas & Electric Company, Enova Energy, Inc. and Ensource Corporation, et al.; Electric Rate and Corporate Regulation Filings

January 21, 1997.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company v. San Diego Gas & Electric Company, Enova Energy, Inc., Ensource Corporation

[Docket No. EL97–21–000]

Take notice that on January 10, 1997, Southern California Edison Company tendered for filing a complaint against San Diego Gas & Electric Company, (SDG&E) Enova Energy, Inc., (Enova Energy) and Ensource Corporation (Ensource) requesting that the Commission find that the merger of Enova and Pacific Enterprises (owner of Ensource), which involves their public utility subsidiaries—SDG&E, Enova Energy, and Ensource is subject to Section 203 of the Federal Power Act, and direct that the companies submit an application for merger approval to the Commission.

Comment date: February 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Truckee Donner Public Utility District

[Docket No. EL97–22–000]

Take notice that on January 14, 1997, Truckee Donner Public Utility District (Truckee) tendered for filing a Petition for Declaratory Order clarifying certain conflicting language in its Order 888 and its pro forma open access transmission tariff in order to resolve a dispute between Truckee and Sierra Pacific Power Company concerning a good-faith transmission request submitted by Truckee to Sierra. Truckee also submitted a request for exemption from or waiver of filing fee.

Comment date: February 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

[Docket No. ER96–224–002]

Take notice that on January 16, 1997, Niagara Mohawk Power Corporation tendered for filing its compliance report in the above-referenced docket.

Comment date: February 3, 1997, in accordance with Standards Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket Nos. ER96–1477–002 and EL95–47–003]

Take notice that on January 7, 1997, Niagara Mohawk Power Corporation tendered for filing its refund report in the above referenced dockets.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power & Light Company

[Docket No. ER97–114–001]

Take notice that on January 8, 1997, Pennsylvania Power & Light Company (''PP&L'') filed a refund compliance report in the above referenced docket.

PP&L states that copies of this filing have been sent to PECO and to the Pennsylvania Public Utility Commission.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Detroit Edison Company

[Docket No. ER97–324–001]

Take notice that on December 31, 1997, Detroit Edison Company tendered for filing its compliance filing in the above-referenced docket pursuant to the Commission's December 19, 1996, order in this proceeding.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. United Illuminating Company

[Docket No. ER97–885–000]

Take notice that on December 23, 1996, United Illuminating Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Cambridge Electric Light Company

[Docket No. ER97–904–000]

Take notice that on December 23, 1996, Cambridge Electric Light Company tendered for filing data to set forth the actual Net Annual Costs of constructing, owning, and maintaining its Transmission System for the twelve month period ending December 31, 1995.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER97–1013–000]

Take notice that on December 31, 1996, Southern California Edison Company tendered for filing a Notice of Cancellation of Rate Schedule FPC No. 61.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER97–1014–000]

Take notice that on December 31, 1996, Southern California Edison Company tendered for filing a Notice of Cancellation of Rate Schedule FPC No. 71.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Kansas City Power & Light Company

[Docket No. ER97–1028–000]

Take notice that on December 31, 1996, Kansas City Power & Light Company (KCPL) tendered for filing a Notice of Cancellation of Service Schedule B, to KCPL's Rate Schedule FERC No. 104.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Company

[Docket No. ER97–1029–000]

Take notice that on December 31, 1996, Kansas City Power & Light Company (KCPL) tendered for filing a Notice of Cancellation of Service Schedule C, to KCPL's Rate Schedule FERC No. 88.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas City Power & Light Company

[Docket No. ER97–1030–000]

Take notice that on December 31, 1996, Kansas City Power & Light Company (KCPL) tendered for filing a Notice of Cancellation of Service Schedule A, to KCPL's Rate Schedule FERC No. 88.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Kansas City Power & Light Company

[Docket No. ER97–1031–000]

Take notice that on December 31, 1996, Kansas City Power & Light Company (KCPL) tendered for filing a Notice of Cancellation of Service Schedule C, to KCPL's Rate Schedule FPC No. 34 and Service Schedule E to KCPL's Rate Schedule FPC No. 34.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Kansas City Power & Light Company

[Docket No. ER97–1032–000]

Take notice that on December 31, 1996, Kansas City Power & Light Company (KCPL) tendered for filing a Notice of Cancellation of Service Schedule C, to KCPL's Rate Schedule FPC No. 55 and Service Schedule D, Supplement No. 2 KCPL's Rate Schedule FPC No. 55.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Kansas City Power & Light Company

[Docket No. ER97–1033–000]

Take notice that on December 31, 1996, Kansas City Power & Light Company (KCPL) tendered for filing a Notice of Cancellation of Service Schedule D, Supplement No. 5 to KCPL's Rate Schedule FPC No. 53.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Kansas City Power & Light Company

[Docket No. ER97–1034–000]

Take notice that on December 31, 1996, Kansas City Power & Light Company (MCPL) tendered for filing a Notice of Cancellation of Service

Schedule C, Supplement No. 2 to KCPL's Rate Schedule FPC No. 53.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Company of Colorado

[Docket No. ER97–1062–000]

Take notice that on December 31, 1996, Public Service Company of Colorado (PSCo) tendered for filing a Notice of Cancellation of PSCo Rate Schedule No. 8.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Potomac Edison Company

[Docket No. ER97–1066–000]

Take notice that on December 31, 1996, Potomac Edison Company tendered for filing a request for disclaimer of jurisdiction or, in the alternative, for acceptance and waiver.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company

[Docket No. ER97–1085–000]

Take notice that on January 3, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Point-to-Point Transmission Service Agreement between Louisville Gas and Electric Company and Illinois Power under LG&E's Open Access Transmission Tariff.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Commonwealth Edison Company

[Docket No. ER97–1086–000]

Take notice that on January 3, 1997, Commonwealth Edison Company (Edison), submitted Amendment No. 3 to the Interconnection Agreement between Edison and Northern Indiana Public Service Company (Northern Indiana). Amendment No. 3 eliminates certain service schedules that provide services redundant to those obtained through Edison's and Northern Indiana's unbundled power sales and open-access transmission tariffs. The Commission has previously designated the Interconnection Agreement as Edison's FERC Rate Schedule No. 17.

Edison requests an effective date of December 31, 1996, for Amendment No. 3, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon Northern Indiana, the Illinois Commerce Commission, and the Indiana Utility Regulatory Commission.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. MidAmerican Energy Company

[Docket No. ER97–1087–000]

Take notice that on January 3, 1997, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801 filed with the Commission the Third Amendment dated December 19, 1996 to Firm Power Interchange Service Agreement (Interchange Agreement) dated August 21, 1985 entered into by a predecessor of MidAmerican and the City of Independence, Missouri (Independence). In Docket No. ER96–1501–000, MidAmerican has filed a Service Agreement dated June 1, 1996 which has been executed by MidAmerican and Independence for the purpose of including all transactions pursuant to the Interchange Agreement on and after June 1, 1996 under MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5, related to market-based pricing.

MidAmerican requests an effective date of January 1, 1997, for the Third Amendment and seeks a waiver of the Commission's notice requirement pursuant to *Prior Notice and Filing Requirements Under Part II of the Federal Power Act,* 64 FERC ¶ 61,139 (1993), *reh'g,* 65 FERC ¶ 61,081 (1993) and *Southern Company Services, Inc.,* 75 FERC ¶ 61,130 (1996). MidAmerican has served a copy of the filing on representatives of Independence, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Northeast Utilities Service Company

[Docket No. ER97–1088–000]

Take notice that on January 3, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement to provide Short-Term Firm Point-to-Point Transmission Service to the Baltimore Gas and Electric Company under the NU system Companies' Open Access Transmission Service Tariff No. 8.

NUSCO states that a copy of this filing has been mailed to the Baltimore Gas and Electric Company.

NUSCO requests that the Service Agreement become effective January 6, 1997.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Duke Power Company

[Docket No. ER97–1089–000]

Take notice that on January 3, 1997, Duke Power Company (Duke), tendered for filing a Service Agreement for Market Rate (Schedule MR) Sales between Duke and Saluda River Electric Cooperative, Inc. dated December 19, 1996. Duke requests an effective date of December 19, 1996.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Niagara Mohawk Power Corporation

[Docket No. ER97–1090–000]

Take notice that on January 2, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Public Service Electric and Gas Company. This Transmission Service Agreement specifies that Public Service Electric and Gas Company has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Public Service Electric and Gas Company to enter into separately scheduled transactions under which NMPC will provide transmission service for Public Service Electric and Gas Company as the parties may mutually agree.

NMPC requests an effective date of December 20, 1996. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Public Service Electric and Gas Company.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Public Service Company of Colorado

[Docket No. ER97–1091–000]

Take notice that on January 3, 1997, Public Service Company of Colorado (Public Service), tendered for filing a Service Agreement between Public Service and Enserco Energy Inc. (Enserco) under Public Service's Electric Coordination Service Tariff. The Service Agreement is a general enabling agreement that will permit Enserco to arrange individual Coordination Power and Energy transactions in accordance with Service Schedule A of the Tariff.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. The Washington Water Power Company

[Docket No. ER97–1092–000]

Take notice that on January 2, 1997, Washington Water Power (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, an Amendment No. 1 to Agreement for the Sale of Energy between The Washington Water Power Company and The City of Seattle. The term of the Agreement is to commence on January 15, 1997 and continue through December, 2000.

WWP requests that the Commission accept the amended filing effective January 15, 1997 and waive the 60-day notice requirement. No parties will be adversely effected by the granting of this waiver.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Southwestern Electric Power Company

[Docket No. ER97–1093–000]

Take notice that on January 2, 1997, Southwestern Electric Power Company (SWEPCO), tendered for filing Amendment No. 7 to the Power Supply Agreement, dated April 8, 1982, between SWEPCO and Northeast Texas Electric Cooperative, Inc. (NTEC) in order to mitigate the impact of a scheduled rate increase.

SWEPCO requests waiver of the Commission's notice requirement in order that Amendment No. 7 may become effective on January 1, 1997. Copies of the filing were served upon NTEC and the Public Utility Commission of Texas,

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. MidAmerican Energy Company

[Docket No. ER97–1094–000]

Take notice that on January 2, 1997, MidAmerican Energy Company (MidAmerican), 106 East Second Street, Davenport, Iowa 52801, tendered for filing an amendment to its initial filing in the above-referenced docket. The amendment consisted of an executed Service Agreement dated June 1, 1996 entered into by MidAmerican with the City of Independence, Missouri pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5.

MidAmerican requests an effective date of June 1, 1997, for the Service Agreement and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the amended filing on all parties designated on the official service list, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Louisville Gas and Electric Company

[Docket No. ER97–1095–000]

Take notice that on January 3, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing Service Agreements between LG&E and various companies under LG&E's Rate Schedule GSS. LG&E requests that the agreements become effective as of December 31, 1996.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. PacifiCorp

[Docket No. ER97–1096–000]

Take notice that on January 2, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Service Agreements with IGI Resources, Inc., and Idaho Falls Electric Light Division under, PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 3, Service Schedule PPL–3.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Louisville Gas and Electric Company

[Docket No. ER97–1097–000]

Take notice that on January 3, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing a copy of a Non-Firm Point-to-Point Transmission Service Agreement between Louisville Gas and Electric Company and Kentucky Utilities Company under LG&E's Open Access Transmission Tariff..

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Minnesota Power and Light Company

[Docket No. ER97–1098–000]

Take notice that on January 3, 1997, Minnesota Power & Light Company (Minnesota Power), submitted for filing four (4) Service Agreements under which Minnesota Power, Western Power Services, Inc., Wisconsin Electric Power Company, and Cinergy Services, Inc., respectively, will take non-firm, point-to-point transmission service under Minnesota Power's open access transmission tariff.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Cinergy Services, Inc.

[Docket No. ER97–1099–000]

Take notice that on January 2, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Plum Street Energy Marketing, Inc.

Cinergy and Plum Street Energy Marketing, Inc. are requesting an effective date of December 15, 1996.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Entergy Power Marketing Corp.

[Docket No. ER97–1101–000]

Take notice that on January 3, 1997, Entergy Power Marketing Corp., filed an amendment to its standards of conduct.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Northeast Utilities Service Company

[Docket No. ER97–1102–000]

Take notice that on January 3, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Non-Firm Point-to-Point Transmission Service to Baltimore Gas and Electric Company under the NU System Companies' Open Access Transmission Service Tariff No. 8.

NUSCO states that a copy of this filing has been mailed to Baltimore Gas and Electric Company.

NUSCO requests that the Service Agreement become effective January 6, 1997.

Comment date: February 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211

and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2113 Filed 1–28–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5681–7]

Agency Information Proposed Collection; Comment Request; National Request for Information (RFI) for Vendor Information System for Innovative Treatment Technologies (VISITT) and Vendor Field Analytical and Characterization Technologies System (Vendor FACTS)

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 continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Request for Information (RFI) for Vendor Information System for Innovative Treatment Technologies (VISITT) and Vendor Field Analytical and Characterization Technologies System (Vendor FACTS). The EPA ICR Number is 1583.02, OMB Control Number is 2050–0114 and current expiration date is July 31, 1997. 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 by April 4, 1997.

ADDRESSES: Technology Innovation Office (5102G), Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Individuals interested in obtaining a copy of the ICR at no charge may send their requests to the above address or by calling (703) 603–9903.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Ma by telephone at (703) 603–9903, by telefax at (703) 603–9135, or by E-mail at ''ma.carl@epamail.epa.gov''.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are technology vendors who are interested in the voluntary participation in EPA's databases on innovative technologies for the clean-up, characterization and monitoring of hazardous waste sites.

Title: National Request for Information (RFI) for Vendor Information System for Innovative Treatment Technologies (VISITT) and Vendor Field Analytical and Characterization Technologies System (Vendor FACTS). The EPA ICR Number is 1583.02, OMB Control Number is 2050–0114 and current expiration date is July 31, 1997.

Abstract: As part of a broad effort to promote the routine consideration and use of more cost effective technologies by the Agency and others, the Technology Innovation Office created the VISITT and Vendor FACTS databases for the purpose of disseminating the latest information on technologies to clean-up, characterize, or monitor hazardous waste sites. Version 5.0 of VISITT contains information on 346 technologies to remediate soil and groundwater contaminated with hazardous wastes. Version 2.0 of Vendor FACTS contains approximately 129 technologies for field analytical and site characterization. These systems help technology vendors promote their technologies by providing readily available information to system users, such as site managers, on the options for site monitoring and clean-up. In addition, the systems provide a communication link between technology users and vendors. Each year, EPA invites vendors to participate in these databases on a voluntary basis and requests specific, non-confidential technology information for listing in the databases. EPA does not verify the accuracy of submitted data or claims made by vendors. 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. One of EPA's highest priorities has been to encourage the use of innovative technologies to speed-up the site remediation process and at the same time to reduce project costs. EPA is working toward these goals by providing the site managers with the necessary information to select the most applicable and cost-effective technology for their sites. In order to obtain such critical information, once every year, EPA invites vendors to participate in the databases by submitting or updating information on new technologies as they emerge or become commercially available. Originally, EPA based the burden hours estimates for individual respondents on two non-statistical pre-tests designed to minimize the burden of potential respondents. In the first pre-test, non-respondent technical experts completed the Vendor Information Form (VIF), and in the second pre-test, vendors who participated in the workgroup to develop the system were asked to estimate the time it would take to complete the VIF. Several vendors based their time estimates on actual time required to fill out the form. To improve its estimates of respondent burden, EPA conducted a small survey of actual respondents. The revised estimates are now 25 hours and 13 hours respectively for an original VIF submittal and an VIF update. EPA is further trying to minimize respondent burden by providing an option to fill out and submit the VIF electronically.

Burden Statement: The following assumptions were made to estimate individual respondent burden:

—Participation in the databases is voluntary; therefore, some potential respondents will read the instructions for completing the VIF, and will choose not to respond.

—Participating new respondents will complete the entire VIF. EPA assumed that each new respondent will complete an average of two VIFs and current participants will submit two updated VIFs each year.

First-time respondents will take a maximum of 50 hours to complete the form for two technologies (or 25 hours per technology). This value is consistent with the maximum values obtained from our respondent survey. Respondents updating two previously submitted forms will require a total of 26 hours. Estimates are the same for VISITT and Vendor FACTS respondents. Based on current trend, the Agency expects, on average, 120 new respondents and 300 current respondents providing updates each year for the next three years beginning in 1997. The hourly rates for management, technical, and clerical staff have been increased by 5% from previous year to bring them in line with current contractor hourly rates. For 1997, the values are $77 for management, $46 for technical staff, and $29 for clerical support. The Agency

assumes that rates will increase 5% each year thereafter due to inflation. 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: January 8, 1997.

Walter W. Kovalick, Jr.,

Director, Technology Innovation Office, Office of Solid Waste and Emergency Response.

[FR Doc. 97–2191 Filed 1–28–97; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00466; FRL–5584–8]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with Standard Operating Procedures for Peer Reviews, Visual System Toxicity Testing of Organophosphates, Inhalation Risk Assessments and the Combining of Margin of Exposures, Toxicology Endpoint Selection Process, Common Mode/Mechanism of Action, and Aggregate Exposure Methodology Issues.

DATES: The meeting will be held on Wednesday and Thursday, March 19 and 20, 1997, from 8:30 a.m. to 5 p.m. Written comments must be received on or before February 24, 1997.

ADDRESSES: The meeting will be held at: Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, VA. The telephone number for the hotel is: (703) 920–3230. By mail, submit written comments (one original and 20 copies) to: Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data also may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–00466.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: By mail: Larry C. Dorsey, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location, telephone number, and e-mail address: Rm. 819B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, telephone: (703) 305–5369/7351, e-mail: dorsey.larry@epamail.epa.gov.

Copies of EPA documents may be obtained by contacting: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Rm. 1132 Bay, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: (703) 305–5805.

SUPPLEMENTARY INFORMATION: Any member of the public wishing to submit written comments should contact Larry C. Dorsey at the address or the telephone number given above. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advanced written request to the Designated Federal Official, interested persons may be permitted by the Chair of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. As oral statements only will be permitted as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit 20 copies of the summary information no later than February 24, 1997, to ensure appropriate consideration by the Panel.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. An edited copy of the comment that does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

A public record has been established for this notice under docket control number ''OPP–00466'' (including comments and data submitted electronically). A public version of this record, including printed versions of electronic comments, which does not include information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 Bay of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

Copies of the Panel's report of their recommendations will be available approximately 15 working days after the meeting and may be obtained by contacting the Public Response and Program Resources Branch, at the address or telephone number given above.

Dated: January 14, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–2189 Filed 1–28–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–568–9]

Open Meeting of the Industrial Non-Hazardous Waste Stakeholders Focus Group

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting of the Industrial Non-Hazardous Waste Stakeholders Focus Group.

SUMMARY: As required by section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of the third meeting of the Industrial Non-Hazardous Waste Policy Dialogue Committee, also known as the Industrial Non-Hazardous Waste Stakeholders Focus Group. The purpose of this committee is to advise EPA and ASTSWMO (the Association of State and Territorial Solid Waste Management Officials) in developing voluntary guidance for the management of industrial nonhazardous waste in land-based disposal units. The Focus Group will facilitate the exchange of information and ideas among the interested parties relating to the development of such guidance. The purpose of the third meeting will be to continue discussion of issues related to development of such guidance. The agenda will include a discussion of tailoring management practices to risk, land application, closure and post-closure considerations, corrective action, run-on/run-off controls, operating considerations, and air emission controls. There will be an opportunity for limited public comment at the end of each day of the meeting. The termination date for this committee has been extended until September 31, 1997, in order to allow the committee to complete its work fully.

DATES: The committee will meet on February 19 and 20, 1997, from 9 a.m. to 5 p.m. on February 19, and from 8:30 a.m. to 3 p.m. on February 20.

ADDRESSES: The location of the meeting is the Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Avenue, NW., Washington, DC 20008. The phone number is (202) 328–2000. The seating capacity of the room is approximately 60 people, and seating will be on a first-come basis. Supporting materials are available for viewing at Docket # F–96–INHA–FFFFF in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page. For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9610 or TDD 703–412–3323.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the committee should contact Paul Cassidy, Municipal and Industrial Solid Waste Division, Office of Solid Waste, at (703) 308–7281.

SUPPLEMENTARY INFORMATION:

Background

EPA and ASTSWMBO have formed a State/EPA Steering Committee to jointly develop voluntary facility guidance for the management of industrial nonhazardous waste in land-based disposal units. The purpose of the guidance is to recommend management practices that are environmentally sound, that are protective of public health, and that recognize opportunities for pollution prevention and waste minimization. The guidance will address such topics as appropriate groundwater monitoring and corrective action requirements, liner designs, daily operating requirements, and closure and post-closure practices.

The State/EPA Steering Committee has convened this Stakeholders Focus Group to obtain recommendations from individuals who are members of a broad spectrum of public interest groups and affected industries. All recommendations from Focus Group participants will be forwarded to the State/EPA Steering Committee for consideration, as the Stakeholders' Focus Group will not strive for consensus. The State/EPA Steering Committee will also provide an opportunity for public comment on the draft guidance document.

''Industrial nonhazardous waste'' under the Federal Resource Conservation and Recovery Act (RCRA) means waste that is neither municipal solid waste under RCRA Subtitle D nor a hazardous waste under RCRA Subtitle C. Industrial nonhazardous waste consists primarily of manufacturing process wastes, including wastewaters and non-wastewater sludges and solids.

EPA estimates there are 7.6 billion tons of industrial nonhazardous waste generated annually in the U.S. and disposed on-site by approximately 12,000 industrial facilities in surface impoundments, landfills, land application units, or waste piles. Most of this waste is managed in surface impoundments, which are designed to hold wastewaters. These wastes, which include inert materials as well as materials which may be declared hazardous at some future date, present a broad range of risk.

Under RCRA Subtitle D, the states are responsible for regulating the management of industrial nonhazardous waste. State requirements vary widely, and may include standards for design and operation, location, monitoring, and record keeping. This guidance is intended to complement existing state programs.

EPA's role in the management of industrial nonhazardous waste is very limited. Under RCRA Subtitle D, EPA issued minimal criteria prohibiting ''open dumps'' (40 CFR 257) in 1979. The states, not EPA, are responsible for implementing the ''open dumping criteria,'' and EPA has no back-up enforcement role.

Copies of the minutes of all Stakeholder Focus Group meetings will be made available through the docket at the RCRA Information Center, including minutes of the first two Focus Group meeting, which were held on April 11–12, 1996, and September 11–12, 1996.

Participants

The Stakeholders Focus Group consists of approximately 25 members, who represent public interest groups, affected industries, states, and Federal officials. Following is a list of representatives from the interested parties:

Public interest groups—Michael Gregory, Sierra Club; John Harney, Citizens Round Table/Pennsylvanians United to Rescue the Environment; Richard Lowerre, Henry, Lowerre, Johnson, Hess & Frederick and David Wells, University of South Alabama Medical Center. Industry sectors—Tim Saylor, International Paper; Chuck Feerick, Exxon Company USA; Walter Carey, New Milford Farms/Nestle USA; Robert Giraud, Dupont Company; Paul Bork, Dow Chemical Company; Bruce Steiner, American Iron and Steel Institute; James Meiers, Indianapolis Power and Light Company; Andrew Miles, The Dexter Corporation; Scott Murto, General Motors Corporation; Lisa Williams, The Aluminum Association; Jonathan Greenberg, Browning-Ferris Industries; and Ed Skernolis, WMX Technologies, Inc.

States—James Warner, Minnesota Pollution Control Agency; Anne Dobbs, Texas Natural Resources Conservation Commission; Gene Mitchell, Wisconsin Department of Natural Resources; and Bill Pounds, Pennsylvania Department of Environmental Resources.

Federal officials—Paul Cassidy, Deborah Dalton, Robert Dellinger, Richard Kinch, and John Sager of the U.S. Environmental Protection Agency.

Dated: January 22, 1997.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 97–2193 Filed 1–28–97; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5681–8]

National Drinking Water Advisory Council; Small Systems Working Group; Notice of Open Meeting

Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the Small Systems Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on February 10 and 11, 1997, from 9 a.m. to 5 p.m., at Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., Washington, DC 20024. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to discuss options for how EPA might implement the capacity development and state affordability information provisions of the Safe Drinking Water Act Amendments of 1996. The meeting is open to the public to observe. The working group members are meeting to gather information and analyze relevant issues and facts. Statements will be taken from the public at this meeting as time allows.

For more information, please contact, Peter E. Shanaghan, Designated Federal Officer, Small Systems Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street SW., Washington, DC 20460. The telephone number is (202) 260–5813 and the e-mail address is shanaghan.peter@epamail.epa.gov.

Dated: January 22, 1997.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–2190 Filed 1–28–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5681–2]

Request for Information and Public Hearing to Evaluate Uses of Stream Segments in Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for information and holding of public hearing.

SUMMARY: EPA is soliciting any information from interested parties and holding a public hearing to assist the Agency in evaluating existing and potential beneficial uses of certain waters in the State of Alabama. This information will be used by EPA in assessing the attainability of such uses and assist the Agency in determining what federal use designations, if any, would be appropriate for these waters. EPA is holding a public hearing for the purposes of receiving information from interested parties. In addition, The Alabama Department of Environmental Management (ADEM) will be holding a public hearing in March or April 1997 for the purposes of evaluating upgraded use designations on some of these same waters.

DATES: All written information and data received on or before March 12, 1997 will be considered by EPA. A public hearing will be held on February 26, 1997, at 1:30 p.m.

ADDRESSES: Written comments should be directed to Morris Flexner, Life Scientist, EPA Region 4, Atlanta Federal Center, Water Management Division, 100 Alabama Street, S.W., Atlanta, GA 30303–3104, (404) 562–9272. A public hearing will be held at the Alabama Center for Commerce, 401 Adams Avenue, Montgomery, AL 38130.

FOR FURTHER INFORMATION CONTACT: Morris Flexner or Fritz Wagener, Water Quality Standards Coordinator, EPA Region 4, Atlanta Federal Center, Water Management Division, 100 Alabama Street, S.W., Atlanta, GA 30303–3104, (404) 562–9272 or (404) 562–9267.

SUPPLEMENTARY INFORMATION:

A. Background

1. Statutory/Regulatory History

Section 303(c) of the Clean Water Act (CWA) directs States, with oversight by EPA, to adopt water quality standards to protect public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under Section 303, States have the primary responsibility to establish water quality standards, defined under the Act as designated uses of a water segment and the water quality criteria necessary to support those uses. Additionally, Indian Tribes authorized to administer the water quality standards program under 40 CFR § 131.8 also establish water quality standards for waters within their jurisdictions. This statutory framework allows States and Tribes to work with local communities to establish appropriate designated uses, and adopt criteria to protect those designated uses. The Act specifies the minimum beneficial uses to be considered by States and Tribes in establishing water quality standards as public water supplies, propagation of fish and wildlife, recreation, agricultural uses, industrial uses and navigation.

Section 303 includes a requirement that States and Tribes review their standards at least once each three year period using a process that includes public participation, and a process for EPA review of State and Tribal standards. Under Section 303(c), EPA is required to either approve new or revised State/Tribal standards that meet the requirements of the Act, or disapprove standards that fail to meet those requirements. Where EPA disapproves a new or revised State/Tribal standard, section 303(c)(4)(A) of the Act states that the Agency is to promptly propose substitute federal standards and promulgate federal standards within 90 days thereafter. In addition, the Agency is authorized to promulgate a federal standard whenever the Agency determines that a new or revised standard is necessary to meet the requirements of CWA Section 303(c)(4)(B).

The implementing regulations for water quality standards regulations are found at 40 CFR Part 131. Under 40 CFR § 131.10(j), States and Tribes are required to conduct a use attainability analysis whenever the State/Tribe designates or has designated uses that do not include the uses specified in Section 101(a)(2) of the CWA, or when the State/Tribe wishes to remove a designated use that is specified in Section 101(a)(2) of the Act, or adopt subcategories of uses that require less stringent criteria. Uses are considered by EPA to be attainable, at a minimum, if the uses can be achieved (1) when effluent limitations under Section 301(b)(1) (A) and (B) and Section 306 are imposed on point source dischargers, and (2) when cost effective and reasonable best management practices are imposed on nonpoint source dischargers.

A use attainability analysis (UAA) is defined in 40 CFR § 131.3(g) as a ''structured scientific assessment of the factors affecting the attainment of a use which may include physical, chemical,

biological, and economic factors as described in § 131.10(g).'' In a UAA, the physical, chemical and biological factors affecting the attainment of a use are evaluated through a water body survey and assessment.

Guidance on water body survey and assessment techniques is contained in the Technical Support Manual, Volumes I–III: Waterbody Surveys and Assessments for Conducting Use Attainability Analyses (Volume I provides information on waterbodies in general, Volume II contains information on estuarine systems and Volume III contains information on lake systems; Volumes I–II, November 1983; Volume III, November 1984), and in the Water Quality Standards Handbook: Second Edition (EPA–823–B–94–005, August 1994). Guidance on economic factors affecting the attainment of a use is contained in the Interim Economic Guidance for Water Quality Standards Workbook (EPA–823–B–95–002, March 1995). Requests for copies of these guidance documents should be directed to the EPA Water Resource Center, (202) 260–7786.

Water body surveys and assessments should be sufficiently detailed to answer the following questions: (1) What are the aquatic uses currently being achieved in the water body? (2) What are the causes of any impairment of the aquatic uses? (3) What are the aquatic uses that can be attained based on the physical, chemical and biological characteristics of the water body?

2. History of ADEM/EPA Actions

On October 14, 1986, the EPA Regional Administrator for Region 4 disapproved use designations adopted by ADEM for 49 stream segments because the State failed to justify lower use classifications in accordance with 40 CFR § 131.10(j). Although the State had previously submitted use attainability analyses for these stream segments, the analyses did not adequately describe the basis for the lower use classifications nor did they provide adequate information to determine if such classifications were appropriate. From 1986 to 1991, 19 of the beneficial use designations were either upgraded to Fish and Wildlife (F&W) by ADEM or approved as Agricultural and Industrial Water Supply (A&I) by EPA. On July 18, 1991, the EPA Regional Administrator for Region 4 disapproved 30 beneficial use designations adopted by ADEM, 29 of which were previously disapproved in 1986. Five of these 30 segments have been upgraded to F&W by ADEM since 1991, leaving the 25 segments that are the subject of this notice.

Based on information provided to EPA by the State, of the 25 stream segments identified in today's notice, ADEM is currently considering a proposal for the complete or partial upgrade of uses on 14 of these segments. The State also currently plans to submit UAAs to EPA for 12 of the stream segments, including 3 of the streams for which partial upgrades are being considered by the State. The State is also evaluating the appropriate steps to take on the remaining segments.

B. Request for Information

The Agency is currently in the process of evaluating the existing data and information with regard to the uses of 25 stream segments that were the subject of EPA's disapproval decisions. Based on such information, EPA can determine whether the uses designated by Alabama are consistent with the requirements of the Clean Water Act, or whether upgrading those uses is necessary. To assist the Agency in ensuring that its decisions are based upon the best available information, the Agency is soliciting information regarding the stream segments listed below. The waters identified in the water quality standards revisions adopted by ADEM on February 20, 1991 for which EPA is soliciting information are as follows:

Basin	Stream	From	To	Classification
Cahaba	Buck Creek	Cahaba Valley	Its source	A&I.
Coosa	Shirtee Creek	Tallasseehatchee Ck	Its source	A&I.
Mobile	Mobile River	Its mouth	Spanish River	A&I.
Mobile	Three Mile Ck.	Mobile River	Mobile Street	A&I.
Mobile	Chickasaw Ck.	Mobile River	Limit of tidal effects (Hwy 43)	A&I.
Mobile	Hog Bayou	Chickasaw Ck.	Its source	A&I.
Perdido-Escambia	Pigeon Creek	Piney Woods Ck.	Its source	A&I.
Perdido-Escambia	Unnamed Trib. to Pigeon Ck	Pigeon Creek	Its source	A&I.
Perdido-Escambia	Rocky Creek	Persimmon Ck.	County road crossing N. of Chapman.	A&I
Perdido-Escambia	Hollinger Ck.	Road 5 mi. E. of Bay Minette	Its source	A&I.
Tallapoosa	Sougahatchee Creek	County road 11 crossing	Pepperell Branch	A&I.
Tallapoosa	Pepperell Br.	Sougahatchee Ck.	Its source	A&I.
Tallapoosa	Sugar Creek	Elkahatchee Ck.	Its source	A&I.
Tennessee	Flint Creek	Alabama Hwy. 36	Shoal Creek	A&I.
Upper Tombigbee	Little Bear Creek	Bear Creek	Highway 82	A&I.
Warrior	Valley Creek	Head of backwater above Bankhead Lock Dam.	Co. road crossing 1½ mi. NE of Johns.	A&I.
Warrior	Valley Creek	Co. road crossing 1½ mi. NE of Johns.	Opossum Creek	IO.
Warrior	Valley Creek	Opossum Creek	Its source	A&I.
Warrior	Opossum Creek	Valley Creek	Its source	IO.
Warrior	Village Creek	Locust Fork	Its source	A&I.
Warrior	Five Mile Crk.	Locust Fork	Ketona	A&I.
Warrior	Lost Creek	AL Hwy 124	Its source	A&I.
Warrior	Cane Ck/Oakman	Lost Creek	Its source	A&I.
Warrior	Cane Ck/Jasper	Mulberry Fork	Its source	A&I.
Warrior	Town Creek	Cane Creek	Its source	A&I.

Note: The existing use classifications for the 25 stream segments adopted by ADEM are either A&I or Industrial Operations (IO) as indicated in the above table.

Specifically EPA is seeking information that would assist in determining whether F&W uses are currently being attained, or have been attained since or before 1975, or whether natural conditions or features or human caused conditions prevent the attainment of F&W uses and cannot be remedied or would cause more environmental damage to correct than to leave in place. Below is a general discussion of the types of data/information requested by the Agency:

Ambient Monitoring Information: (1) Any instream data for any of the above stream segments reflecting either natural conditions (e.g., instream flow data or other data relating to stream hydrology) or irretrievable human-caused conditions which prevent the F&W uses or supporting water quality criteria from being attained, (2) Any available instream biological data, (3) Any chemical and biological monitoring data that verify improvements to water quality as a result of treatment plant/facility upgrades and/or expansions and (4) Any instream data reflecting nonpoint sources of pollution or best management practices that have been implemented for nonpoint source control.

Current and Historical Effluent Data: (1) Any data and information relating to mass loadings from point source discharges of pollutants such as BOD, NH_3-N, Chlorine, metals (e.g., As, Cd, Cr, Cu, Pb, Hg, Ni, Ag, Zn), toxics (e.g., volatile organic chemicals such as benzene or toluene, acid extractables such as pentachlorphenol, base neutrals such as anthracene, fluorene or pyrene, and pesticides such as aldrin, lindane, DDT, dieldrin, endrin and toxaphene), (2) Data and information related to facility or treatment plant effluent quality and (3) Any information related to releases of pollutants from other sources such as landfills, transportation facilities, construction sites, agriculture/silviculture, incinerators, and contaminated sediments.

Models: (1) Any data or information on analytical models which can be used to evaluate or predict stream quality, flow and/or morphology, (2) Any physical, biological or chemical characteristics relating to beneficial uses and (3) The results of any such models which can be used to evaluate beneficial uses. Economic Data: Any information relating to costs and benefits associated with facility or treatment plant expansions or upgrades. This information includes: (1) Qualitative descriptions or quantitative estimates of any costs and benefits associated with facilities or treatment plants meeting F&W limits, (2) Any information on costs to households in the community with facility or treatment plant expansions or upgrades, whether through an increase in user fees, an increase in taxes, or a combination of both, (3) Descriptions of the geographical area affected, (4) Any changes in median household income, employment, and overall net debt as a percent of full market value of taxable property and (5) Any effects of changes in tax revenues if the private-sector entity were to go out of business, changes in income to the community if workers lose their jobs, and effects on other businesses both direct and indirect.

Dated: January 21, 1997.

Robert F. McGhee,

Director, Water Management Division.

[FR Doc. 97–2044 Filed 1–28–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2174]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

January 24, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed February 13, 1997. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Rose Hill, Trenton, Aurora, and Ocracoke, North Carolina) (MM Docket No. 95–88, RM–8641, RM–8688, RM–8689)

Number of Petition Filed: 1.

Subject: Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services. (CC Docket No. 94–54)

Number of Petition Filed: 2.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–2082 Filed 1–28–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

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: Approval and Coordination of Requirements to Use the NETC for Extracurricular Training Activities.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 3067–0219.

Abstract: The National Emergency Training Center (NETC) is a FEMA facility, located in Emmitsburg, Maryland, 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, or in direct support of 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. The collection of information will be used to obtain information from special groups that request the use of NETC facilities for extracurricular training activities.

Affected Public: Individuals and households, business or other for-profit, not-for-profit institutions, Federal Government, and State, Local, or Tribal Government.

FEMA Forms:

(1) FEMA Form 75–10, Request for Housing Accommodations, is used by an organization's or group's contact person to provide information on participants who will be staying on campus. NETC staff use the information to assign dormitory rooms. Estimated burden for this form is 110 hours—1,100 responses at 6 minutes per response.

(2) FEMA Form 75–11, Request for Use of NETC Facilities, is used by

respondents to provide information on the number of participants, meals, and special requirements. The information is used by NETC staff to assign classrooms, schedule equipment, and arrange for food service. Estimated burden for this form is 20 hours —100 responses at 12 minutes per response.

Frequency of Response: One response per respondent.

Estimated Total Annual Burden Hours: 130.

Estimated Costs: $3,000 per year.

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 February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made 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.

Dated: January 17, 1997.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 97–2199 Filed 1–28–97; 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 is submitting a request for review and approval of a collection of information under the emergency processing procedures in Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting the collection of information be approved by January 21, 1997, for use through July 31, 1997.

Supplementary Information. The Robert T. Stafford Disaster Relief and Emergency Act, Public Law 93–288, as amended, authorizes the President to provide assistance to individuals and to State and local governments to help them to respond to and recover from a disaster. Certain types of private nonprofit organizations may receive assistance also. In order to receive Federal assistance, i.e., Federal grants, State and local officials and officials of eligible private nonprofit organizations who have a responsibility for response to a major disaster and for the restoration of facilities in the aftermath of such events must provide information to FEMA. The information is required in accordance with FEMA regulations 44 CFR Part 206, Subpart G and guidance published in FEMA 286, Public Assistance Guide.

Collection of Information

Title. Damage Survey Report-Data Sheet, Building Survey, Pumping Equipment Survey, Bridge Survey.

Type of Information Collection. Reinstatement, without change, of a previously approved collection for which OMB approval has expired.

OMB Number: 3067–0223.

Abstract. Following a major disaster declaration by the President, the State and Disaster Recovery Manager will arrange for damage surveys to be made by damage survey inspection teams. A Damage Survey Report-Data Sheet will be completed by a Federal/State inspection team, escorted by a local representative for each damaged facility and for each item of emergency and permanent work identified by the local representative. The inspection teams will inspect every damaged facility and review all applicable records to determine the extent of the disaster damage, the scope of eligible work, and the estimated cost of that work. The inspection teams do not randomly search for damaged facilities but rely on applicants to prepare for the damage survey inspections before the arrival of the inspectors (through the identification of all damaged facilities and the projection of restoration/repair costs, etc.), and be prepared to guide the team to each site.

The Damage Survey Report-Data Sheet is designed to itemize field recommendations which are attached as supporting justification to the applicant's project application. The following forms are supplements to the Damage Survey Report: FEMA Form 90–3, Pumping Survey, provides additional information on pumping equipment damage sustained during a disaster. FEMA Form 90–51, Building Survey, provides additional information on damage to buildings, and FEMA Form 90–53, Bridge Survey, provides additional information on bridge damage sustained during a disaster. Prior to approval, FEMA performs an engineering analysis of each project application and the accompanying damage survey report-data sheet, to ensure the restoration work and associated costs meet FEMA eligibility criteria.

FEMA Forms and Checklist:

(1) FEMA Form 90–91, Damage Survey Report-Data Sheet—12,000 responses at 30 minutes per response for an estimated total of 6,000 burden hours.

(2) FEMA Form 90–3, Pumping Equipment Survey—50 responses at 30 minutes per response for an estimated total of 25 burden hours..

(3) FEMA Form 90–51, Building Survey—50 responses at 30 minutes per response for an estimated total of 25 burden hours.

(4) FEMA Form 90–53, Bridge Survey—50 responses at 30 minutes per response for an estimated total of 25 burden hours.

(5) Applicant's Checklist to Prepare for Damage Survey Inspections—An estimated total burden of 80 hours for local representatives to gather required information contained in FEMA 286, Public Assistance Guide.

Affected Public: Not-for-profit institutions, State, Local or Tribal Governments.

Estimated Total Annual Burden Hours. 6,155.

Estimated Cost. $210,000.

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; (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.

ADDRESSES: Interested persons should submit written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Ms. Victoria Wassmer, FEMA Desk Officer, Room 10202, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Contact Dick Buck at (202) 646–4535 for additional information. Contact Ms. Muriel B. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: January 21, 1997.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 97–2200 Filed 1–28–97; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

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). 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 February 21, 1997.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. NewSouth Bancorp, Inc., Washington, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of NewSouth Bank, Washington, North Carolina. NewSouth Bank is the proposed successor by charter conversion to Home Savings Bank, SSB, Washington, North Carolina.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Provincial Corp., Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First Heritage Bank, Lakeville, Minnesota, a *de novo* bank.

Board of Governors of the Federal Reserve System, January 23, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–2125 Filed 1-28-97; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, February 3, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–2285 Filed 1–24–97; 4:48 pm]

BILLING CODE 6210–01–P

Agency information collection activities: Submission to OMB under delegated authority

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension, with revision, of the following reports:

1. Report titles: Interagency Notice of Change in Control, Interagency Notice of Change in Director or Senior Executive Officer, and Interagency Biographical and Financial Report

Agency form numbers: FR 2081a, FR 2081b, and FR 2081c

OMB Control number: 7100-0134

Effective Date: February 28, 1997

Frequency: On occasion

Reporters: Financial institutions and certain of their officers and shareholders

Annual reporting hours: Interagency Notice of Change in Control--9.000 hours; Interagency Notice of Change in Director or Senior Executive Officer—560 hours; Interagency Biographical and Financial Report—4,000 hours; Total—13,560 hours

Estimated average hours per response: Interagency Notice of Change in Control—30 hours; Interagency Notice of Change in Director or Senior Executive Officer—2 hours; Interagency Biographical and Financial Report—4 hours

Number of respondents: Interagency Notice of Change in Control—300; Interagency Notice of Change in Director or Senior Executive Officer—280; Interagency Biographical and Financial Report—1,000

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1817(j) and 12 U.S.C. 1831(i)) and is not given confidential treatment.

Abstract: The collections of information are necessary in order to eliminate duplicative filings and to satisfy federal law and regulatory authority for each agency. The Federal Reserve uses the biographical portions of the collections to evaluate the competence, experience, character, and integrity of persons proposed as organizers, senior executive officers, directors, or principal shareholders. The financial portion is used to evaluate the financial ability of persons proposed as

organizers, senior executive officers, directors, or principal shareholders. The reports are also used to allow or disapprove proposed acquisitions.

A task force of the Federal Financial Institutions Examination Council has adapted, reformatted, and retitled the three reports, pursuant to the Riegle Community Development and Regulatory Improvement Act of 1994. Comments were solicited in the Federal Register on August 13, 1996 (61 FR 42085) and on November 29, 1996 (61 FR 60748). No comments were received on any of the forms.

Board of Governors of the Federal Reserve System, January 23, 1997.

William W. Wiles

Secretary of the Board.

[FR Doc. 97–2159 Filed 1–28–76; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Study to Assess the Effectiveness of Commission Divestiture Orders Information Collection Requirement

AGENCY: Federal Trade Commission.

ACTION: Notice of application to The Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for clearance of a telephone survey, requests for documents, and a questionnaire in conjunction with a study of Commission divestiture orders in merger cases.

SUMMARY: The application for OMB review concerns information collection to be undertaken in a study to assess the effectiveness of Commission divestiture orders in merger cases. The study will assist the Commission in evaluating the effectiveness of its merger enforcement actions. Specifically, the study will inform the Commission about whether to modify its current divestiture procedures so as to make divestitures more timely and effective. The study includes some collection of information from the public by means of telephone interviews, requests for documents, and a limited questionnaire. All interviews will be conducted on a voluntary basis. All information will be collected on a voluntary basis.

Staff will study a total of 49 divestitures arising out of 36 orders. Staff have already contacted nine buyers. Staff, thus, will contact another 40 buyers (plus any subsequent buyers of the divested assets), 36 respondents, and 147 third-parties (on average, three per divestiture), for a total of 223 telephone interviews. Each interview should take about one hour and 30 minutes to complete, for a total burden estimate of approximately 335 hours.

After the telephone interviews, the buyers of divested assets and the respondents will be asked to submit financial documents for a five-year period beginning the year before the divestiture occurred. Only documents prepared in the ordinary course of business will be requested. To the extent that no such financial documents exist, staff will not request that such documents be prepared. Because only documents already in existence will be requested, the anticipated burden of producing these documents will be minimal, approximately two hours, per participant, for a total of 170 hours ($49 + 36 = 85 \times 2 = 170$).

Staff will also ask that the respondents and buyers complete a two-question chart that will request sales in dollars and units of the product that was the subject of the Commission's initial concern in the case over a five-year period beginning the year before the divestiture. Staff estimate that the burden on each participant to provide this information will be 4 hours, for a total of 392 hours (49 buyers + 36 respondents asked about 49 divested products = $98 \times 4 = 392$). The total cumulative burden of the document production will be 562 hours (392 + 170). The estimated total burden for the entire study is therefore calculated to be 897 hours (335 + 562), which has been rounded to 1000 hours to allow for small additions such as subsequent buyers of divested assets.

DATES: Comments on the proposed study must be submitted on or before February 28, 1997.

ADDRESSES: Send comments both to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, ATN: Desk Officer of the Federal Trade Commission and to the Federal Trade Commission, Compliance Division, ATN: Kenneth Davidson, Room S 2122, N.W., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT:

Kenneth Davidson, Compliance Division, Bureau of Competition, Federal Trade Commission, Washington, D.C. 20580 (202) 326–2863.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–2208 Filed 1–28–97; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932–3019]

Pre-Paid Legal Services, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Pre-Paid to pay $165 to any consumer who purchased certain living trusts and who has not already received a refund and does not live in a state with which Pre-Paid has already settled. In addition, Pre-Paid, would be prohibited from making misrepresentations about living trusts and would be required to make certain disclosures with regard to legal challenges that can be made against living trusts; the possibility of probate for certain estates regardless of whether living trusts are used; and the transfer of consumers' assets into the trusts. The agreement settles allegations that the Pre-Paid made numerous false statements about the benefits and appropriateness of living trusts, in general, and about living trusts it sold, in particular.

DATES: Comments must be received on or before March 31, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Janice Charter, Federal Trade Commission, Denver Regional Office, 1961 Stout Street, Suite 1523, Denver, CO 80294. (303) 844–2272. Elizabeth Palmquist, Federal Trade Commission, Denver Regional Office, 1961 Stout Street, Suite 1523, Denver, CO 80294. (303) 844–2272.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the

Commission Actions section of the FTC Home Page (for January 16, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has agreed to accept, subject to final approval, a proposed consent order settling charges that Pre-Paid Legal Services, Inc., violated Section 5 of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns the sale of living trusts to senior citizens through membership in the American Association for Senior Citizens (''AASC'). The respondent covered by the proposed order is Pre-Paid Legal Services, Inc., the company responsible for furnishing to and preparing the living trusts for AASC.

The complaint alleges that the respondent violated Section 5 of the Federal Trade Commission Act by making numerous misrepresentations about the advantages of living trusts over other forms of estate planning. Specifically, the complaint alleges that respondent has misrepresented that (1) the use of a living trust avoids all administrative costs; (2) at death, a living trust ensures that assets are distributed immediately or almost immediately; (3) a living trust cannot be challenged; (4) living trusts are prepared by local attorneys; (5) a living trust protects against catastrophic medical costs; (6) a living trust is the appropriate estate planning device for every consumer; and (7) there are no disadvantages to a living trust.

The proposed consent order contains provisions which are designed to remedy the alleged violations and to prevent the respondent from engaging in similar acts and practices in the future. The proposed order would prohibit the respondent from making the misrepresentations alleged in the complaint and set forth above. Additionally, the order would require the respondent to disclose to prospective purchasers that living trusts may be challenged on similar grounds as wills and that they may not be appropriate in all instances.

Under the order, the respondent also would be required to provide four affirmative disclosures in situations where the statements would be true. (1) Some states have created a mechanism for ''informal probate'' of an estate if the estate meets certain criteria, which significantly reduces the time involved in probate. This disclosure would be required in states where informal probate is available. (2) If the transfer of an individual's assets into the living trust is not included in the price of creating the living trust, that fact must be disclosed. (3) If it is the sole responsibility of the purchaser of the living trust to transfer assets into the trust, that fact must be disclosed. (4) In some states, but not in others, creditors have a longer period of time to file claims against a living trust than against a probated estate. This fact would have to be disclosed in such states.

The proposed order would require the respondent to distribute the proposed order to its officers, agents, and all personnel who participate in any way with respondent's sales activities relating to living trusts. Additionally, the order would require the respondent to notify the Commission of any changes in its corporate structure and to retain for three years all materials that it relies upon in making representations covered by the order. Finally, the respondent is required to file one or more compliance reports detailing its compliance with the order.

The proposed order also requires the respondent to offer partial refunds to any AASC member who has not previously received a refund from either the respondent or AASC.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, nor to modify in any way their terms. The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

[FR Doc. 97–2206 Filed 1–28–97; 8:45 am]

BILLING CODE 6750–01–P

[File No. 962–3150]

Uno Restaurant Corporation, et al.; Pizzeria Uno Corporation; Uno Restaurants, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the nationwide pizza restaurant chain from misrepresenting the existence or amount of fat or any other nutrient or substance in pizzas or other food products containing a baked crust. The agreement settles allegations that advertising touting the ''Thinzettas'' line of thin crust pizzas as ''low fat'' was false and misleading.

DATES: Comments must be received on or before March 31, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Federal Trade Commission, Boston Regional Office, 101 Merrimac St, Suite 810, Boston, MA 02114–4719. (617) 424–5960. John T. Dugan, Federal Trade Commission, Boston Regional Office, 101 Merrimac St, Suite 810, Boston, MA 02114–4719. (617) 424–5960.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for January 22, 1997),

on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Uno Restaurant Corporation, Pizzeria Uno Corporation, and Uno Restaurants, Inc. The proposed respondents operate the nationwide Pizzeria Uno restaurant chain, where they sell, among other items, a line of thin crust pizzas known as ''Thinzettas.''

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents falsely claimed that their Thinzettas line of thin crust pizzas is low in fat. The proposed consent order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Part I of the proposed order, in connection with pizzas or any other food product containing a baked crust, prohibits the proposed respondents from misrepresenting the existence or amount of total fat or any other nutrient or substance in such product. Part I further provides that if any representation covered by this Part conveys a nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this Part shall be governed by the qualifying amount set forth in that regulation. Part II of the proposed order specifies that nothing in the order prohibits the proposed respondents from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

Part III of the proposed order contains record keeping requirements for materials that substantiate, qualify, or contradict covered claims and requires the proposed respondents to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. Part IV requires distribution of a copy of the consent decree to current and future principals, officers, directors, managers, and franchisees, and to certain current and future employees, agents, and representatives.

Part V provides for Commission notification upon any change in the corporate respondents affecting compliance obligations arising under the order. Part VI requires the filing of compliance report(s). Finally, Part VII provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 97–2207 Filed 1–28–97; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Notice of Intent To Prepare an Environmental Impact Statement (EIS)

SUMMARY: The General Services Administration (GSA) hereby gives notice it intends to prepare an Environmental Impact Statement pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), as implemented by GSA's Order PBS P 1095.4B to construct a new Federal Courthouse in downtown Seattle, King County, Washington.

The EIS will evaluate the proposed project, any other reasonable alternatives, and the no-action alternative identified through the scoping process. Scoping will be accomplished through direct mail correspondence to interested persons, parties, and organizations and through a Public Scoping Meeting. GSA will publish a Public Notice of this meeting and all subsequent public meetings in Seattle newspapers approximately one to two weeks prior to each event.

ADDRESSES: As part of the public scoping process, GSA solicits your written comments on the scope of alternatives and potential impacts at the following address: Ms Donna M. Meyer, Regional Environmental Program Officer (10 PCB), General Services Administration, 400 15th Street SW, Auburn, WA, 98001, or FAX: Ms Donna M. Meyer at 206–931–7308. Written comments should be received no later than February 21, 1997.

FOR FURTHER INFORMATION CONTACT: Nona Diediker at Herrera Environmental Consultants, 2200 Sixth Avenue, Suite 601, Seattle, Washington 98121, (206) 441–9080, or Donna M. Meyer, GSA, (206) 931–7675.

SUPPLEMENTARY INFORMATION: The GSA, assisted by Herrera Environmental Consultants, is anticipating the preparation of an Environmental Impact Statement on a proposal to acquire a site and design and construct a new Federal Courthouse in downtown Seattle. GSA will serve as the lead agency and scoping will be conducted consistent with NEPA regulations and guidelines.

GSA invites interested individuals, organizations, and federal, state, and local agencies to participate in defining the reasonable alternatives to be evaluated in the EIS, and in identifying any significant social, economic, or environmental issues related to the alternatives. During scoping, comments should focus on identifying specific impacts to be evaluated and suggesting alternatives that minimize adverse significant impacts while achieving similar objectives. Comments may also identify issues which are not significant or which have been covered by prior environmental review. Scoping should be limited to commenting on alternatives and the merit of the proposal rather than indicating preferences. There will be an opportunity to comment on preferences upon completion of the Draft Environmental Impact Statement.

Mailing List: If you wish to be placed on the project mailing list to receive future or further information as the EIS process develops, contact Herrera at the address noted above.

Project Purpose, Historical Background, and Project: A new Federal Courthouse is needed in downtown Seattle to consolidate existing judicial functions and to accommodate the projected space needs of the Federal Courts and court-related agencies. There have been previous environmental reviews completed for this project. A

new review is necessary because of a change in the delineated area. The existing U.S. Courthouse at 1010 5th Street is listed on the National Register of Historic Places along with its lawn area.

The Administrative Office of the U.S. Courts (AOC) has requested GSA provide a building based on the Long Range Facility Plan for the Western District of Washington. The new Courthouse would provide for 15 courtrooms for use by the Ninth Circuit Court of Appeals, the U.S. District Court, and U.S. Magistrate judges. The existing Courthouse would continue to be utilized.

At occupancy, the new facility is expected to house approximately 700 federal employees. Development would involve construction of one building comprising approximately 620,000 square feet of gross floor area and parking for 200 vehicles.

Alternatives: The EIS will examine the short and long term impacts on the natural and built environment of developing and operating a new courthouse in downtown Seattle. Potential impact assessment will include but not be limited to changes in the social environment, changes in land use, aesthetics, changes in traffic and parking patterns, economic impacts, and conformance to City planning and zoning requirements.

The EIS will also examine measures to mitigate significant unavoidable adverse impacts resulting from the proposed action. Concurrent with NEPA implementation, GSA will also implement its consultation responsibilities under Section 106 of the National Historic Preservation Act to identify potential impacts to existing historic or cultural resources.

The EIS would consider a no action alternative and action alternatives. The no-action alternative (no-build) alternative would continue the use of the existing U.S. Courthouse supplemented by the continued use of leased space throughout the downtown Seattle area. The preferred action alternative is construction of a new courthouse building. Currently, three separate site alternatives are being proposed for study. GSA will consider the acquisition of one or two block sites sufficient to meet future expansion needs of the court and within an area delineated as follows:

Bounded on the north by Blanchard Street, on the east by Terry Avenue, on the south by James Street, and by First Avenue on the west.

Due to the unique requirements for courtrooms, chambers, and security considerations, GSA has found it is impractical to consider the use of an existing building through either purchase or lease in which to meet these needs.

Procedures: The Draft EIS will be prepared at the completion of and based upon a scoping report. The Draft EIS will then be made available for public and agency review and comment with a public hearing being held during this comment period. A final EIS would be prepared following conclusion of the comment period to address issues raised on the Draft EIS.

Dated: January 23, 1997.

L. Jay Pearson,

Regional Administrator (10A).

[FR Doc. 97–2237 Filed 1–28–97; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Statement of Organization, Functions, and Delegation of Authority

Part A (Office of the Secretary), Chapter AE (Office of the Assistant Secretary for Planning and Evaluation (OASPE), of the Statement of Organization, Functions and Delegation of Authority for the Department of Health and Human Services (most recently amended at 61 FR 24499 on May 15, 1996) is amended to establish the Office of Science Policy within OASPE.

I. Chapter AE, add the following as paragraph F:

F. The Office of Science Policy (OSP) is responsible for guiding and coordinating the development of science policy throughout the Department. As directed by the Secretary or the ASPE, OSP establishes and leads broadly representative, multi-office working groups to develop policy initiatives related to complex science and technology issues that cut across the missions of several entities within the Department. The Director, OSP frequently serves as the spokesperson for these working groups in presentations to the Secretary, other senior DHHS staff, to members and/or staff of the Congress, and to others outside DHHS.

OSP is responsible for guiding and coordinating the incorporation of science-policy considerations within regulatory proposals, legislative proposals, Congressional testimony, press releases, and other public documents describing major Departmental initiatives. OSP staff provide critique and advice regarding the science-policy content of such documents, which typically originate from DHHS Operating Divisions or other units within the Office of the Secretary. In selected instances, OSP initiates and directs the development of such documents.

OSP is responsible for creating and maintaining effective communication with scientific and technical communities outside the Department regarding science-policy issues. This may include liaison with the Office of Science and Technology Policy, Executive Office of the President. It also includes active participation in inter-agency science and technology activities (such as those sponsored by the National Science and Technology Council) and government/private sector collaborations related to science policy (such as those sponsored by the National Academy of Sciences). These duties may include service as the Secretary's representative in meetings with leaders of research universities, scientific societies, professional associations, and industrial organizations involved in biomedical, behavioral, or social-science research or in the delivery of health and human services.

In all of these areas, OSP staff coordinate their activities as appropriate with those of other components within OASPE, with other components of the Office of the Secretary, and with the Operating Divisions of the Department. The Director, OSP consults regularly with the Assistant Secretary for Health in his/her role as the Secretary's senior advisor on public health and science.

Dated: January 17, 1997.

John J. Callahan,

Assistant Secretary for Management and Budget.

[FR Doc. 97–2085 Filed 1–28–97; 8:45 am]

BILLING CODE 4110–12–M

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Temporary Assistance to Needy Families, Medicaid, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 1997 Through September 30, 1998

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Federal Percentages and Federal Medical Assistance Percentages for Fiscal Year 1998 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from

October 1, 1997 through September 30, 1998. This notice announces the calculated ''Federal percentages'' and ''Federal medical assistance percentages'' that we will use in determining the amount of Federal matching in State welfare and medical expenditures. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Programs under title XIX of the Act exist in each jurisdiction; programs under titles I, X, and XIV operate only in Guam and the Virgin Islands; while a program under title XVI (AABD) operates only in Puerto Rico. The percentages in this notice apply to State expenditures for assistance payments and medical services (except family planning which is subject to a higher matching rate). The statute provides separately for Federal matching of administrative costs.

As of July 1, 1997, all States will have implemented the new title IV–A program, Temporary Assistance for Needy Families (TANF). As a block grant, no matching percentage is needed. However, the Federal medical assistance percentage will still be applicable under TANF for those States that receive contingency funds under section 403(b) of the Act in the required annual reconciliation of those funds. Closeout claims under the old title IV–A program, Aid to Families with Dependent Children will be matched at the Federal medical percentage in effect at the time the expenditure was made.

Section 1101(a)(8) and 1905(b) of the Act, as revised by section 9528 of Pub. L. 99–272, require the Secretary of Health and Human Services to publish these percentages each year. The Secretary is to figure the percentages, by formulas in sections 1101(a)(8) and 1905(b) of the Act, from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within upper and lower limits given in those two sections of the Act. The statute specifies the percentages to be applied to Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Marina Islands.

The ''Federal percentages'' are for residual payments under the old Aid to Families with Dependent Children (AFDC) program. The ''Federal medical assistance percentages'' are for Medicaid. However, under section 1118 of the Act, States with approved Medicaid plans may claim Federal matching funds for expenditures under approved State plans for other programs using either the Federal percentage or the Federal medical assistance percentage. These States may claim at the Federal medical assistance percentage without regard to any maximum on the dollar amounts per recipient which may be counted under paragraph (2) of sections 3(a), 1003(a), 1403(a), and 1603(a) of the Act.

DATES: The percentages listed will be effective for each of the 4 quarter-year periods in the period beginning October 1, 1997 and ending September 30, 1998.

FOR FURTHER INFORMATION CONTACT:

Mr. Gene Moyer, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 442E Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, D.C. 20201, Telephone (202) 690–7861.

(Catalog of Federal Domestic Assistance Program Nos. 93–560—Assistance Payments—Maintenance Assistance (State Aid); 93–778—Medical Assistance Program)

Dated: January 21, 1997.

Donna E. Shalala,

Secretary of Health and Human Services.

FEDERAL PERCENTAGES AND FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 1997–SEPTEMBER 30, 1998 (FISCAL YEAR 1998)

State	Federal percentages	Federal medical assistance percentages
Alabama	65.00	69.32
Alaska	50.00	50.00
American Samoa	50.00	50.00
Arizona	61.47	65.33
Arkansas	65.00	72.84
California	50.00	51.23
Colorado	50.00	51.97
Connecticut	50.00	50.00
Delaware	50.00	50.00
District of Columbia	50.00	50.00
Florida	50.72	55.65
Georgia	56.49	60.84
Guam	50.00	50.00
Hawaii	50.00	50.00
Idaho	65.00	69.59
Illinois	50.00	50.00
Indiana	57.12	61.41
Iowa	59.73	63.75
Kansas	55.23	59.71
Kentucky	65.00	70.37
Louisiana	65.00	70.03
Maine	62.27	66.04
Maryland	50.00	50.00
Massachusetts	50.00	50.00
Michigan	50.00	53.58
Minnesota	50.00	52.14
Mississippi	65.00	77.09
Missouri	56.31	60.68
Montana	65.00	70.56
Nebraska	56.85	61.17
Nevada	50.00	50.00
New Hampshire	50.00	50.00
New Jersey	50.00	50.00

FEDERAL PERCENTAGES AND FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 1997–SEPTEMBER 30, 1998 (FISCAL YEAR 1998)—Continued

State	Federal percentages	Federal medical assistance percentages
New Mexico	65.00	72.61
New York	50.00	50.00
North Carolina	58.99	63.09
North Dakota	65.00	70.43
Northern Mariana Islands	50.00	50.00
Ohio	53.49	58.14
Oklahoma	65.00	70.51
Oregon	57.18	61.46
Pennsylvania	50.00	53.39
Puerto Rico	50.00	50.00
Rhode Island	50.00	53.17
South Carolina	65.00	70.23
South Dakota	64.16	67.75
Tennessee	59.28	63.36
Texas	58.09	62.28
Utah	65.00	72.58
Vermont	57.98	62.18
Virgin Islands	50.00	50.00
Virginia	50.00	51.49
Washington	50.00	52.15
West Virginia	65.00	73.67
Wisconsin	54.26	58.84
Wyoming	58.91	63.02

*For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI and Part A of title IV will be 75 per centum.

[FR Doc. 97–2231 Filed 1–28–97; 8:45 am]
BILLING CODE 4110–60–M

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This Notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter K, Administration for Children and Families (60 FR 58628), as last amended, November 28, 1995; Chapter KA, Office of the Assistant Secretary for Children and Families (60 FR 40586), as last amended, August 9, 1995; Chapter KJ, Office of Regional Operations and State Systems (60 FR 40586), as last amended, August 9, 1995; Chapter KL, Office of Staff Development and Organizational Resources (60 FR 58628), as last amended, November 28, 1995; Chapter KP, Office of Program Support (60 FR 40586), as last amended, August 9, 1995; Chapter KT, Office of Legislative Affairs and Budget (60 FR 40586), as last amended, August 9, 1995; and Chapter KU, Office of Human Resource Management (60 FR 58628), as last amended, November 28, 1995. This reorganization of staff offices will realign several major functions of ACF and create an Office of Administrative Services and Facilities Management. These Chapters are amended as follows:

I. Amend K.10—Organization. After ''Office of Human Resource Management (KU),'' add the following: ''Office of Administrative Services and Facilities Management (KV).''

II. A. Amend KA.10—Organization. Delete ''U.S. Advisory Board on Child Abuse and Neglect Staff'' (KAE) and ''U.S. Commission on Child and Family Welfare Staff'' (KAF).

B. Amend KA.20—Functions. Delete Paragraph A in its entirety and replace with the following:

KA.20—Functions. A. The Office of the Assistant Secretary is responsible to the Secretary for carrying out ACF's mission and provides executive supervision to the major components of ACF.

These responsibilities include providing executive leadership and direction to plan and coordinate ACF program activities to assure their effectiveness, approving instructions, policies, publications, and grant awards issued by ACF, and representing ACF in relationships with governmental and non-governmental organizations. The Assistant Secretary for Children and Families also serves as the Director of the Office of Child Support Enforcement, and signs official Child Support Enforcement documents as the Assistant Secretary for Children and Families.

The Deputy Assistant Secretary for Program Operations serves as principal advisor and counsel to the Assistant Secretary for Children and Families on all aspects of strategic and operational management issues. The Deputy Assistant Secretary for Program Operations serves as ACF liaison to the General Counsel and, as appropriate, initiates action in securing resolution of legal matters relating to management of the agency, and represents the Assistant Secretary on all administrative litigation matters. The Deputy Assistant Secretary provides day-to-day executive leadership and direction for the Office of Human Resource Management, the Equal Employment Opportunity/Civil Rights and Special Initiatives Staff, the Office of Staff Development and Organizational Resources, and the Office of Administrative Services and Facilities Management. The Deputy Assistant Secretary for Program Operations represents the Assistant Secretary in HHS and with other Federal agencies and task forces in defining objectives and priorities, and in coordinating activities associated with reinvention and continuous improvement initiatives.

The Deputy Assistant Secretary for Policy and External Affairs serves as the principal advisor and counsel to the Assistant Secretary for Children and

Families on all aspects of legislation, policy, strategic planning, performance measures and demonstration testing, research, evaluation, intergovernmental affairs, budget execution, budget formulation, and media. The Deputy Assistant Secretary for Policy and External Affairs develops broad policy strategies and concepts pertaining to on-going and anticipated program issues and recommends legislation relevant to ACF programs. The Deputy Assistant Secretary for Policy and External Affairs formulates and presents ACF's program budgets; represents the Assistant Secretary for Children and Families in budget negotiations with the Department and the Office of Management and Budget (OMB); and assists in planning for and presenting the budget before the OMB and Congress. The Deputy Assistant Secretary for Policy and External Affairs represents the Assistant Secretary for Children and Families on intergovernmental matters, media affairs, and in contacts and negotiations with Congressional members and staff and executives of agencies and organizations. The Deputy Assistant Secretary for Policy and External Affairs provides executive leadership and direction to the Office of Legislative Affairs and Budget, the Office of Planning, Research and Evaluation and the Office of Public Affairs. The Deputy Assistant Secretary for Policy and External Affairs also provides oversight for agency commissions and advisory committees, including the President's Committee on Mental Retardation.

C. Delete Paragraphs D, ''U.S. Advisory Board on Child Abuse and Neglect Staff'' and E, ''U.S. Commission on Child and Family Welfare Staff.''

III. Retitle Chapter KJ. ''The Office of Regional Operations and State Systems'' as the ''Office of Regional Operations,'' and replace with the following:

KJ.00 Mission
KJ.10 Organization
KJ.20 Functions

KJ.00 Mission. The Office of Regional Operations (ORO) recommends to and advises the Assistant Secretary on all strategic and operational activities related to implementation of the agency's programs at the regional level. It oversees the performance and operation of all Regional Offices, and coordinates with program offices on strategies and implementation of program initiatives.

KJ.10—Organization. The Office of Regional Operations is headed by a Director who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

- Office of the Director (KJA)
- Regional Operations Staff (KJB)

KJ.20 Functions. A. Office of the Director provides executive leadership for administering the agency's programs and initiatives at the regional level. The Director provides direction to the Regional Operations Staff. The Director is the principal advisor to the Assistant Secretary for Children and Families on region-related matters.

The Director supervises and supports the Regional Hub Directors and Regional Administrators in administering Regional Office activities and establishing and implementing cross-cutting program initiatives. The Director establishes coordinative arrangements with program and staff office directors to assure that the Regional Hub Directors and Regional Administrators can oversee operations, fulfill program responsibilities, and have access to needed information. The Director advises the Assistant Secretary of problems that could prevent the Regional Offices from carrying out the mission of ACF and the Department.

The Director represents the Assistant Secretary in HHS and with other Federal agencies and task forces on Region-related activities.

In conjunction with Program and Regional Offices, the Director provides the leadership of ACF's partnership and monitoring activities. The Director is jointly responsible with the Office of Planning, Research and Evaluation for implementing performance measures for ACF's goals and objectives.

Within the Office of the Director, administrative staff assist the Director in managing the administrative, personnel, and salaries and expenses activities for the Office of Regional Operations.

B. The Regional Operations Staff develops and manages processes for liaison between ACF Regional Offices and the Assistant Secretary and program and staff offices in headquarters. The Staff supports Regional Offices by implementing and overseeing systems and procedures for communicating with and managing the workload emanating from the varied and diverse ACF Program Offices. The Staff monitors and evaluates Regional Office operations and makes plans for the utilization of regional resources to accomplish approved objectives. The Staff works with program offices to develop strategies for delivery of services to States and grantees.

IV. Delete Chapter KL.00, ''Office of Staff Development and Organizational Resources'', in its entirety and replace with the following:

KL.00 Mission
KL.10 Organization
KL.20 Function

KL.00 Mission. The Office of Staff Development and Organizational Resources (OSDOR) serves as principal advisor to the Deputy Assistant Secretary for Program Operations and provides consultation, policy development, technical assistance and related services to all ACF components in the areas of training, staff development, organizational development and organizational analysis. Supports the implementation of ACF's streamlining efforts.

KL.10 Organization. The Office of Staff Development and Organizational Resources is headed by a Director who reports to the Deputy Assistant Secretary for Program Operations.

KL.20 Functions. The Office of Staff Development and Organizational Resources provides leadership in directing and managing agency-wide staff development and training activities for ACF. The Office is responsible for the functional management of all program, common needs and management training in the agency, including policy development, guidance, and technical assistance and evaluation of all aspects of program, career, employee, supervisory, management, executive and organizational development. Provides leadership in implementing the recommendations of the Staff Development and Training Team by managing/overseeing and monitoring the ACF Training Resource Center and institutionalizing long-term developmental training for ACF employees. Support the daily work and special projects of ACF employees by managing the Information Resource Center (library).

The Office serves as the principal source of advice through the Deputy Assistant Secretary for Program Operations to the Assistant Secretary on organizational design by collaborating with staff to develop high-leverage, tailored solutions to achieve measurable outcomes and to transform the agency to a quality organization that supports ACF's vision, values and goals. The Office advises the Assistant Secretary through the Deputy Assistant Secretary for Program Operations on all aspects of ACF organizational analysis including: planning for new organizational elements; and planning, organizing and performing studies, analysis and evaluations related to structural, functional and organizational issues, problems and policies to ensure organizational effectiveness. Conducts the review process for ACF

reorganization proposals. Acts as liaison with the HHS Office of the Assistant Secretary for Management and Budget to coordinate organizational proposals requiring Secretarial approval; prepares functional statements and official organizational charts. Administers ACF's system for review, approval, and documentation of delegations of authority and maintains the guidelines related to the delegations of authority.

V. Delete Chapter KP, ''Office of Program Support'', in its entirety and replace with the following:

KP.00 Mission
KP.10 Organization
KP.20 Functions

KP.00 Mission. The Office of Program Support (OPS) advises the Assistant Secretary for Children and Families on information resource, financial, grants, and procurement activities, both internal and external to ACF. The Director is the principal advisor to the Assistant Secretary for Children and Families on State systems matters. In addition, the Director serves as the Associate Deputy Director for Child Support Enforcement Systems and reports directly to the Director, Child Support Enforcement, on matters related to child support information systems. The Office develops, administers and coordinates financial, operational and budgetary policies, processes, and controls necessary to administer ACF programs and financial resources; directs discretionary and mandatory grant activities; oversees the utilization of information resources throughout ACF; directs ACF's information systems, computer centers and communications network activities; coordinates ACF's development and implementation of State systems policies and strategies; and administers and coordinates ACF's internal control activities.

KP.10 Organization. The Office of Program Support (OPS) is headed by a Director who reports directly to the Assistant Secretary for Children and Families. The Office is organized as follows:

- Office of the Director (KPA)
- Office of Information Services (KPB)
- Office of Financial Services (KPC)
- Office of Management Services (KPD)
- Office of Customer Service and Administration (KPE)
- Office of State Systems/Child Support Information Systems (KPF)

KP.20 Functions. A. Office of the Director directs and coordinates all activities of the Office of Program Support. The Director serves as ACF's: Chief Financial Officer (CFO); ACF's Chief Grants Management Officer; Federal Managers' Financial Integrity Act (FMFIA) Management Control Officer; Principal Information Resource Management Official serving as ACF's Chief Information Officer responsible for implementing the Information Technology Management Reform Act; and Reports Clearance Officer. The Director also serves as the Associate Deputy Director of Child Support Enforcement Systems and reports directly to the Director, Child Support Enforcement, on matters related to child support information systems. The Director serves as the ACF liaison with the Assistant Secretary for Management and Budget, the General Accounting Office, the Office of the Inspector General, and the Office of Management and Budget for areas under OPS' purview. The Office of Program Support (OPS) advises the Assistant Secretary for Children and Families on information resource, financial, grants, and procurement activities, both internal and external to ACF. The Office develops, administers and coordinates financial, operational policies, processes, and controls necessary to administer ACF programs and financial resources; directs discretionary and mandatory grant activities; oversees the utilization of information resources throughout ACF; directs ACF's information systems, computer centers and communications network activities; coordinates ACF's development and implementation of State systems policies and strategies; and administers and coordinates ACF's internal control activities.

B. Office of Information Services (OIS) provides centralized information technology policy, procedures, standards and guidelines; develops long-range information resource management (IRM) plans; develops IRM policy, procurement plans and budget for OIS; develops and implements procurement strategies for ADP support services; serves as the Deputy Chief Information Officer supporting ACF's responsibilities under the Information Technology Management Reform Act; reviews and analyzes all ADP acquisition documentation for compliance with applicable laws and regulations as well as for procurement strategy; coordinates technical assistance provided to program offices on ADP support services procurement; represents ACF on the Department's IRM Advisory Council; provides liaison and manages major interdepartmental IRM initiatives; conducts major information system reviews of ADP systems as required by the Department; directs and coordinates ACF's systems security and privacy responsibilities; maintains an ACF-wide program data inventory; coordinates mandated OMB approvals required under the Paperwork Reduction Act; and plans, directs and maintains ACF electronic records management system.

OIS manages the National Computer Center facility which provides services to ACF components and authorized state and county computer users for programs administered by ACF; plans, manages, maintains and operates ACF's local area networks (LANs), national wide-area network (WAN) and personal computers; provides for equipment and software acquisition, maintenance and user support for end-user computing; manages and maintains a Help Desk for ACF users and provides information technology and software training in coordination with ACF components; develops plans and places orders for data communications services; provides liaison with HHS, GSA and private firms on data telecommunications matters; and provides assistance to ACF components to identify needs for and use of data telecommunications equipment and systems.

OIS designs, develops, implements and maintains application systems to support ACF administrative, budget and program systems; provides technical assistance to ACF program offices procuring system support services; provides technical assistance on automated systems to state and local agencies who are users of ACF's Computer Center; and develops software policy, procedures, standards and guidelines.

C. Office of Financial Services (OFS) supports the Director, OPS in fulfilling ACF's Chief Financial Officer, Management Control Officer, and Chief Grants Officer responsibilities including preparation of the CFO 5 Year Plan; performs audit oversight and liaison activities, including preparing reports to Congress, Office of the General Counsel and the Office of the Inspector General. OFS writes/interprets financial policy and researches appropriation law issues; oversees and coordinates ACF's FMFIA activities; performs debt management functions; and develops and administers quality assurance, training and certification programs for grants management; and responsible for the annual preparation and audit of ACF's financial statement requirements. It develops/interprets internal policies and procedures for OFS components and coordinates the management of ACF's interagency agreement activities.

OFS provides agency-wide guidance to program and regional office staff on grant related issues; including

developing and interpreting financial and grants policy, coordinating strategic grants planning, facilitating policy advisory groups, and assuring consistent grant program announcements. OFS prepares, coordinates and disseminates action transmittals, information memoranda, and other policy guidance on financial and grants management issues; provides financial and grants administration training and technical assistance to ACF staff and grantees; and in coordination with the Office of Management Services, directs and/or coordinates management initiatives to improve financial administration of ACF mandatory and discretionary grant programs. OFS also develops and delivers grants management training to ACF program and financial staff.

D. Office of Management Services (OMS) provides centralized management and administration of acquisitions for ACF headquarters components; assures that all contracts awarded conform to applicable statutes, regulations and policies; develops ACF policies, procedures and instructions for the award and administration of all ACF acquisitions; reviews and interprets proposed HHS and OMB regulations, circulars and directives pertaining to acquisition management; solicits, negotiates, awards, modifies, terminates and closes all acquisitions issued by ACF; conducts the Small and Disadvantaged Business Utilization Program; and provides training and technical assistance to program and staff components on significant acquisition policies and procedures. OMS serves as the lead for ACF in coordination and liaison within ACF and with the Department, OMB, GSA and other federal agencies on procurement management issues and activities.

OMS provides management and technical administration of ACF discretionary, formula, entitlement and block grants; assures that all grants awarded by ACF conform with applicable statutes, regulations, and policies; computes grantee allocations, prepares grant awards, ensures incorporation of necessary grant terms and conditions, and monitors grantee expenditures; analyzes financial needs under grant programs; provides data in support of apportionment requests; prepares reports and analyses on the grantee's use of funds; maintains liaison and coordination with appropriate ACF and HHS organizations to ensure consistency between ACF grant systems and the Department's grant payment systems; and provides technical assistance to ACF program and regional components on grant operations and technical grants management issues; and performs audit resolution activities for ACF grant programs. OMS serves as the lead for ACF in coordination and liaison with the Department and other federal agencies on grants management and administration operational issues and activities.

E. Office of Customer Service and Administration (OCSA) develops and maintains a customer service plan for the OPS and conducts customer surveys for OPS; facilitates and assists in developing and writing standard operating procedures for all components within OPS; assists in office-specific training of OPS staff; assists OPS components with the provision of office-specific and functional training to program and regional offices; coordinates permanent and temporary teams formed within OPS; develops and maintains OPS staff directory and users' guide for OPS services.

OCSA is responsible for overseeing OPS' salaries and expenses budget. Provides direction to meet the human resource management needs within OPS; coordinates with the office which handles ACF's human resources activities and the Department to provide OPS staff with personnel services including position management, staffing, recruitment, employee and labor relations, employee assistance, payroll, staff development and training, and special hiring and placement programs; and maintains systems to track personnel actions to keep the Director of OPS and, as appropriate, the Directors of offices within OPS informed about the status of personnel actions, current full-time equivalency usage and salaries and expenses resources, and employee programs and benefits. All OPS personnel related issues, performance management activities and other administrative functions within OPS are handled within this office.

F. Office of State Systems/Child Support Information Systems (OSS) oversees the Department's responsibilities for Federal financial participation in the funding of State automated systems. It coordinates ACF's development and implementation of strategies and policies related to payment integrity, electronic benefits transfer, welfare systems integration, and related initiatives and programs. It directs state systems activities on partnership, collaborative efforts, and technical assistance activities.

The Office provides leadership for provision of technical assistance to States on information systems projects; and advances the use of computer technology in the administration of welfare and social services programs by States.

The Office is responsible for developing departmental policies and procedures under which States obtain Federal financial participation in the cost of automated systems development to support programs funded under the Social Security Act. It serves as the departmental focal point for the development and implementation of strategies and policies related to payment integrity, welfare systems integration and related initiatives and programs; and provides leadership and guidance to interagency work groups in these areas for the Department.

The Office reviews, analyzes, and approves/disapproves State requests for Federal financial participation for automated systems development activities which support the AFDC, JOBS, Child Care, Head Start, Child Welfare, Foster Care, Social Services, and Refugee Resettlement programs. It provides assistance to States in developing or modifying automation plans to conform to Federal requirements. It monitors approved State systems development activities; conducts periodic reviews to assure State compliance with regulatory requirements applicable to automated systems supported by Federal financial participation. It provides guidance to States on functional requirements for these automated information systems. It promotes interstate transfer of existing automated systems and provides assistance and guidance to improve ACF's programs through the use of automated systems.

The Office has a separate organizational unit which reports to the Associate Deputy Director for Child Support Enforcement, who reports to the Director of Child Support Enforcement. It reviews, analyzes, and approves/disapproves State requests for Federal financial participation for automated systems development activities which support the Child Support program. It provides assistance to States in developing or modifying automation plans to conform to Federal requirements. It monitors approved State systems development activities; conducts periodic reviews to assure State compliance with regulatory requirements applicable to automated systems supported by Federal financial participation. It provides guidance to States on functional requirements for these automated information systems. It promotes interstate transfer of existing automated systems and provides assistance and guidance to improve ACF's programs through the use of automated systems.

VI. Delete KT, ''Office of Legislative Affairs and Budget,'' in its entirety and replace with the following:

KT.00 Mission
KT.10 Organization
KT.20 Functions

KT.00 Mission. The Office of Legislative Affairs and Budget (OLAB) provides leadership in the development of legislation, budget, and policy, ensuring consistency in these areas among ACF program and staff offices, and with ACF and the Department's vision and goals. It advises the Assistant Secretary for Children and Families on all policy and programmatic matters which substantially impact the agency's legislative program, budget development, budget execution and regulatory agenda. The Office serves as the primary ACF contact, for the Department, the Executive Branch, and the Congress on all legislative, budget development, and regulatory activities.

KT.10 Organization. The Office of Legislative Affairs and Budget is headed by a Director, who reports to the Deputy Assistant Secretary for Policy and External Affairs.

KT.20 Functions. The Office of Legislative Affairs and Budget serves as the principal advisor to the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary for Children and Families on all policy and programmatic matters which substantially impact on legislative affairs, budget development, budget execution and the regulatory agenda; and represents the Deputy Assistant Secretary for Policy and External Affairs and the Assistant Secretary on budget, policy and legislative materials and activities.

Serves as the primary ACF contact for the Department, the Executive Branch, and Congress on all budget development and budget execution activities; manages the development and presentation of ACF's budget; provides guidance to ACF program and staff components in preparing material in support of budget development; manages the ACF regulatory development process; negotiates regulatory policy positions with the Department and the Executive Branch; provides guidance to ACF programs and staff components on policy and programmatic matters which substantially impact the budget and regulatory development process; and reviews and analyzes other policy significant documents to ensure consistency with ACF's budget, vision and goals.

Serves as the focal point for congressional liaison in ACF and for the Office of Assistant Secretary for Legislation; counsels and advises the Assistant Secretary for Children and Families and senior ACF staff on congressional activities and relations; manages the preparation of testimony and briefings; negotiates clearance of testimony; monitors hearings and other congressional activities which affect ACF; and manages congressional inquiries.

Manages the ACF legislative planning cycle and the development of Reports to Congress; reviews and analyzes a wide range of Congressional policy documents including, legislative proposals, pending legislation, and bill reports; solicits and synthesizes internal ACF comments on such documents; negotiates legislative policy positions with the Department and the Executive Branch; and reviews other policy significant documents to ensure consistency with statutory and congressional intent and the agency legislative agenda.

Facilitates the preparation of comprehensive administrative (salaries and expenses) budget for ACF; and designs and develops budget estimating modes and procedures.

VII. Delete KU.00, ''The Office of Human Resource Management,'' in its entirety and replace with the following:

KU.00 Mission
KU.10 Organization
KU.10 Function

KU.00 Mission. The Office of Human Resource Management (OHRM) is the principal advisor to the Deputy Assistant Secretary for Program Operations on all personnel administration and management areas.

KU.10 Organization. The Office of Human Resource Management is headed by a Director who reports to the Deputy Assistant Secretary for Program Operations.

KU.20 Functions. The Office of Human Resource Management directs and manages the personnel operations and services for the Administration for Children and Families (ACF). Provides advice and assistance to ACF managers in their personnel management activities including workforce planning, recruitment, selection, position management, performance management, and incentive awards. Provides a variety of services to ACF employees, including provision of employee assistance services and career, retirement and benefits counseling. Serves as ACF liaison to the Department on all payroll matters. Provides the following personnel administrative services: the exercise of appointing authority, position classification, awards authorization, personnel management evaluation, personnel action processing and recordkeeping. Manages the merit promotion, special hiring and placement programs.

Provides leadership, oversight, and coordination for the planning, analysis, and development of human resource policies and programs. Serves as liaison between ACF, the Department, and the Office of Personnel Management. Provides technical advice and assistance on policy, legal and regulatory matters. Formulates and interprets policies pertaining to all areas related to personnel administration and management. Formulates and interprets new human resource programs and strategies.

Formulates and oversees the implementation of ACF-wide policies, regulations and procedures concerning all aspects of the Senior Executive Service, and SES equivalent recruitment, staffing, position establishment, compensation, award, performance management and other related personnel areas. Manages the performance recognition systems and the responsibilities of the Executive Resources Board (ERB) and the Performance Review Board (PRB). Coordinates the Schedule C and Executive personnel activity with the Office of the Secretary. Is the focal point for data, reports, and analyses relating to SES, Schedule C and other executive personnel, such as those in Executive Level positions.

Provides management advisory service on all labor management and employee relations issues. Plans and coordinates ACF-wide employee relations and labor relations activities, including the application and interpretation of the Federal Labor-Management Relations Program, collective bargaining agreements, disciplinary and adverse action regulations, and appeals. Pursues human relations innovations such as alternative dispute resolutions and serves as the focal point on all issues pertaining to the Labor-Management Partnership Council. Provides leadership in assuring the integrity, effectiveness and impartiality of ACF's alternative dispute resolution programs, grievances, and merit systems program. Participates in the formulation and implementation of policies, practices and matters affecting bargaining unit employees' working conditions by assuring management's compliance with the Federal Labor Relations Program (5 U.S.C. Chapter 71).

Administers ACF's personnel security responsibilities and ethics program. Coordinates the ethics program with the

Department's Office of Special Counsel for Ethics.

VIII. Establish a new ''Chapter KV,'' as follows: Office of Administrative Services and Facilities Management:

KV.00 Mission
KV.10 Organization
KV.20 Functions

KV.00 Mission. The Office of Administrative Services and Facilities Management (OASFM) is the principal advisor to the Deputy Assistant Secretary for Program Operations on all areas of administrative services and facilities management for the Administration for Children and Families (ACF).

KV.10 Organization. The Office of Administrative Services and Facilities Management (OASFM) is headed by a Director who reports to the Deputy Assistant Secretary for Program Operations.

KV.20 Functions. The Office of Administrative Services and Facilities Management (OASFM) directs and manages ACF's administrative support services, facilities management programs and activities.

Provides agency-wide guidance on administrative issues; prepares, coordinates and disseminates information, policy, and/or procedural guidance on administrative and facilities management issues. Directs and/or coordinates management initiatives to improve ACF administrative and facilities management services with the goal of continually improving services while reducing costs.

Maintains budgetary controls on administrative services accounts, reconciling accounting reports and invoices, and monitoring all spending. Controls OASFM Visa credit card for small purchases. Establishes and manages contracts and/or blanket purchase agreements (BPAs) for administrative support and facilities management services, including space design, building alteration and repair, telecommunications, reprographics, physical security, moving, labor, records and property management and inventory, systems furniture acquisitions and assembly, fleet management, and the Information Resource Center (library).

Provides management and oversight of ACF mail delivery services and activities, including Federal and contractor postal services nationwide, covering all classes of U.S. Postal Service mail, priority and express mail services, and courier services, etc.

Directs all activities associated with the ACF Master Housing Plan, including coordination and development of the agency long-range space budget; planning, budgeting, identification, solicitation, acceptance and utilization of office and special purpose space, repairs, and alterations; principal liaison with General Services Administration (GSA) and other Federal agencies, building managers and facilities engineers, architects and commercial representatives, for space acquisition, negotiation of lease terms, dealing with sensitive issues such as handicapped barriers, space shortages, and security. Develops and maintains space floor plans and inventories, directory boards, and locator signs. OASFM serves as the lead for ACF in coordination and liaison with Departmental, GSA, Federal Protective Service, and other Federal agencies on implementation of Federal security directives. Responsible for planning and executing the Agency's environmental health, safety, and physical security programs, ensuring that appropriate occupational health and safety and occupant emergency evacuation plans are in place. Serves as principal liaison with private and/or Federal building managers for all administrative services and facilities management activities. Responsible for issuing, and managing and controlling badge and cardkey systems to control access to agency space for security purposes.

Develops and/or implements agency telecommunications management policy in accordance with Federal regulations and procedures. Reviews and directs payment of all agency telephone invoices. Recommends and advises on the design and function of telecommunications systems, based on user needs, costs and technological availability. Communicates directly with private industry service providers to coordinate the acquisition, installation and maintenance of voice/data telecommunications equipment and systems. Responsible for other sources of communications capability such as pagers, cellular phone service, cable TV service, and audio conferencing equipment and service. Coordinates the implementation of personal video and video conferencing. Updates and maintains the ACF LAN-based telephone directory, handles the distribution of all commercial directories, and updates and maintains the databases for telephone lines, and equipment inventories.

Plans, manages/operates employee transportation programs, including shuttle service and fleet management, employee and visitor parking, and commuter services and programs including transit subsidies and ridesharing. Develops and implements ACF travel policies and procedures consistent with Federal requirements. Provides technical assistance and oversight; coordinates ACF use of the Travel Management System; manages employee participation in the American Express Credit Card program for travel.

Purchases and tracks common use supplies, stationery and publications; manages equipment repair services and reprographics management activities; controls and maintains equipment and personal property inventories; develops and coordinates records (paper) and forms management, and real property activities.

Dated: January 14, 1997.

Olivia A. Golden,

Acting Assistant Secretary for Children and Families.

[FR Doc. 97–2236 Filed 1–28–97; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 96E–0354]

Determination of Regulatory Review Period for Purposes of Patent Extension; DIFFERIN Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for DIFFERIN Solution and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product,

medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product DIFFERIN Solution (adapalene). DIFFERIN Solution is indicated for the topical treatment of acne vulgaris. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for DIFFERIN Solution (U.S. Patent No. Re. 34,440) from Centre International de Recherches Dermatologiques (CIRD), and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 24, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of DIFFERIN Solution represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for DIFFERIN Solution is 2,814 days. Of this time, 1,651 days occurred during the testing phase of the regulatory review period, while 1,163 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: September 18, 1988. FDA has verified the applicant's claim that the date that the investigational new drug application became effective was on September 18, 1988.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: March 26, 1993. The applicant claims March 19, 1993, as the date the new drug application (NDA) for DIFFERIN Solution (NDA 20–338) was initially submitted. However, FDA records indicate that NDA 20–338 was submitted on March 26, 1993.

3. *The date the application was approved*: May 31, 1996. FDA has verified the applicant's claim that NDA 20–338 was approved on May 31, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 433 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 31, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 28, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 17, 1997.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 97–2141 Filed 1–28–97; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Drug Abuse Advisory Committee

Date, time, and place. February 10, 1997, 8:30 a.m., and February 11, 1997, 9 a.m., Holiday Inn—Gaithersburg, Grand Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, February 10, 1997, 8:30 a.m. to 9:30 a.m.; unless public participation does not last that long; open committee discussion, 9:30 a.m. to 11 a.m.; closed presentation of data, 11 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 5:30 p.m.; open public hearing, February 11, 1997, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5:30 p.m.; Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Drug Abuse Advisory Committee, code 12535.

Please call the hotline for information concerning any possible changes.

General function of the committee. The committee advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 27, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments. This statement may be faxed to Kimberly L. Topper at 301–443–0699, or E-mailed to TOPPERK@cder.fda.gov.

Open committee discussion. On February 10, 1997, the committee will discuss Quit™ Brand silver acetate lozenges, New Life Health Products, for smoking cessation. On February 11, 1997, the committee will discuss new drug application (NDA) 11–792, Soma® (carisoprodol generic tablets, Wallace Laboratory), for muscle relaxation and generic drugs containing carisoprodol. The committee will consider a Drug Enforcement Administration petition regarding scheduling of carisoprodol under the Controlled Substances Act.

Closed presentation of data. On February 10, 1997, the committee will hear trade secret and/or confidential commercial information relevant to pending investigational new drugs (IND's) and NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. On February 10, 1997, the committee will review trade secret and/or confidential commercial information relevant to pending IND's or NDA's. This portion of the meeting will be closed to permit discussion of this information. (5 U.S.C. 552b (c)(4)).

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. February 20 and 21, 1997, 8 a.m., Holiday Inn—Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing February 20, 1997, 8 a.m. to 9 a.m.; unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; closed presentation of data, February 21, 1997, 8 a.m. to 1 p.m.; closed committee deliberations, 1 p.m. to 4 p.m.; Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Endocrinologic and Metabolic Drugs Advisory Committee, code 12536. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 14, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On February 20, 1997, the committee will hear presentations and discuss data submitted regarding NDA 20–560/S–003, Fosamax (alendronate sodium tablets, Merck & Co.) for an expansion of the indication to include the prevention of postmenopausal osteoporosis.

Closed presentation of data. On February 21, 1997, the committee will hear trade secret and/or confidential commercial information relevant to pending IND's and NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. On February 21, 1997, the committee will discuss trade secret and/or confidential commercial information relevant to pending IND's and NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 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 may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration,

12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 22, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–2168 Filed 1–28–97; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETING: The following advisory committee meeting is announced:

Radiological Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. February 24, 1997, 8 a.m., Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD. A limited number of overnight accommodations have been reserved at the Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD. Attendees requiring overnight accommodations may contact the hotel at 301–590–0044 and reference the FDA Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Christie Wyatt, KRA Corp., 301–495–1591, ext. 267. The availability of appropriate accommodations cannot be assured unless prior written notification is received.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9:15 a.m., unless public participation does not last that long; open committee discussion, 9:15 a.m. to 12 m.; closed committee deliberations, 12 m. to 1 p.m.; open committee discussion, 1 p.m. to 4:30 p.m.; John C. Monahan, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Radiological Devices Panel, code 12526. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 17, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues related to a supplement to a premarket approval application (PMA) for an ultrasound contrast agent indicated for use with ultrasound assessment of the female reproductive organs to demonstrate fallopian tube patency. The committee will also discuss general issues related to a PMA for an ultrasound contrast agent indicated for use in conjunction with diagnostic ultrasound to provide opacification of cardiac chambers, improve delineation of endocardial borders, enhance the

Doppler signal (blood flow), and visualize wall motion of the heart.

Closed committee deliberations. FDA staff will present to the committee trade secret and/or confidential commercial information regarding present and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 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 may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 22, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–2239 Filed 1–28–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[Form # HCFA–1500]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), has submitted to the Office of Management and Budget (OMB) the following request for Emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320, in order to prevent providers from denying services to beneficiaries. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result if normal clearance procedures are followed. Without this information, HCFA would not be able to process claims possibly resulting in the denial of services to

Medicare Beneficiaries, due to provider non-payment.

HCFA is requesting that OMB provide a seven working day review and a 180-day approval. During this 180-day period HCFA will pursue OMB clearance of this collection as stipulated by 5 CFR 1320.5.

1. *Type of Information Collection Request:* Reinstatement without change, of a previously approved collection; *Title of Information Collection:* Medicare/Medicaid Health Insurance Common Claim Form and Instructions, and Supporting Regulations 42 CFR 424.32 (Basic Requirements for all Claims) and 42 CFR 414.40 (Coding and Ancillary Policies); *Form No.:* HCFA–1500; *Use:* This form and instructions are standardized for use in the Medicare/Medicaid programs to apply for reimbursement for covered services. HCFA does not require exclusive use of this form for Medicaid. 42 CFR 424.32 and 42 CFR 414.40 are regulations underlying the use of the form HCFA–1500 and the information captured on the form HCFA–1500, including the use of diagnostic and procedural coding systems; *Frequency:* On occasion; *Affected Public:* Business or other for profit, not for profit institutions, State, local or tribal government; *Number of Respondents:* 976,239; *Total Annual Responses:* 614,967,982; *Total Annual Hours:* 52,139,385.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1325. Written comments and recommendations for the proposed information collections should be sent within five working days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC. 20503.

Dated: January 23, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–2088 Filed 1–28–97; 8:45 am]

BILLING CODE 4120–03–P

[ORD–089–N]

Medicare and Medicaid Programs; Small Business Innovation Research Grants for Fiscal Year 1997

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the availability of HCFA funding, through grants, for small businesses under the Small Business Innovation Research (SBIR) Program. This notice contains information about the subject areas for grants that will be given priority, application requirements, review procedures, and other relevant information.

DATES: Grant applications must be submitted by April 29, 1997, in order to be considered under the fiscal year (FY) 1997 annual funding cycle.

ADDRESSES: Standard application forms and related instructions are available from and must be formally submitted to: HCFA Grants Officer, Office of Acquisition and Grants, Health Care Financing Administration, 7500 Security Boulevard, C2–21–15, Baltimore, MD 21244–1856, (410) 786–5701.

FOR FURTHER INFORMATION CONTACT: Carl Hackerman, (410) 786–6644. *Internet:* Chackerman@hcfa.gov.

SUPPLEMENTARY INFORMATION:

I. Small Business Innovation Research Program

The Small Business Innovation Development Act of 1982 (Public Law 97–219, enacted on July 22, 1982), as amended by the Small Business Innovation Research Program Extension (Public Law 99–443, enacted on October 6, 1986), the Small Business Administration Reauthorization and Amendment Act of 1988 (Public Law 100–590, enacted on November 3, 1988), the Small Business Research and Development Enhancement Act of 1992 (Public Law 102–564, enacted on October 28, 1992), and the Small Business Administration Reauthorization Act of 1994 (Public Law 104–403, enacted on October 2, 1994), (15 U.S.C. 638(e) through (m)), requires Federal agencies to reserve a specific amount of their extramural research and budgets for a Small Business Innovation Research (SBIR) Program. This SBIR Program is intended to—

- Stimulate technological innovation;
- Use small business to meet Federal research and demonstrations (''R & D'') needs;
- Increase private sector commercialization of innovations derived from Federal R & D; and
- Foster and encourage participation by minority and disadvantaged persons in technological innovation.

The principal purpose of HCFA's SBIR Program is to provide assistance to creative applicants so that innovation can be encouraged that will result in better health care.

A. SBIR Program Phases, Award Amounts, and Period of Support

The SBIR Program consists of the following three phases:

Phase I

The objective of this phase is to establish the technical merit and feasibility of proposed research or Research and Demonstrations efforts and to determine the quality of performance of the small business awardee organization before furnishing further Federal support in Phase II. Phase I awards will be approximately $50,000 (for both direct and indirect costs) for a period not to exceed 12 months.

Phase II

The objective of this phase is to continue the research or R & D efforts initiated in Phase I and to actually create the proposed product and test it before marketing. Funding is based on the results of Phase I and technical merit of the Phase II application, including its potential for commercialization. (Only Phase I awardees are eligible to apply for Phase II funding.) Phase I awardees are eligible to apply for Phase II funding only from the Federal agency that supported their Phase I project. Phase II awards will be approximately $100,000 to 150,000 (for both direct and indirect costs) for a period normally not to exceed 12 months.

Phase III

The objective of this phase, if appropriate, is for the small business concern to pursue with non-Federal funds the commercialization of the results of the research or R & D in Phases I and II.

The purpose of this notice is to invite Phase I and II grant applications from for-profit domestic small business concerns that have the expertise to develop or further develop innovative technology. This technology should be compatible with the general mission of HCFA and contribute to the health care field. HCFA is responsible for the Medicare program, Federal participation in the Medicaid program, and related health care quality assurance programs. HCFA's mission is to promote the timely delivery of appropriate quality health care to its Medicare beneficiaries and Medicaid recipients—over 70 million of the nation's aged, disabled, and poor. HCFA must also ensure that Medicare beneficiaries and Medicaid recipients are aware of the services for

which they are eligible. In addition, HCFA must ensure that those services are accessible and of high quality.

In carrying out its mission, HCFA conducts studies and projects that examine and demonstrate payment, coverage, eligibility, and management alternatives to the present programs. HCFA also studies the impact of HCFA programs on health care costs, program expenditures, beneficiary and recipient access to services, health care providers, and the health care segment of the American economy.

In addition, HCFA monitors national health care expenditures and prices and provides analyses of the costs of current programs, as well as the impact of possible legislative or administrative changes in the programs. HCFA's Office of Research and Demonstrations (ORD) is responsible for the technical aspects of the SBIR Program described in this section.

This notice outlines the eligibility requirements for organizations wishing to participate in the HCFA SBIR Program and the research grant application and review processes. It also provides both general program information as well as specific research topics and subtopics that may be of interest to small business concerns.

Although areas of special programmatic interest or priority are described in section VII. of this notice, we will consider grant applications in any area within the field of health care research and demonstrations unless otherwise specifically excluded. However, we are not generally interested in funding the biomedical or clinical projects that more appropriately fit the mission of the National Institutes of Health.

B. Eligibility

Each organization submitting a grant application under our SBIR Program must qualify as a small business concern. ''Small business concern'' is defined in section II.F. of this notice. In determining whether an applicant is a small business concern, an assessment will be made of several factors, including whether it is organized for profit, whether it is independently owned and operated, and whether it meets the size requirement of 500 or fewer employees. Whether the size requirement is met may depend on whether the applicant organization is affiliated with another organization whose employees, when added to those of the applicant organization, exceed 500. In conducting this assessment, all appropriate factors will be considered, including common ownership, common management, and contractual relationships.

Affiliation exists when one concern controls or has the power to control the other, or there is third party control, or an identity of interest between or among parties exists so that affiliation may be found. Control may be affirmative or negative, and it is immaterial whether it is exercised so long as the power to control exists. Indeed, control can arise from a variety of circumstances. One example of a circumstance that could lead to a finding that an organization is controlling, or has the power to control, another organization is the sharing of common office space, employees, or other facilities (for example, laboratory space). Although access to special facilities or equipment in another organization is permitted (as in cases in which the SBIR applicant has entered into a subcontractual agreement with another institution for a specific, limited portion of the research project), research space occupied by an SBIR applicant must be space that is not generally shared with another organization and over which the applicant has exclusive control. When there is an indication of sharing of common employees, a determination will be made on a case-by-case basis of whether the sharing constitutes control or the power to control.

Additionally, control or the power to control is generally considered to exist when ''key employees of one concern organize a new concern and serve as its officers, directors, principal stockholders, and/or key employees, and the one concern is furnishing or will furnish the other concern with subcontracting financial or technical assistance, bid or performance bond indemnification, and/or other facilities, whether for a fee or otherwise.'' Affiliation can also arise between or among two or more persons when an identity of interest exists, such as members of the same family or persons with common investments in more than one concern.

All SBIR grant applications will be reviewed with the above considerations in mind. Organizations considering submitting an application are referred to the SBA's SBIR Program Policy Directive published in the Federal Register on January 26, 1993 (58 FR 6144) and to the regulations set forth at 13 CFR part 121 for further guidance regarding eligibility. In particular, to determine whether affiliation exists, the applicant should also refer to 13 CFR 121.401 for the definition of affiliation, which will be used as HCFA's guide on this matter. If it appears that an applicant organization does not meet eligibility requirements with respect to size, HCFA will request a size determination of the organization from the applicable Small Business Administration (SBA) regional office. The review of the application may be deferred until a definitive response is furnished by SBA.

Of particular concern in considering grant awards is the position of principal investigator. We wish to ensure that support is furnished to a carefully directed working group led by an individual personally committed to the development of the innovation. Accordingly, we are adopting the ''principal investigator'' concept from 42 CFR part 52. These regulations define the term ''principal investigator'' to mean ''a single individual designated by the grantee in the grant application * * * who is responsible for the scientific and technical direction of the project'' (42 CFR 52.2). In order to meet this standard, the principal investigator's primary employment must be with the grantee at the time of the award and remain so for the duration of the project. Primary employment means that more than one-half of the principal investigator's time is spent in the employment of the small business concern. Primary employment with a small business concern precludes full-time employment at another organization.

In accordance with SBA's SBIR Program Policy Directive published in the Federal Register on January 26, 1993 (58 FR 6144), we have further restricted the definition of primary employment of the principal investigator to accurately reflect HCFA's needs. The applicant must declare the principal investigator's employment, whether paid or unpaid, at the time of application, and must declare all employment relationships, whether paid or unpaid, that the principal investigator is expected to have at the time the SBIR grant awards are expected to be made and for the duration of the proposed project. In the event that, at the time of application, the principal investigator (1) is, or expects to be, a less-than-full-time employee of the small business concern; (2) is, or expects to be, concurrently employed by another organization; or (3) gives, or expects that he or she may give, the appearance of being concurrently employed by another organization, whether for a paid or unpaid position, it is essential that documentation be submitted with the application to verify the applicant's eligibility at the time of the award. Thus, if the principal investigator is also employed or appears to be employed by an institution other

than the applicant organization (for example, a university, nonprofit research institute, or a company other than the applicant organization), a letter must be furnished by the nonapplicant organization confirming that the principal investigator, if awarded an SBIR grant, is, or will become, a less-than-half-time employee of the organization and will remain so for the duration of the SBIR project. If the principal investigator is employed by a university, the letter must be furnished by the dean of the school or the departmental chairperson. If the principal investigator is employed by another for-profit organization, the letter must be signed by a corporate official. This documentation of the primary employment of the principal investigator is required for every application that is submitted, even one that is a revision of a previously submitted application. In the event that solicitation of this documentation would place the principal investigator's current employment in jeopardy should the grant award not be made, the applicant may delay submission of the documentation, provided the documentation is submitted no later than 30 days after receiving notice of a grant award, and provided that the applicant includes a statement with the grant application to the effect that solicitation of the documentation at this time would place the principal investigator's current employment in jeopardy, that the applicant will forward the documentation within 30 days of receiving notice of a grant award, and that the applicant understands that should it fail to provide the documentation, we may, at our discretion, immediately suspend or terminate the grant. If the principal investigator fails to furnish adequate documentation, the application may be returned without review. In the event a grantee is required to submit documentation of the principal investigator's employment, but fails to do so within 30 days of the date of the notice of grant award, we may immediately suspend or terminate the grant.

For both Phase I and Phase II, the research or R & D must be performed in its entirety in the United States (U.S.), that is, the States, territories, and possessions of the U.S.; the Commonwealths of Puerto Rico and the Northern Mariana Islands; and the District of Columbia.

II. Definitions

The words and phrases that appear on the SBIR application form, or are needed in the application narrative, are not readily defined. Therefore, for convenience and clarity, we have furnished the following definitions, which, except as noted, are taken from SBA's SBIR Program Policy Directive that implements this program and was published on January 26, 1993, in the Federal Register (58 FR 6144). This policy directive requires an agency to define in a separate section whatever terms it uses that are unique to either the SBIR Program, a specific SBIR solicitation, or a portion of the solicitation. The section must also include, at a minimum, specific terms as defined in the policy directive. Accordingly, in addition to the terms required by the policy directive, we are also defining the terms ''Contract'' and ''Grant'' and including the policy directive's definition of the term ''Research and Development.''

A. Contract

A ''contract'' is an award instrument establishing a binding legal procurement relationship between a funding agency and the recipient, obligating the latter to furnish an end product or service and binding the agency to furnish payment for the product or service.

B. Grant

A ''grant'' is a financial assistance mechanism whereby either money or direct assistance, or both, is furnished to carry out approved activities.

C. Socially and Economically Disadvantaged Individual

In accordance with the Small Business Administrations definitions (13 CFR Part 124), a ''socially and economically disadvantaged individual'' is defined as a member of any of the following groups:

- Asian-Pacific Americans
- Black Americans
- Hispanic Americans
- Native Americans
- Subcontinent Asian Americans

D. Socially and Economically Disadvantaged Small Business Concern

A ''socially and economically disadvantaged'' small business concern is one—

- In which at least 51 percent is owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the voting stock is owned by one or more socially and economically disadvantaged individuals; and
- Whose management and daily business operations are controlled by one or more of the individuals.

E. Research and Development

- Research and Development'' or Research and Demonstrations is defined as any activity that is—
- A systematic, intensive study directed toward greater knowledge or understanding of the subject studies;
- A systematic study directed specifically toward applying new knowledge to meet a recognized need; or
- A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

F. Small Business Concern

At the time of award of Phase I and of Phase II, a ''small business concern'' is one that—

- Is organized for profit, independently owned and operated, not dominant in the field of operation in which it is proposing, and has its principal place of business located in the U.S.;
- Is at least 51 percent owned or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by U.S. citizens or lawfully admitted permanent resident aliens; and
- Has, including its affiliates (''affiliation'' is defined in 13 CFR 121.401), a number of employees (as defined in 13 CFR 121.407) not exceeding 500, and meets the other small business concern size regulation requirements found in 13 CFR 121. Business concerns, other than investment companies licensed, or State development companies qualifying, under the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.), are affiliates of one another when either directly or indirectly (1) one concern controls or has the power to control the other, (2) a third party or parties controls or has the power to control both, or (3) an identity of interest between or among parties exists so that affiliation may be found. Control can be exercised through common ownership, common management, and contractual relationships. Business concerns include, but are not limited to, any individual, partnership, corporation, joint venture, association, or cooperative.

G. Subcontract

A ''subcontract'' is any agreement, other than one involving an employer-employee relationship, entered into by a Federal government funding agreement awardee calling for supplies or services

required solely for the performance of the original funding agreement.

H. Women-Owned Small Business Concern

A ''women-owned small business concern'' is a business that is at least 51 percent owned, controlled, and operated by a woman or women. ''Control'' is defined as exercising the power to make policy decisions; ''operate'' is defined as being actively involved in the day-to-day management.

III. Preparation of Grant Applications

The forms and instructions will be supplied to the applicant by the HCFA Grants Officer (see the **ADDRESSES** section of this notice) and are designed for use in applying for SBIR Phase I or Phase II research grants. The instructions contain the SBA policy directive's guidelines on proposal content and limitations.

Potential applicants are encouraged to contact the SBIR Coordinator (see the **FOR FURTHER INFORMATION CONTACT** section of this notice) for preapplication technical assistance and for more specific information on the research topics described in section VII. of this notice.

Health science research literature is available at academic and health science libraries and Regional Medical Libraries through a network supported by the National Library of Medicine. A list of Regional Medical Libraries and information about network services may be requested from the Public Information Office, National Library of Medicine, Bethesda, MD 20894, telephone (301) 496–6308.

Other sources that provide technology search and document services include the organizations listed below. They should be contacted directly for service and cost information.

National Technical Information Service
5285 Port Royal Road
Springfield, VA 22161
(703) 487–4600

NASA Industrial Applications Center
University of Pittsburgh
701 LIS Building
Pittsburgh, PA 15280
(412) 624–5211

North Carolina Science and Technology Research Center
Post Office Box 12235
Research Triangle Park, NC 27709
(919) 549–0671

NASA/Florida State Technology Applications Center
State University
System of Florida, 500 Well Hall
Gainesville, FL 32611
(904) 392–6626

NASA/UK Technology
University of Kentucky
109 Kinkead Hall
Lexington, KY 40506
(606) 257–6322

Aerospace Research Applications Center
611 N. Capitol Avenue
Indianapolis, IN 46204
(317) 262–5003

Kerr Industrial Applications Center
Southeastern Oklahoma State
University Durant, OK 74701
(405) 924–6822

IV. Submission of Grant Applications

Grant applications must be submitted to the HCFA Grants Officer (see the **ADDRESSES** section of this notice).

Applications must be postmarked by April 29, 1997. Applications mailed through the U.S. Postal Service or a commercial delivery service will be ''on time'' if they are received or postmarked on or before April 29, 1997. Submissions by facsimile (fax) transmission will not be accepted. Applications that do not meet the above criteria will be considered late applications. Respondents are cautioned that if their application is late, it will be returned without review.

V. Method of Selection and Evaluation Criteria

All Phase I and Phase II grant applications will be evaluated and judged on a competitive basis. Applications will be screened, and those found to be inadequate for review or programmatically unrelated to HCFA's mission will be returned to the applicant. Those passing the screening will be reviewed for technical merit. Each application will be judged individually, as described in this section. HCFA is under no obligation to fund any application or make any specific number of awards in a given topic area. It may also elect to fund no projects within a given topic area.

A. Review Process

Grant applications are subject to a review process involving two sequential steps. The first step is performed by a technical review panel composed primarily of Federal and non-Federal professionals selected for their competence in particular fields. The task of the panel is to evaluate applications for technical merit. The reviewers furnish a number rating, make an overall recommendation, and, on occasion, make highly specific recommendations related to the scope, direction, and conduct of the proposed research. The second level of review is made by the senior management of HCFA's ORD. ORD management decisions are based on judgments about not only the technical merit of the proposed research, but also its relevance to our mission. Generally, HCFA may award a grant only if the corresponding application has been recommended for approval by the panel. However, applications recommended for approval are not automatically funded.

B. Review Criteria

- In considering the technical merit of each application, the following criteria and weights will be used:
- The soundness and technical merit of the proposed approach—35 percent.
- The potential of the research for technological innovation including the potential for commercial application—30 percent.
- The qualifications of the proposed principal investigator, support staff, and consultant—20 percent.
- The appropriateness of the budget—10 percent.
- The adequacy and suitability of the facilities and research environment—5 percent.

C. Funding Decisions

When making funding decisions, ORD takes into consideration the following: (1) Ratings resulting from the technical evaluation process, (2) program relevance, and (3) applications.

D. Release of Grant Application Review Information

Following decisions on grant applications, their summary statements are mailed with a disapproval letter to principal investigators whose proposals have not been accepted.

E. Submission of Similar Grant Applications by the Applicant Organization

HCFA discourages the submission of more than one grant application submitted by the same applicant organization with essentially the same research focus: That is, a product or technology that, with nonsubstantive modifications, can be applied to a variety of purposes. In evaluating groupings of applications with a common focus or objective, technical review groups are in a position to easily identify multiple grant applications from the same organization for essentially the same project. In these cases, HCFA will give funding consideration to only one application.

VI. Considerations

SBA's SBIR Program Policy Directive (58 FR 6144) specifies that we furnish the following information:

A. Awards

- There will be approximately 10 to 15 Phase I and/or Phase II awards in FY '97.
- The SBA Program Policy Directive permits the payment of a reasonable fee or profit under the SBIR program.

B. Reports

The grantee organization will be required to submit semi-annual progress reports, a complete draft final report, and a final report. Additionally, a financial status report (SF–269A) must be submitted to the HCFA Grants Officer annually. The award will specify the schedule for these reports and place of delivery.

C. Payment Schedule

Once an SBIR grant is awarded, the grantee organization will receive information and forms regarding requests for cash, manner of payment, and associated reporting requirements. Payment may be made on a cost-reimbursement or advance basis. Cost reimbursements may be requested monthly, quarterly, or at other periodic intervals. Advance payments may be requested on a monthly basis only.

D. Limited Rights Information and Data

1. Proprietary Information

Information contained in an unfunded grant application will remain the property of the applicant. HCFA may, however, retain copies of all applications.

If proprietary information is provided by a proposer in a proposal that constitutes a trade secret, proprietary, commercial or financial information, confidential personal information or data affecting the national security, it will be treated in confidence, to the extent permitted by law, provided this information is clearly marked by the proposer with the term ''confidential proprietary information'' and provided the following legend appears on the title page of the proposal:

For any purpose other than to evaluate the proposal, this data shall not be disclosed outside the government and shall not be duplicated, used, or disclosed in whole or in part, provided that if a funding agreement is awarded to this proposer as a result of or in connection with the submission of this data, the government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement. This restriction does not limit the government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained in pages _____ of this proposal.

Any other legend may be unacceptable to the Federal government and may constitute grounds for removing the proposal from further consideration and without assuming any liability for inadvertent disclosure. The government will limit dissemination of the information to official channels only.

2. Title to Property

Title to real property, equipment, and supplies acquired by a for-profit recipient under a financial assistance award or subaward will vest, upon acquisition, in the Federal government. However, the title may be transferred to the awardee upon termination of the project if the transfer would be more cost-effective than our recovery of the property. It is recommended that applicants consider leasing arrangements whenever possible. HCFA will generally not fund projects that require the acquisition of real property, equipment, or supplies.

3. Rights in Data Developed Under the SBIR Grant

Rights in data, including software developed under the terms of any grant resulting from an application submitted in response to this notice, will remain with the grantee, except that the Federal government will have the limited right to use the data for internal Federal government purposes. These data will not be released outside the Federal government without permission of the grantee for a period of 4 years from completion of the project from which the data were generated. However, at the end of this 4-year period a royalty-free license will exist for HCFA to use, and to authorize others to use on its behalf, these data for Federal government purposes. At this time, HCFA is also relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This notice will be affixed to any reproductions of these data, in whole or in part.

4. Copyrights

With prior written permission of the Grants Officer, the awardee may normally copyright and publish (consistent with appropriate national security considerations, if any) material developed with HCFA's support. HCFA receives a royalty-free license for the Federal government and requires that each publication contain an appropriate acknowledgment of agency support and a disclaimer statement.

5. Patents

Small business concerns may normally retain the principal worldwide patent rights to any invention developed with HCFA support. The Federal government receives a royalty-free license for Federal government use, reserves the right to require the patentholder to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the U.S. must normally manufacture it substantially in the U.S. To the extent authorized by 35 U.S.C. 205, the government will not make public any information disclosing a government-supported invention for a 4-year period to allow the awardee a reasonable time to pursue a patent.

E. Profit or Fee

Absent a statutory prohibition, payment of a reasonable fee or profit will be made under the SBA's SBIR Program Policy Directive (58 FR 6144). Because the regulations set forth at 45 CFR 74.705, which provide that no profit or fee will be furnished to for-profit organizations through grants, do not invoke a statutory prohibition on paying a fee or profit, the SBA's policy directive applies to these SBIR grants.

F. Joint Ventures and Limited Partnerships

Joint ventures and limited partnerships are eligible provided the entity created qualifies as a small business concern in accordance with the definition included in this notice.

G. Performance of Research and Analytical Work by the Applicant Organization

In Phase I, a minimum of two-thirds or 67 percent of the research or analytical effort must be carried out by the small business concern; that is, consultant fees and contracts to a third party for portions of the technical effort may not exceed 33 percent of the total proposed budget.

In Phase II, a minimum of one-half or 50 percent of the research or analytical effort must be carried out by the small business concern; that is, consultant fees and contracts to a third party for portions of the technical effort may not exceed 50 percent of the total proposed budget.

H. Terms and Conditions of Awards

Upon acceptance of a grant, the awardee must comply with the terms and conditions contained or referenced in the Notice of Grant Award document. These terms and conditions, constituting legal requirements imposed on a grantee by statute, regulations,

administrative policy, or the award document itself, comprise the following ''standard'' and ''special'' provisions:

• Standard Provisions—Terms and conditions required as part of each Notice of Grant Award.

1. SBIR Grant program legislation: The Small Business Innovation Development Act of 1982 (Public Law 97–219); SBIR Program Extension (Public Law 99–443); the SBA Reauthorization and Amendment Act of 1988 (Public Law 100–590); and the Small Business Research and Development Enhancement Act of 1992 (Public Law 102–564).

2. The SBA's SBIR Program Policy Directive published in the Federal Register on January 26, 1993 (58 FR 6144).

3. Regulations set forth at 13 CFR part 121.

4. The inclusion of special terms and conditions, if any (see below).

5. Regulations set forth at 45 CFR part 74 (Administration of Grants).

• Special Provisions—Additional terms and conditions judged necessary to attain the objectives for which the grant is being made, to facilitate post-award administration of the grant, to conserve grant funds, or to otherwise protect the interests of the Federal government.

1. Requirement for written progress reports and due dates.

2. Requirement for a draft final report and due date.

3. Grantees' responsibilities with respect to information contained in technical documents.

4. HCFA's rights to suspend or terminate the grant.

5. Protection of individually identifiable data.

6. Grantees' responsibilities with respect to presentation of information.

7. Key personnel.

8. Submission of data to the Federal government.

9. Submission of items developed to the Federal government.

10. Other special terms and conditions that are appropriate to the circumstances of the individual award.

The grant must be administered in accordance with the following regulations:

13 CFR Part 121—Small Business Size Regulations
42 CFR Part 52—Grants for Research Projects
45 CFR Part 46—Protection of Human Subjects
45 CFR Part 74—Administration of Grants
45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the DHHS Effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
45 CFR Part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance.

I. Cost Sharing

Cost sharing is not required nor will it be an evaluation factor in consideration of the proposal. However, due to the special nature of the SBIR Program, the applicant may choose to share the costs of a project. This may be done through cash or in-kind contributions. Most frequently, we expect that the applicant will contribute more labor or use unreimbursed equipment as the applicant's share.

J. Additional Information

This Federal Register notice is intended for informational purposes and reflects current planning. If there is any inconsistency between the information contained in this notice and the terms of any resulting SBIR grant, the terms of the grant are controlling.

Before award of an SBIR grant, HCFA may request the applicant to submit certain organization, management, personnel, and financial information in order to ensure responsibility of the applicant.

The Federal government is not responsible for any monies expended by the applicant before the award of any grant.

This notice is not an offer by HCFA and does not obligate HCFA to make any specific number of awards.

The SBIR Program is not a substitute for HCFA's existing unsolicited proposal mechanisms, and unsolicited proposals will not be accepted under either Phase I or Phase II of the SBIR Program.

The applicant may be required to certify that he or she has not previously been paid, nor is currently being paid, for essentially equivalent work by an agency of the Federal government. If a grant is made under this notice for a project, some of whose elements are being supported, or will be supported, by another Federal agency, HCFA and the applicant will negotiate a budget that reflects the elimination of any overlapping support.

This program is not covered by Executive Order 12372, ''Intergovernment Review of Federal Programs.'' Executive Order 12372 provides for a State clearinghouse in each State to review Federal programs. Research grants are exempt from this review.

VII. Research Topic Areas

This notice invites SBIR Phase I applications in the following areas. The topics are defined in general terms. They are intended to indicate where we believe we can properly offer assistance in the development of innovative technology. ORD will consider any idea that is within the general subject of a topic. In addition, ORD will review any idea that is within the general purview of HCFA, as described in section I of this notice. Applicants are reminded that the overall intent of the HCFA SBIR Program is to provide assistance to the development of products and processes that have commercial potential and not to the acquisition of products for HCFA's own use.

A. High Quality and Effective Care

HCFA invites ideas that would develop products to assist all participants in health care in assessing and monitoring the quality of care and level of care being furnished to patients. Projects should aim to develop tools for health care professionals, providers, and managers that permit them to examine patterns of services being delivered, and the health and social outcome of those services. Projects that would assist private organizations in developing patient guidelines and in conducting technology assessments are of interest. These tools should provide a way to monitor and measure the delivery of health care services and the outcomes of those services. They should also make possible a judgment about the quality of the care, the effectiveness of the care, or both. The technical efficiency with which care is delivered and the appropriateness of the overall outcome for the patient should be addressed.

B. Management of Ambulatory Services

HCFA invites ideas that would develop tools to monitor, assess, and control overutilization and underutilization of ambulatory services and products at all levels of the health care system. Apart from the inflation in the cost of each service, a significant cause of the rising cost of health care services is excessive utilization. Traditionally, utilization review techniques have been applied to high cost, acute services, such as surgery and hospitalizations. We wish to focus on physician services and other ambulatory services and products, for example, drugs, medical equipment, and testing. HCFA invites applications related to services or products commonly

associated with Medicare beneficiaries and Medicaid recipients, who are primarily the aged, the poor, the disabled, and persons with end-stage renal disease. Techniques to be explored involve systems both for retrospective utilization pattern review and for managing prospective interventions in individual physician or beneficiary and recipient service or product use. This area also includes broader management tools, based on information derived from utilization review, that promote or ensure more efficient and effective service delivery.

C. Beneficiary Information and Assistance

HCFA invites ideas that may make the Medicare and Medicaid programs understandable to beneficiaries and recipients and that provide assistance to these individuals in their attempts to deal with the programs. Potential program users (Medicare and Medicaid beneficiaries) need to understand when they are eligible, what services or products are covered, and what their rights and responsibilities are within each program. (It is important to understand that detailed information on Medicaid must be assembled on a state-by-state basis). An example would be an information project that would assist health care consumers, including Medicare and Medicaid beneficiaries, by providing aggregate data on provider performance and utilization trends, discrete price information, and information on related copayments, etc.; in a sense, a ''Blue Book for Consumers.'' Another example is obtaining payment for claims, one of the most frequent problems encountered by Medicare beneficiaries. The process of dealing with Medicare's fiscal intermediaries and carriers is difficult for many beneficiaries. Tools that would ease this process would be welcome. Beneficiaries also need to be able to decide whether they should join, or exit from, a health maintenance organization, and the advantages and disadvantages of the decision. Beneficiaries need to understand what considerations to take into account when long term care is a possibility. Similarly, beneficiaries need to be assisted in the decision about the purchase of health insurance in addition to Medicare. HCFA invites ideas in beneficiary communication and assistance approaches that are tailored to special populations (such as significant demographic, sociocultural, or disease-related groups of beneficiaries), as well as approaches that could be used by supplemental health benefit program sponsors (for example, employers and unions) in assisting Medicare-eligible retirees. Applicants who are considering this topic should understand that the SBIR Program generally seeks to support the development of commercially viable products and that there is already a fair amount of existing commercial activity in this area.

D. Program Efficiencies and Improvement

The existing systems for health care delivery and financing have undergone, and are continuing to undergo, changes due to new technology, legislation, regulation, and market forces. Major payers for health care are continually studying the feasibility of new approaches to improving the management of care, the delivery of care, and financing. Therefore, HCFA invites applications that focus on tools to assist in the goal of improved management of the Medicare and Medicaid programs. The term management is used in a broad sense. These could be tools that are directed toward providers who furnish services or products to Medicare beneficiaries or Medicaid recipients, organizations that handle the financing of care, organizations that oversee the quality of services and products, or the beneficiaries and recipients themselves, and State and local organizations that deal primarily with Medicare and Medicaid populations.

HCFA will consider any innovative idea that appears to have the potential for improving the programs for any of the several parties involved, and that has a potential for sale in the normal or commercial market. An example of an innovative idea is the development of improved computer-based case management systems for community care services. Case management programs are commonly being used to coordinate community-based care for frail elderly and other populations under Medicaid and other programs. Automated systems use client eligibility and assessment information to assist case management agencies in preparing appropriate plans of care based on the client's condition and select service providers. These systems would also interface with service approval or financial or billing systems to improve the cost-efficiency of case management programs. Proposed systems should complement or integrate existing mandated HCFA instruments (particularly functional assessment tools, minimum data sets, discharge planning, etc.). Redundant instruments will not be considered for funding.

E. Other Health Care Research and Demonstrations

We encourage small business concerns to submit applications for proposed research in any area within the field of health care R & D.

VIII. Other Required Information

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management.

Authority: Public Law 97–219, 96 Stat. 217–221; Public Law 99–443, 100 Stat. 1120; Sec. 108, Public Law 100–590, 102 Stat. 2989, 2994; Public Law 102–564, 106 Stat. 4249 (15 U.S.C. 638 (e) through (m)). (Catalog of Federal Domestic Assistance Program No. 93.779, Health Care Financing Research, Demonstration and Experiments)

Dated: December 17, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 97–2087 Filed 1–28–97; 8:45 am]

BILLING CODE 4120–01–P

[ORD–081–CN; ORD–082–CN; ORD–083–CN; ORD–091–CN; ORD–094–CN]

Medicaid Program; New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: August and September 1995; October 1995; November 1995; July 1996; and October 1996; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction.

SUMMARY: In the following Federal Register documents delete the entry and description for the Montana Mental Health Access Plan as a ''pending'' section 1115 demonstration proposal.

- Federal Register document 95–30066, in the issue of December 11, 1995, page 63535, second column.
- Federal Register document 95–30559, in the issue of December 15, 1995, page 64443, first column.
- Federal Register document 96–824, in the issue of January 23, 1996, page 1772, first column.
- Federal Register document 96–23116, in the issue of September 11, 1996, page 47949 third column.
- Federal Register document 96–31237, in the issue of December 9, 1996, page 64916, third column.

In Federal Register document No. 95–30066, in the issue of December 11, 1995, on page 63536, first column, the narrative information under the heading ''5. Disapproval Proposals'' should read as follows:

''5. *Disapproval Proposals*

The Montana Mental Health Access Plan Section 1115 Demonstration Proposal was disapproved on September 13, 1995 for the following reasons:

- It would not have provided a comprehensive range of services to the expansion population, that is, the expansion population would not be eligible to receive physical health benefits under the demonstration; and
- It would have shifted the costs of state-funded mental health services to the Federal Government.''

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments)

Dated: January 23, 1997.

Barbara Cooper,

Acting Director, Office of Research and Demonstrations.

[FR Doc. 97–2086 Filed 1–28–97; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 35, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Forms—0915–0034—Extension, no change—This clearance request is for extension of approval for four HEAL forms: the Lender's Application for Contract of Federal Loan Insurance (used by lenders to make application to the HEAL insurance program); the Lender's Manifest (used by the lender to report recent HEAL loan activity); the Loan Transfer Statement (used by the lender to report the transfer of a HEAL loan); and the Borrower Status Request (completed by the borrower and the borrower's employer and used by the lender to determine eligibility for deferment). The reports assist the Department in protecting its investment in this loan insurance program. No changes to the forms are proposed.

The estimate of burden for the forms are as follows:

HRSA form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Lender's Application for Contract of Federal Loan Insurance	32	1	32	8 min	4
Lender's Manifest	9	331	2,975	5 min	248
Loan Transfer Statement	32	265	8,480	10 min	1,413
Borrower Status Request:					
Borrowers	12,180	1	12,180	10 min	2,030
Employers	7,550	1.613	12,180	5 min	1,015
Total	19,762	1.81	35,847	8 min	4,710

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 23, 1997

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–2139 Filed 1–28–97; 8:45 am]

BILLING CODE 4160–15–P

Program Announcement for Contracts for the Disadvantaged Health Professions Faculty Loan Repayment Program for Fiscal Year 1997

The Health Resources and Services Administration (HRSA) announces that applications for contracts for fiscal year (FY) 1997, for the Disadvantaged Health Professions Faculty Loan Repayment Program (FLRP) are now being accepted under section 738(a) of the Public Health Service Act (The Act).

In FY 1997, approximately $800,000 is available for competing applications for the Disadvantaged Health Professions Faculty Loan Repayment Program. It is expected that 25 contracts averaging $32,000 ($15,000 per year for two years) will be supported with these funds.

Purpose

The purpose of the Disadvantaged Health Professions Faculty Loan Repayment Program (FLRP), authorized by section 738(a), is to attract disadvantaged health professionals into faculty positions in accredited health professions schools. The program provides a financial incentive for degree-trained health professions personnel from disadvantaged backgrounds who will serve as members of the faculties of those schools. The FLRP is directed at those individuals available to serve immediately or within a short time as ''new'' full-time faculty members. Loan repayment may be provided only for an individual who has *not* been a member of the faculty of any school at any time during the 18-month period preceding the date on which the Secretary receives the request of the individual for a repayment contract (i.e., ''new'' faculty).

Section 738(b) makes available grants and contracts with schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, health administration, clinical

psychology and other public or private nonprofit health or educational entities to assist in increasing the number of underrepresented minority faculty. Section 738(b) will be implemented as a separate program.

Eligible Individuals

Individuals from disadvantaged backgrounds are eligible to compete for participation in the FLRP if they:

1. Have degrees in medicine, osteopathic medicine, dentistry, nursing, pharmacy, podiatric medicine, optometry, veterinary medicine, public health or clinical psychology; or

2. Are enrolled in an approved graduate training program in one of the health professions listed above; or

3. Are enrolled as full-time students in the final year of health professions training, leading to a degree from an eligible school.

Established faculty members are not eligible to apply for funds under the FLRP. Only individuals that have not taught in the last 18 (eighteen) months prior to application to the program will be considered.

Statutory Requirements

Prior to submitting an application for a contract for loan repayment, individuals must sign a contract with an eligible school, as prescribed by the Secretary, setting forth the terms and conditions of the FLRP. This contract with the school must require the individual to serve as a full-time member of the faculty, as determined by the school, for not less than 2 years, whereby the school agrees to pay, for each year, a sum (in addition to faculty salary) equal to that paid by the Secretary towards the repayment of principal due on the applicant's health professions educational loans. Additionally, the individual involved may not have been a member of the faculty of any school at any time during the last 18 months prior to application to the program.

Eligible Schools

Eligible schools are public or nonprofit private accredited schools of medicine, nursing, as defined in section 853 of the Act, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine or public health, or schools that offer graduate programs in clinical psychology and which are located in States as provided in section 799 of the Act.

Provisions of the Loan Repayment Program

Section 738(a) authorizes repayment, for each year of service, as much as 20 percent of the outstanding principal and interest on the individuals educational loans, not to exceed $20,000 for any given year. The school pays an equal amount, unless the Secretary determines that the repayment will impose an undue financial hardship on the school in which case, the Secretary may pay up to the entire 20 percent.

The school is required, for each such year, to make payments of principal and interest in an amount equal to the amount of payment made by the Secretary for that year. These payments must be in addition to the faculty salary the participant otherwise would receive.

Allowable educational loan repayment expenses include the following:

1. Tuition expenses;

2. All other reasonable educational expenses such as fees, books, supplies, educational equipment and materials required by the school, and incurred by the applicant;

3. Reasonable living expenses, as determined by the Secretary; and

4. Partial payments of the increased Federal income tax liability caused by the FLRP's payments and considered to be ''other income,'' if the recipient requests such assistance.

Prior to entering into a contract for repayment of loans, the Secretary requires satisfactory evidence of the existence and reasonableness of the individual's educational loans, including a copy of the original written loan agreement establishing the outstanding educational loan.

Waiver Provision

In the event of undue financial hardship to a school, the school may obtain from the Secretary a waiver of its share of payments while the participant is serving under the terms of the contract. For purposes of this program, ''undue financial hardship'', as seen by the Secretary, is based on a school's particular financial status as influenced by such circumstances as budget cutbacks. Decisions will be made on a case-by-case basis, and must be supported by the school's documentation of comparative yearly financial allocation of funds; or the most current certified public accounting audit, including the Balance Sheet and Statement of Income and Expenses for the past several years.

If the Secretary waives the school's payment requirement, the amount of the Federal loan repayment may be up to the full 20 percent described above (regardless of the ''equal amount'' provision described above), but cannot exceed the $20,000 repayment limit. The participant must pay that portion of loan payment due which is not covered.

The following Definitions, Program Requirements, Review Criteria and Funding Preference were established in FY 1991 after public comment dated October 2, 1991, at 56 FR 49896, and the Secretary is extending them in FY 1997.

Definitions

For purposes of the FLRP in FY 1997, an ''Individual from a Disadvantaged Background'' is defined as in 42 CFR 57.1804, as one who:

1. Comes from an environment that has inhibited the individual from obtaining the knowledge, skill, and abilities required to enroll in and graduate from a health professions school, or from a program providing education or training in an allied health profession; or

2. Comes from a family with an annual income below a level based on low income thresholds according to a family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in health professions and nursing programs. The Secretary will periodically publish these income levels in the Federal Register. The following income figures determine what constitutes a low income family for purposes of the Faculty Loan Repayment Program for FY 1997.

Size of parents' family [1]	Income level [2]
1	$10,200
2	13,200
3	15,700
4	20,200
5	23,800
6 or more	26,700

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1995 rounded to $100.

The term ''Living expenses'' means the costs of room and board, transportation and commuting costs, and other costs incurred during an individual's attendance at a health professions school, as estimated each year by the school as part of the school's standard student budget. (National Health Service Corps Loan Repayment Program, 42 CFR part 62.22)

The term ''Reasonable educational expenses and living expenses'' means the costs of those educational and living expenses which are equal to or less than the sum of the school's estimated

standard student budgets for educational and living expenses for the degree program and for the year(s) during which the Program participant is/was enrolled in the school. (National Health Service Corps Loan Repayment Program, 42 CFR part 62.22)

The term ''Unserved Obligation Penalty'' means the amount equal to the number of months of obligated service that were not completed by an individual, multiplied by $1,000, except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000. (Section 338E of the Act) See ''Breach of Contract'' section below.

Program Requirements

The following requirements will be applied to the applicant and to the school.

The Applicant

The applicant will be required to do the following:

1. Submit a completed application, including the applicant's contract with an eligible school to serve as a full-time faculty member for not less than 2 years;
2. Provide evidence that the applicant has completely satisfied any other obligation for health professional service which is owed under an agreement with the Federal Government, State Government, or other entity prior to beginning the period of service under this program;
3. Certify that the United States does not hold a judgment against the applicant; and
4. Provide documentation to evidence the educational loans and to verify their status.

The School

The school will be required to do the following:

1. Enter into a contractual agreement with the applicant whereby the school is required, for each year for which the participant serves as a faculty member, to make payments of principal and interest in an amount equal to the amount of such quarterly payments made by the Secretary. These payments must be in addition to the faculty salary the participant otherwise would receive.
2. Verify the participant's continuous employment at intervals as prescribed by the Secretary.

The Secretary will pay participants in equal quarterly payments during the period of service.

Effective Date of Contract

After an applicant has been approved for participation in the FLRP, the Director, Division of Student Assistance (DSA), will send the applicant a contract with the Secretary. The effective date is either the date work begins at the school as a faculty member or the date the Director, DSA, signs the FLRP contract, whichever is later. Service should begin no later than September 30, 1997.

Breach of Contract

The following areas under Breach of Contract are addressed in the appended contract:

1. If the participant fails to serve his or her period of obligated faculty service (minimum of 2 years) as contracted with the school, he/she is then in breach of contract, and neither the Secretary nor the school is obligated to continue loan repayments as stated in the contract. The participant must then reimburse the Secretary and the participating school for all sums of principal and interest paid on his/her behalf as stated in the contract in addition to any income tax assistance he/she may have received.
2. Regardless of the length of the agreed period of obligated service (2, 3, or more years), a participant who serves less than the time period specified in his/her contract is liable for monetary damages to the United States amounting to the sum of the total of the amounts the Program paid him/her, plus an ''unserved obligation penalty'' of $1,000 for each month unserved.
3. Any amount which the United States is entitled to recover because of a breach of the FLRP contract must be paid within 1 year from the day the Secretary determines that the participant is in breach of contract. If payment is not received by the payment date, additional interest, penalties and administrative charges will be assessed in accordance with Federal Law (45 CFR 30.13).

Review Criteria

The HRSA will review fiscal year 1997 applications taking into consideration the following criteria:

1. The extent to which the applicant meets the requirements of section 738(a) of the Act;
2. The completeness, accuracy, and validity of the applicant's responses to application requirements;
3. The submission of the signed contract with the school;
4. An applicant's earliest available date to begin service as a faculty member provided funding is available for that year; and
5. An applicant's availability to enter into a service contract for a longer period than the mandatory 2-year minimum.

Factors to assure equitable distribution (e.g. geographic, discipline) will be considered in determining the funding of completed applications.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Disadvantaged Health Professions Faculty Loan Repayment Program is related to the priority area of Educational and Community-Based Programs. 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 Community Partnerships

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive 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 promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Application Requests

Requests for application materials and questions regarding program information and business should be directed to: Shirley Zimmerman, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–34, Rockville, Maryland 20857. *Email:* szimmerman@hrsa.dhhs.gov; *Telephone:* (301) 443–1700; *FAX:* (301) 443–0846.

Completed applications should be returned to the address listed above. The application deadline date is June 30, 1997. Applications shall be considered to be ''on time'' if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Postmarked 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.

The application form and instructions for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0150.

The Disadvantaged Health Professions Faculty Loan Repayment Program is listed at 93.923 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: January 23, 1997.

Ciro V. Sumaya,

Administrator.

[FR Doc. 97–2245 Filed 1–28–97; 8:45 am]

BILLING CODE 4160–15–P

Office of Inspector General

Program Exclusions: December 1996

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of December 1996, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
AHMED, AFZAL, JAMAICA, NY	01/08/97
ARIF, RONALD A, N OLMSTEAD, OH	01/06/97
ARJONA, IGNACIO JESUS, MIAMI, FL	01/01/97
BADWOUND, JENNIFER, BILLINGS, MT	12/30/96
BOYKINS, MICHAEL L, BRANDON, MS	01/08/97
BURGER, JERRY R, AMHERST, OH	01/08/97
CARTER, ANNIE PEARL, LAKE PROVIDENCE, LA	12/30/96
CHICCO, JOANNE, WAYNE, PA	01/07/97
CHILDS, CAMIEL DANIELLE, PHOENIX, AZ	01/12/97
CRITCHFIELD, DALE, SAN DIEGO, CA	01/12/97
FARID, MOHAMMED, EDISON, NJ	01/07/97
FERRARA, AGNES, LANSDALE, PA	01/07/97
GALLOWAY, LYNN T, MESA, AZ	01/12/97
GOUGER, SANDHYA CYNTHIA ANN, LA JOLLA, CA	01/12/97
HENRY, JAMES E JR, UNION CITY, TN	01/08/97
HICKS, PEZZONIA VALDEZ, LONOKE, AR	12/30/96
HUOR, TOUCH, SAN DIEGO, CA	01/12/97
HUREY, JACQUELINE AMAHALALYA, SUITLAND, MD	01/07/97
I, HENG, SAN DIEGO, CA	01/12/97
JORDAN, PAMELA, LITHONIA, GA	01/01/97
KEATTS, JANET G, HOUSTON, TX	12/30/96
KNIGHT, NANCY A, HONOLULU, HI	01/12/97
LOPEZ, MARCO A SR, MIAMI BEACH, FL	01/01/97
LOVELACE, TERRY L, SCOTLANDVILLE, LA	12/30/96
MANALO, BENJAMIN M, WHEELING, IL	01/08/97
MAR, SONNY N, LOS ANGELES, CA	01/12/97
MARSHALL, VERNA, SACRAMENTO, CA	01/12/97
MAYS, MARIA L, DEQUINCY, LA	12/30/96
MLYNAREK, DANIEL A, STERLING HGTS, MI	01/08/97
POSEY, VALERIE ADELE, LA MESA, CA	01/12/97
QADRI, FARHAT S, HOLLIS, NY	01/08/97
RAMIREZ, ORY, CULVER CITY, CA	01/12/97
SABO, MARCIA, LAKEWOOD, CO	12/30/96
SALAMON, JAMES HARRY, LOS ANGELES, CA	01/12/97
SNIDER, GERALD A, EL RENO, OK	12/30/96
THRON, RICHARD D, SCHENECTADY, NY	01/07/97
TILLIS, CATRICE D, CANTON, MS	12/30/96
TRINGALI, JOSEPHINE AH NEE, MILILANI, HI	01/12/97
UNCAL, ANTONIO PEDRO, MIAMI, FL	01/01/97
VOLLOR, DAWN, GUILDERLAND, NY	01/07/97
WELLS, LINDA, RUDYARD, MI	01/08/97
WHELIHAN, DAVID ARTHUR, JESSUP, GA	01/01/97

Subject, city, state	Effective date
PATIENT ABUSE/NEGLECT CONVICTIONS	
ANDERSON, BOBBY JR, AURORA, CO	12/30/96
BARTLETT, TRACY D, BOYERTOWN, PA	01/07/97
BENSON, JANET M, DOVER, DE	01/07/97
BLAKE, ZONDRA I, GEORGETOWN, DE	01/07/97
BROWN, ROGERS BRIAN, DOVER, DE	01/07/97
CHAPMAN, D'ANGELA PATRICE, WOODVILLE, MS	12/30/96
CICHON, JOSEPH J, CARLTON, IL	01/02/97
CLEMONS, MICHAEL, LITTLE ROCK, AR	12/30/96
CROSS, ANDRAYUS N, GLEN CARBON, IL	01/08/97
DIMPKA, OZIOMA M, DOVER, DE	01/07/97
DUKER, RONALD T, WILMINGTON, DE	01/07/97
HARGIS, HOLLY DAWN, GREENFIELD, MO	01/08/97
JAMES, MALVINA, NEW CASTLE, DE	01/07/97
JOHNSON, STEVEN WAYNE, LA MARQUE, TX	12/30/96
KNIGHT, CLARA, PINE BLUFF, AR	12/30/96
KOVARY, WARREN A, OGDEN, UT	12/30/96
LONDRIE, RANDY, ST LOUIS, MO	01/08/97
MATTHEWS, GEORGE W, CARTHAGE, AR	12/30/96
NELSON, IRIS, GEORGETOWN, DE	01/07/97
ROSS, ERNEST L, GREENWOOD, DE	01/07/97
SAVOIE, GWENDOLYN HENRY, EDGARD, LA	12/30/96
SHAH, ASHVIN NATVARLAL, LINCOLN, IL	01/08/97
TAYLOR, DEMETRIUS, MILLSBORO, DE	01/07/97
TIDWELL, SHALONDA N, N LITTLE ROCK, AR	12/30/96
CONVICTION FOR HEALTH CARE FRAUD	
BATTS, JOHN ROBERT, PHOENIX, AZ	01/12/97
DUVALL, LISA, ASHEVILLE, NC	01/01/97
GALPERIN, VLADIMIR B, PHILADELPHIA, PA	01/07/97
GERZAN, ALAN, LANGHORNE, PA	01/07/97
HARRIS, STEPHEN D, KALAMAZOO, MI	04/03/96
MITCHELL, DONALD RAY, FLORISSANT, MO	01/08/97
MOORE, JUANITA, MAYWOOD, IL	01/08/97
OREN, ARIE, PENN VALLEY, PA	01/07/97
RAIKHELKAR, KRANTINATH, PHOENIX, AZ	01/12/97
ZAVERUKHA, ALEXANDER, CHURCHVILLE, PA	01/07/97
LICENSE REVOCATION/SUSPENSION/SURRENDER	
BELLAMY, DEBRA, DENVER, CO	12/30/96
BROWN, JAMES PAUL JR, HAZELTON, PA	01/07/97
DINOLFI, ARMAND, RYE BROOK, NY	01/07/97
EDWARDS, RONALD L, MINNETONKA, MN	01/08/97
HOLMAN, GERALD L, YAKIMA, WA	01/12/97
HOROWITZ, ALAN J, SCHENECTADY, NY	01/07/97
KELLY, RONALD KAY, ELKO, NV	01/12/97
MAHBOUBIAN, SOHAIL SAM, WOODLAND HILLS, CA	01/12/97
MCLANE, JERRY F, POPLAR BLUFF, MO	01/08/97
PALMQUIST, JAMES, MINNEAPOLIS, MN	01/08/97
RICHMOND, JOSEPH S, KANSAS CITY, KS	12/30/96
SALERNO, RICHARD D, NEWTOWN, CT	01/07/97
SHORE, THOMAS R, DURHAM, NC	01/01/97
WINTERLING, CHRISTINA, WEST CHESTER, PA	01/07/97
FEDERAL/STATE EXCLUSION/SUSPENSION	
ALCARE RESPIRATORY SERVICES IN NYACK, NY	01/07/97
BISSELL, RUSSELL, CHICAGO, IL	01/08/97
BRUNEY, RITA, BROOKLYN, NY	01/07/97
DON, AGUSTIN E, ELMHURST, NY	01/07/97
KAMEN, BARRY, FOREST HILLS, NY	01/07/97
LEWIS, PATRICIA, NYACK, NY	01/07/97
MURAGALI, CHANDRASHEKHAR G, BRONX, NY	01/07/97
OSTRO, ELLIOTT, CHICAGO, IL	01/08/97
STALLINGS, CAROL WRIGHT, BROOKLYN, NY	01/07/97
STAMBLER, LEONARD, BALDWIN HARBOR, NY	01/07/97
VICTOR, JACQUELINE, FLUSHING, NY	01/07/97
WICOFF, JAMES S, SAN ANTONIO, TX	12/30/96
OWNED/CONTROLLED BY CONVICTED/EXCLUDED	
DADE CO MED RENTALS & SALES, MIAMI, FL	01/01/97

Subject, city, state	Effective date
FLORIDA MEDICAL RENTAL & SALES, MIAMI, FL	01/01/97
ISLAND CHIROPRACTIC, VIRGINIA BEACH, VA	01/07/97
MED STAR AMBULANCE SERVICE, ATLANTA, GA	01/01/97
MIAMI MEDICAL RENTALS INC, MIAMI, FL	01/01/97
PANAC MEDICAL RENTALS & SALES, MIAMI, FL	01/01/97
QUALITY TRANSPORTATION, LITHONIA, GA	01/01/97
TERRY L LOVELACE, PH.D., INC, SCOTLANDVILLE, LA	12/30/96
DEFAULT ON HEAL LOAN	
ABE, GREGORY, TUGUNGA, CA	01/16/97
AHMAD, HAIFA M, CAMPBELL, CA	01/05/97
AKIN, KATHY L, LONG BEACH, CA	01/05/97
ALEXANDER, ZANDRINA, VALRICO, FL	01/12/97
ALI, ABDIRAZAK A, COLLEGE PARK, GA	01/12/97
ALSTON–DAVIS, DIEDRA A, GILBERTSVILLE, PA	01/06/97
ANYAJI, GEORGE I, SAN DIEGO, CA	01/16/97
ARMSTRONG, PHYLLIS M, LOS ANGELES, CA	01/05/97
AUSTIN, JERRY, DANIA, FL	01/12/97
BADIA, RAYMOND, GAFNEY, SC	01/12/97
BAI, CHUNG HWAN, GLENDALE, CA	01/05/97
BAILEY, CYNTHIA, PHILADELPHIA, PA	01/06/97
BAILEY, DARRELL E, WOODSTOCK, GA	01/12/97
BAIN, LEE ROBERT, COVINA, CA	01/05/97
BAKER, GRISBY JR, HOUSTON, TX	12/30/96
BALL, JOHN W, CLEVELAND, OH	01/16/97
BALYEAT, LISA ELAINE, LAKE FOREST, CA	01/05/97
BARNETT, RUTH D, DETROIT, MI	01/16/97
BARRERA, ADRIAN V, LAREDO, TX	12/30/96
BARTLEY, EMILY J, HOUSTON, TX	12/30/96
BAXENDALE, ROBERT C, MT CLEMENS, MI	01/06/97
BEERS, RICHARD H, WINTER PARK, FL	01/12/97
BELL, PHILIP J, DUNBAR, PA	01/06/97
BENKULA, JAN K, HAYWARD, CA	01/05/97
BERMAN, DAVID H, MARIETTA, GA	01/12/97
BERQUIST, ANDY O, FOSTER CITY, CA	01/05/97
BERRY, JAMES E, STAFFORD, TX	12/30/96
BESS-BLYTHE, VALERIE D, WASHINGTON, DC	01/06/97
BIGDELI, JAVAD, PENN VALLEY, PA	01/06/97
BILLSTROM, RICHARD L, MARIETTA, GA	01/12/97
BLOCK, ROBBYN K, PITTSBURGH, PA	01/06/97
BOHR, CORINNE E, ALPHARETTA, GA	01/01/97
BOLDUC, DAVID G, GREENSBORO, NC	01/01/97
BORON, STEVEN J, GUERNEVILLE, CA	01/05/97
BREAZEALE, MICHAEL E, MARIETTA, GA	01/12/97
BREEDLOVE, DAVID L, LONG BEACH, CA	01/05/97
BRODSKY, BARBARA L, RIVER EDGE, NJ	01/07/97
BROOKS, WILLIAM B, CHAMBLEE, GA	01/12/97
BROWN, JAMES A, WEST JORDAN, UT	01/01/97
BROWN, GEOFFREY G, DECATUR, GA	01/12/97
BROWN, WILLIAM C, HOUSTON, TX	12/30/96
BROWN, DARLA J, HIGHLANDS, TX	12/30/96
BUCHER, GILLES R, FORT LEE, NJ	01/07/97
BURKE, ANDREA M, HOUSTON, TX	12/30/96
BURNE, JAMES P JR, SCRANTON, PA	01/06/97
BURT, ERIC S, MONROE, LA	01/05/97
BURT, THOMAS R, NEWARK, CA	01/05/97
BURT, HUGH A, CLOVIS, NM	12/30/96
BYRD, RICARDAU E, ATLANTA, GA	01/12/97
CALDWELL, ERIC J, LEWISVILLE, AR	01/05/97
CALLOWAY, VOLLIE A, STOCKTON, CA	01/05/97
CARAZO, ANDRES R, PHILADELPHIA, PA	01/06/97
CARR, WAYNE S, HEALDSBERG, CA	01/05/97
CARTER, KAREN L, PONCHATOULA, LA	01/05/97
CESAR, GARY L, WILLIAMSTON, MI	01/06/97
CEZAR, MAHDI, DES PLAINES, IL	01/06/97
CHIN, RICHARD J, METAIRIE, LA	12/30/96
COOPER, APRIL DENISE, HOUSTON, TX	12/30/96
CURTIN, MICHAEL M, FAIRFAX, CA	01/05/97
DANIELS, FERNANDO III, UPPER MARLBORO, MD	01/06/97
DAY-TALL, DEBORAH A, WALDORF, MD	01/06/97
DE LA CRUZ, MAUREEN, BETHESDA, MD	01/06/97
DEOPP, WILLIAM N, MARIETTA, GA	01/12/97
DICKENS, CHARLES, LA QUINTA, CA	01/05/97

Subject, city, state	Effective date
DODD, DANIEL J, TEXAS CITY, TX	12/30/96
EARLE, JOHN E, JAMAICA, NY	01/16/97
EARTH-CHILD, ERIN I, OAKLAND, CA	01/05/97
EDEH, ONYEMACHI A, ATLANTA, GA	01/01/97
EICHLER, JOHN A, SALINE, MI	01/06/97
EILAND, GAZANDRA J, EAST LANSING, MI	01/06/97
FABER, DANA ANNICE, REMUS, MI	01/06/97
FEATHERSTONE, JOHN J, SAN BRUNO, CA	01/05/97
FISHER, MICHAEL J, SMYRNA, GA	01/12/97
FLOOD, WANDA G, CANTON, OH	01/06/97
FORTE, SANDRA L, DETROIT, MI	01/06/97
FORTSON, HENRY D, THOMASVILLE, GA	01/12/97
FOSTER, VALERIA J, ARVADA, CO	01/05/97
FOUNTAIN, RODNEY E, PENSACOLA, FL	01/12/97
FRANKLIN, JANET L, ROCKVILLE, MD	01/06/97
FRIDRICK, TIM P, N HOLLYWOOD, CA	01/05/97
FRIGARD, SCOTT N, MARIETTA, GA	01/12/97
FULLER, MICHAEL A, GALVESTON, TX	12/30/96
GABRIEL, TONY D, GLENDALE, CA	01/05/97
GALLAGHER, PATRICK S, DURHAM, NC	01/01/97
GARCIA, LETICIA S, NETHERLAND, TX	01/05/97
GAY, WARNER A, MARIETTA, GA	01/12/97
GHIGNA, MARY L BOGDANFFY, BAYSHORE, NY	01/16/97
GLOVER, CHERYL M, BROOKLYN, NY	01/16/97
GOEBEL, MICHAEL L, CLEVELAND, TX	12/30/96
GOUDREAULT, DEBORAH A, PARADISE VALLEY, AZ	01/05/97
GRANT, PATRICIA E, DECATUR, GA	01/12/97
GREEN, GREGORY N, ST LOUIS, MO	01/08/97
GROSS, GEORGE E, DALLAS, TX	01/05/97
GUIDOTTI, JANICE L, PHILADELPHIA, PA	01/06/97
HALL, JOHN E, ATLANTA, GA	01/12/97
HALL, JOHN L, CARTERSVILLE, GA	01/12/97
HAMMOCK, MARK A, DECATUR, GA	01/12/97
HENDLER, MICHAEL J, LAKEWOOD, CO	01/05/97
HENDRICKS, RICHARD L, MESA, AZ	01/05/97
HERMOSILLO, FRANCISCO J, TARZANA, CA	01/05/97
HILL, LEO D, BALTIMORE, MD	01/06/97
HINKEY, STEPHEN JACK, ASPEN, CO	01/01/97
HOCKERSMITH, KEVIN W, CLEARFIELD, UT	01/01/97
HOPPES-GOROSHKO, ELAINE M, TAMAUQUA, PA	01/06/97
HOWE, JOHN B, HASKELL, NJ	12/19/96
HUSH, GEORGE G, ROSE CITY, MI	01/06/97
JEWELL, ELDIN CARNELL, LITTLE ROCK, AR	12/30/96
JOHNSON, TIMOTHY H, DEPELO, NY	01/16/97
JOHNSON, RANDALL G, LOS ANGELES, CA	01/05/97
JONES, SHERMAN P, WASHINGTON, DC	01/06/97
JORDAN, JOYCE M, NEW ORLEANS, LA	01/05/97
KESSINGER, CHARLES W, S DAYTONA BEACH, FL	01/01/97
LAWSON, MARGARET B, WINNETKA, IL	01/06/97
LEE, CAROLE A, ACKWORTH, GA	01/12/97
MANNINO-SEIGEL, HOLLY L, NEWPORT BEACH, CA	01/05/97
MCCLAIN, DONALD W, CLEVELAND, OH	01/06/97
MCELHINNEY, THOMAS E, ST AUGUSTINE, FL	01/01/97
MIKOS, RONALD A, EVANSTON, IL	01/06/97
MORGAN, GLENN R, LAS VEGAS, NV	01/16/97
MORRILL, THOMAS R, ROCKWALL, TX	01/05/97
NEGASH, OMER I, HOUSTON, TX	01/05/97
NELSON, DOROTHY S, DALY CITY, CA	01/05/97
NEWSOME, DORITA, ORANGE, NJ	01/07/97
NICHOLLS, HILARY J, CARMEL VALLEY, CA	01/05/97
NICHOLSON, JAMES E JR, POWDER SPRINGS, GA	01/12/97
OTTEMAN, TIMOTHY A, ARVADA, CO	01/05/97
OWENS, JAMES R, ATLANTA, GA	01/12/97
PALMER, BECKY A, FALLBROOK, CA	01/05/97
PATE, MICHAEL D, DES PLAINES, IL	01/06/97
PATE, VALERIE J, CLEVELAND, OH	01/06/97
PEPE, PATRICIA, LAKE WYLIE, SC	01/01/97
PETTY, JAY E, RAYVILLE, LA	01/05/97
POWELL, THOMAS R JR, MARIETTA, GA	01/01/97
POWELL, RANDY, MARION, IL	01/06/97
PRUITT, CHRISTOPHER R, PHOENIX, AZ	01/05/97
REEHL, MICHELLE D, SUMNER, WA	01/05/97
RENZULLI, MICHAEL J, DESTIN, FL	01/01/97
RICHARDSON, JUSTIN W, CANOGA PARK, CA	01/05/97

Subject, city, state	Effective date
ROBERTS, CHARLES C, DENVER, CO	01/12/97
ROOHANI, MAURINE F, NEW ORLEANS, LA	12/30/96
ROSS, GUY A, FERNDALE, MI	01/06/97
ROWLETT, ANDRE L, DETROIT, MI	01/06/97
ROYBAL-HAZEN, MARIA E, MCALLEN, TX	01/05/97
RUANE, JOSEPH T, LITTLE SILVER, NJ	01/07/97
RUDOLPH, PAUL P, CHINO, CA	01/05/97
RUIZ, HENRY S, PALMDALE, CA	01/05/97
SADIEN, HABIB, HOUSTON, TX	01/05/97
SALCZENKO, JEFFREY G, SHREVEPORT, LA	01/05/97
SALEM, ATIYEH A, LAKEWOOD, OH	01/06/97
SALLEY, HEZEKIAH JR, SMOAKS, SC	01/12/97
SANCHEZ, ISHMAEL B, LALUZ, NM	01/05/97
SARGENT, JOHN F, LAWNDALE, CA	01/05/97
SCHALK, RONALD R, TEXAS CITY, TX	01/05/97
SCHULZ, ERIC H, SPRING, TX	01/05/97
SCOVEL, ROSHELLE R, SEDRO WOOLEY, WA	01/05/97
SEGESTA, MICHAEL, EASTPOINTE, MI	01/06/97
SEIDES, RICHARD, BLOOMFIELD, NJ	01/07/97
SHABER, SYDNEY S, CARMEL, CA	01/05/97
SHELBY, GLORIA D, MT RAINIER, MD	01/06/97
SIMS, MICHAEL A, WASHINGTON, DC	01/06/97
SIVERLING, GERALD D, BRANDON, FL	01/12/97
SKIDMORE, CLYDE ERIC, STAFFORD, TX	01/05/97
SKINNER, KEITH K, WICHITA, KS	01/01/97
SMALLEY, KATHERINE J, SEATTLE, WA	01/05/97
SMITH, VASCO A III, WASHINGTON, DC	01/06/97
SMITH, JESSICA, DOWNEY, CA	01/05/97
SPANOS, GEORGE KEVIN, CLEARWATER, FL	01/01/97
STEFFEN, MICHAEL R, TULSA, OK	01/05/97
STIRGUS, KENT L, PORTLAND, OR	01/05/97
SZALANSKI, DAVID L, HOBBS, NM	01/05/97
TABER, STUART M, COLUMBIA, SC	01/12/97
TAYLOR, BRETT M, ROYAL PALM BEACH, FL	01/01/97
THOMAS, ROBERT B SR, MACON, GA	01/12/97
THOMPSON, FLORIAN, LOS ANGELES, CA	01/05/97
THURSTON, GREGORY D, ALGONQUIN, IL	01/16/97
TONWE, TUTSE D, MILFORD, DE	01/06/97
TORTORIELLO, MICHAEL J, MONTCLAIR, NJ	01/07/97
TROUNG, THAO V, HOUSTON, TX	01/05/97
TUCKER, DAROLD B, CHICAGO, IL	01/06/97
UPDYKE, JOHN G, HOUSTON, TX	01/05/97
VOGELMANN, CHRISTOPHER S, KENSINGTON, MD	01/06/97
WEIMMER, FREDERICK J, LAKEHURST, NJ	01/07/97
WELLINGTON, JAMES G, KIGWOOD, TX	01/05/97
WEST, WELDON C, PORTLAND, OR	01/05/97
WHITAKER, AARON T, WASHINGTON, DC	01/06/97
WHITE, MICHAEL M, OVERLAND PARK, KS	01/05/97
WILLIAMS, RONALD G, WYOMING, MI	01/16/97
WILLIAMS, KAROL, BROOKLYN, NY	01/16/97
WILLIAMS, DUANE A, LIVERMORE, CA	01/05/97
WILLIAMS, KENNETH, DURHAM, NC	01/12/97
WILLIAMS, MARVIN L, DETROIT, MI	01/06/97
WILLIS, ADAM C, CHARLOTTE, NC	01/01/97
WILSON, EVELYN, CHICAGO, IL	01/06/97
WISK, DUANE F, GROSSE POINT, MI	01/06/97
WOLF, PHILIP L, SAN ANTOINO, TX	01/05/97
WOOD, CECIL N JR, DUNCANVILLE, TX	01/05/97
WOODS, DOLORES, ORANGE, NJ	01/07/97
WOODY, LARRY L, OLATHE, KS	01/05/97
WOOLING, LEONARD C, MARIETTA, GA	01/12/97
WORSTELL, CRAIG S, SUNNYVALE, CA	01/05/97
YORK, STEVEN R, LAKELAND, MI	01/06/97
YOUNG, HOWARD Y, BALTIMORE, MD	01/06/97
ZOLFAGHRI, BEHROOZ, DANVILLE, CA	01/05/97

Dated: January 21, 1997.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Enforcement and Compliance.

[FR Doc. 97–2124 Filed 1–28–97; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Council; Availability of Document

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that a final document, U.S. Grant Application Instructions Package For Funding Consideration Through the North American Wetlands Conservation Council Under Authority of North American Wetlands Conservation Act, is available.

DATES: Proposals may be submitted at any time. FY 1998 proposals will be accepted through August 1, 1997.

ADDRESSES: Copies of this document can be obtained by contacting the Fish and Wildlife Service, Publications Unit, Mail Stop 130 Webb, 4401 N. Fairfax Drive, Arlington, VA 22203, during normal business hours (7:45 am–4:15 pm) in writing or by phone (703) 358–1711.

FOR FURTHER INFORMATION CONTACT: Dr. Byron Kenneth Williams, Coordinator, North American Wetlands Conservation Council at (703) 358–1784.

SUPPLEMENTARY INFORMATION: This document provides the schedules, review criteria, definitions, description of information required in the proposal, and a format for proposals submitted for Fiscal Year 1998 funding. Major changes since last year are: (1) Acreage in Part 1 to be described in terms of grant-affected acres and partner-affected acres; (2) An emphasis on two application periods for 2 proposals, rather than two due dates; (3) Match, in the Budget Table, is to be categorized as ''old'' (spent prior to proposal submission) or ''new'' (will be spent during grant period); (4) Signed partner letters may be submitted via facsimile machine by the due date; (5) State matching partner letters must include a disclaimer that the match is not derived from the Service's Federal Aid program; and, (6) A new non-game bird list. In addition, changes are indicated by an asterisk (*) in the booklet.

This document was prepared to comply with the ''North American Wetlands Conservation Act.'' The Act established a North American Wetlands Conservation Council. This Federal-State-Private body annually recommends wetland acquisition, restoration, and enhancement conservation projects to the Migratory Bird Conservation Commission. These project recommendations will be selected from proposals made in accordance with this document. The Council requires that proposals contain a minimum of 50 percent non-Federal matching funds.

Dated: January 17, 1997.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–2186 Filed 1–28–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[WO–880–9500–00–24 1A; OMB Approval Number 1004–0109]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). On March 21, 1996, BLM published a notice in the Federal Register (61 FR Number 56) requesting comments on this proposed collection. The comment period ended on May 20, 1996. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0109), Office of Information and Regulatory Affairs, Washington, D.C., 20503, (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Statement of Federal Land Payments (43 CFR 1881). OMB approval number: 1004–0109.

Abstract: The Bureau of Land Management is proposing to renew the approval of an information collection for an existing rule at 43 CFR 1881. That rule allows BLM to collect information that is statutorily required to compute payments due units of local government under the PILT Act. The Act requires the governor of each State to furnish a statement as to the amounts paid to units of local government under 11 receipt sharing statutes in the prior fiscal year.

Bureau Form Number: None.

Frequency: Annually.

Description of Respondents: Respondents are State government.

Estimated completion time: 20 hour(s).

Annual Responses: 50.

Annual Burden Hours: 1,000.

Collection Clearance Officer: Carole Smith, 202–452–0367.

Dated: January 23, 1997.

Annetta L. Cheek,

Chief, Regulatory Affairs Group.

[FR Doc. 97–2233 Filed 1–28–97; 8:45 am]

BILLING CODE 4310–84–M

[WO–320–01–24 1A; OMB Approval Number 1004–-0121]

Extension of Currently Approved Information Collection; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed renewal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). On March 21, 1996, the BLM published

a notice in the Federal Register (61 FR 11649) requesting comments on the collection. The comment period ended May 20, 1996. One comment was received from the President and Chief Executive Officer of the National Mining Association, who stated that ''[t]he NMA supports this proposal which will assist BLM in efficient administration and management of mineral development activities.''

Copies of the proposed collection of information and related forms and materials may be obtained by contacting the Bureau's Clearance Office at the phone number listed below. Any other comments and suggestions as regards the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Desk Officer, for the Interior Department (1004–0121), Office of Information and Regulatory Affairs, Washington, D.C., 20503, telephone (202) 395–7340.

Nature of Comments: The public is asked to comment as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

2. The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Leasing of Solid Minerals Other Than Coal and Oil Shale (43 CFR 3500).

OMB Approval Number: 1004–0121.

Abstract: Respondents supply information which will be used to determine procedures for the leasing of solid minerals other than coal and oil shale. The information supplied allows the Bureau of Land Management to determine that operations are conducted in a manner consistent with the regulations and environmental requirements in accordance with the National Environmental Policy Act of 1969, as amended.

Form Numbers: 3504–1, 3504–3, 3504–4, 3510–2, 3520–7, 3510–1.

Frequency: On occasion.

Description of Respondents: Those seeking to lease solid minerals other than coal and oil shale.

Estimated Completion Time:

Type of application	Number of responses	Hours/response	Total hours
Prospecting Permit	325	5/6	271
Exploration plan for Prospecting Permit	250	10	2,500
Prospecting Permit Extension	125	1	125
Preference Right Lease	25	10	250
Competitive Lease Bids	12	1	112
Fringe acreage/Lease Modification	10	2	20
Assignments/Sublease	50	2	100
Lease Renewals/Adjustments	30	2	60
Use Permit	6	2	12
Exploration License	10	3	30
Development Contract	3	3	9
Bonding	400	5/6	333
Total	1,246	.....	3,722

BLM estimates that it will take an average of three hours to complete the applications, petitions, offers and statements required. The applicants will have access to records, plats and maps necessary for providing legal land descriptions. The type of information necessary is outlined in the regulations and is already maintained by the respondents for their own recordkeeping purposes and needs only to be compiled in a reasonable format. The estimate also includes the time required for assembling the information, as well as the time of clerical personnel if needed. BLM estimates that approximately 1,246 filings will be made annually for a total of 3,722 reporting hours.

Annual Responses: 1246.

Annual Burden Hours: 3722.

Bureau Clearance Officer: Wendy Spencer, (303) 236–6642.

Dated: January 18, 1997.

Annetta Cheek,

Regulatory Management Team.

[FR Doc. 97–2234 Filed 1–29–97; 8:45 am]

BILLING CODE 4310–84–M

[NV–050–1610–00]

Intent To Amend the Clark County Management Framework Plan/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent. The Bureau of Land Management (BLM) is proposing to prepare a supplement to the Clark County Management Framework Plan/ Environmental Impact Statement (MFP/ EIS) to analyze the expansion of the existing land disposal boundary by approximately 200 acres.

SUMMARY: A land development company (Perma-Bilt Homes) purchased 132 acres of private lands which are surrounded by BLM administered lands, The company can not develop the land until the surrounding BLM parcels are acquired through Phase II of the proposed land exchange. The land identified in this amendment is contained within the Southern Nevada Public Land Management Act of 1997, as well as the Draft Stateline Resource Area Resource Management Plan/ Environmental Impact Statement. The Environmental Assessment (EA) being prepared for this action will also analyze the exchange of selected (federal lands) for offered (non-federal lands).

DATES: A 30 day public review and comment period is provided. A meeting is scheduled for February 3, 1997, from 6 p.m. to 7 p.m., in the Las Vegas District conference room to offer the public an opportunity to provide input into the land use plan amendment process and EA.

ADDRESSES: All comments and concerns you may have with this proposed

amendment are to be submitted to: Bureau of Land Management, Attention: Las Vegas District Manager, 4765 Vegas Drive, Las Vegas, Nevada, 89108. Comments can also be hand delivered to the same address.

FOR FURTHER INFORMATION CONTACT: Michael F. Dwyer, Las Vegas District Manager, Cheryl Frassa, Reality Specialist or Jeffrey G. Steinmetz, Planning and Environmental Coordinator, at (702) 647–5000.

SUPPLEMENTARY INFORMATION: The lands identified for the exchange are within the Community District 2 (CD2) designation which Clark County Comprehensive Planning has developed. The purpose of CD2 is to guide growth where urban development already exists. Therefore, the amendment and exchange are consistent with County development guidelines.

The federal lands (105 acres) identified by the proponent are not within the existing land disposal boundary designated in the Clark County Management Framework Plan, for the Las Vegas Valley.

Dated: January 15, 1997.

Michael F. Dwyer,

District Manager, Las Vegas District.

[FR Doc. 97–2121 Filed 1–28–96; 8:45 am]

BILLING CODE 4310–HC–M

[NM–030–1430–00; NMNM 96543]

Notice of Realty Action; Public Land Purchase for Recreation and Public Purposes (R&PP Act) as Amended, Sierra County

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described public land in Sierra County, New Mexico, has been identified and examined and found suitable for purchase for recreational or public purposes under the provisions of the R&PP Act, as amended (43 U.S.C. 869 et seq.). Sierra County proposes to use the land for a solid waste transfer station.

T. 16 S., R. 7 W., NMPM
sec. 10, NW¼SW¼NW¼SW¼.
Containing 2½ acres more or less.

DATES: Comments regarding the proposed conveyance or classification must be submitted on or before March 17, 1997.

ADDRESSES: Comments should be sent to the BLM, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Bernie Creager at the address above or at (505) 525–4325.

SUPPLEMENTARY INFORMATION: The land is not required for any Federal purpose. The purchase is consistent with the current Bureau planning for this area and would be in the public interest. The conveyance will be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (U.S.C. 945).

2. The subject parcel will be conveyed in accordance with the approved plan of development and management. The mineral estate will be conveyed simultaneously pursuant to Section 209 of the Act of October 21, 1976 (43 U.S.C. 1719).

3. All valid existing rights documented on the official public land records at the time of patent issuance.

4. Subject to a 30-foot easement over an existing road through the parcel.

Detailed information concerning this action is available for review at the BLM, Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act, as amended.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the Federal Register. The land will not be offered for purchase until after the classification becomes effective.

Dated: January 23, 1997.

Linda S.C. Rundell,

District Manager.

[FR Doc. 97–2214 Filed 1–28–97; 8:45 am]

BILLING CODE 4310–VC–P

[NV–020–1990–01]

Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability, Record of Decision for Sante Fe Pacific Gold Corporation's Twin Creeks Mine Expansion Project.

DATES: The Record of Decision will be distributed and made available to the public on January 23, 1997. Anyone wishing to appeal the Record of Decision has 30 days following the date of publication of this notice in the Federal Register. The appeal must be postmarked no later than February 27, 1997.

ADDRESSES: A copy of the Record of Decision can be obtained from: Bureau of Land Management, Winnemucca District Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: Gerald L. Moritz, Project Manager, at the above Winnemucca District address or telephone (702) 623–1500.

SUPPLEMENTARY INFORMATION: The Record of Decision consists of the action proposed in the Plan of Operation and analyzed in the Draft and Final Environmental Impact Statements. The agency Preferred Alternative includes all components of the Proposed Action, as well as the Partial Vista Pit Backfill alternative, the Overburden and Interburden Storage Area Reclamation alternative 1, West Side alternative, and the East Side alternative. The Agency Preferred Alternative is also the environmentally preferred alternative incorporating mitigation and monitoring measures. The Proposed Action consists of expanding mining and ore processing activities at the Twin Creeks Mine.

Dated: January 22, 1997.

Bud C. Cribley,

Acting Winnemucca District Manager.

[FR Doc. 97–2278 Filed 1–28–97; 8:45 am]

BILLING CODE 4310–HC–M

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sales 171, 174, 177, and 180

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for Information and Nominations and Notice of Intent (Call/NOI) to Prepare an Environmental Impact Statement (EIS).

Call for Information and Nominations

1. Authority

This Call is published pursuant to the Outer Continental Shelf (OCS) Lands Act as amended (43 U.S.C. 1331–1356, (1994)), and the regulations issued thereunder (30 CFR Part 256).

2. Purpose of Call

The purpose of the Call is to gather information for the following tentatively scheduled OCS Lease Sales in the Western Gulf of Mexico (WGOM):

Sale No.	Tentative sale date
171	Aug. 1998.
174	Aug. 1999.
177	Aug. 2000.
178	Aug. 2001.

Information and nominations on oil and gas leasing, exploration, and development and production within the WGOM are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act and regulations at 30 CFR 256.

This is the second issuance of a multisale Call by MMS for proposed Gulf of Mexico sales in the 5-year program for 1997–2002. A multisale Call for Central Gulf of Mexico (CGOM) sales in the new 5-year program was published in August 1996. Responses are requested relative to all sales included herein. The MMS has modified its prelease planning and decision process for proposed Central and Western Gulf lease sales. This multisale process is based on over a dozen years of leasing at an annual pace which have shown that the sale proposals in the WGOM and the CGOM are very similar from year to year. The multisale process in the WGOM will incorporate planning and analysis for four sales: Sales 171, 174, 177, and 180. (The first WGOM sale in the new 5-year program, scheduled for August 1997, was covered in an Environmental Impact Statement (EIS) filed in December 1996.) From the initial step in the process (the Call for Information and Nominations) through the final EIS/Consistency Determination (CD) step, this process will cover multiple sale proposals. There will also be complete National Environmental Policy Act (NEPA), OCS Lands Act, and Coastal Zone Management Act coverage for each sale after the first sale—either an Environmental Assessment (EA) or Supplemental EIS and a CD, focusing primarily on new issues or changes in a State's federally-approved coastal management plan, will be prepared for each subsequent sale. A proposed and final Notice of Sale will be prepared for each proposed sale.

This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the area for possible leasing will be made at a later date and in compliance with applicable laws including all requirements of the NEPA and the OCS Lands Act. Established departmental procedures will be employed.

3. Description of Area

The general area of the Call covers the entire WGOM. The WGOM is bounded on the west and north by the Federal-State boundary offshore Texas; the eastern boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28 degrees North latitude, thence east to approximately 92 degrees West longitude, thence south to the provisional maritime boundary with Mexico which constitutes the southern boundary of the area. It is offshore Texas and, in deeper water, offshore Louisiana. The area available for nominations and comments at this time consists of approximately 35.9 million acres, of which approximately 28.4 million acres are currently unleased.

A standard Call for Information Map depicting the WGOM on a block-by-block basis is available without charge from: Minerals Management Service, Public Information Unit (MS 5034), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone: 1–800–200–GULF.

4. Areas Excluded From This Call

The entire WGOM is proposed for possible leasing except two blocks in the vicinity of the East and West Flower Garden Banks (and the Flower Garden Banks National Marine Sanctuary): High Island Area, East Addition, South Extension, Blocks A–375 and A–398; and three blocks near Corpus Christi, Texas, which are used by the Navy for mine warfare exercises: Mustang Island Area Blocks 793, 799, and 816.

5. Instructions on Call

Indications of interest and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled ''Nominations for Proposed 1998–2001 Lease Sales in the Western Gulf of Mexico'' or ''Comments on the Call for Information and Nominations for Proposed 1998–2001 Lease Sales in the Western Gulf of Mexico.'' The standard Call for Information Map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the above address.

The standard Call for Information Map delineates the Call area, all of which has been identified by the MMS as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate interest in the comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have included in each of the proposed sales in the WGOM.

Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are required to do so on the standard Call for Information Map by outlining the areas of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 [high], 2 [medium], or 3 [low]). Respondents are encouraged to be specific in indicating blocks by priority, as blanket nominations on large areas are not useful in the analysis of industry interest. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3 (low).

Respondents may also submit a detailed list of blocks nominated (by Official Protraction Diagram and Leasing Map designations) to ensure correct interpretation of their nominations. Specific questions may be directed to the Chief, Leasing Activities Section at (504) 736–2761. Official Protraction Diagrams and Leasing Maps can be purchased from the Public Information Unit referred to above.

Comments are sought from all interested parties about particular geological environmental, biological, archaeological and socioeconomic conditions or conflicts, or other information that might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sales and State Coastal management Programs (CMP). If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject

area in the standard Call for Information Map.

6. Use of Information From Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. This information will be used to make a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. A third purpose for this Call is to use the comments collected in the scoping process for the Environmental Impact Statement (EIS) and to develop proposed actions and alternatives. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore operations. And, fifth, comments may be used to assess potential conflicts between offshore oil and gas activities and a State CMP.

7. Existing Information

The MMS routinely assesses the status of information acquisition efforts and the quality of the information base for potential decisions on tentatively scheduled lease sales. As a result of this continually ongoing assessment, it has been determined that the status of the existing data available for planning, analysis, and decisionmaking is adequate and extensive.

An extensive environmental studies program has been underway in the WGOM since 1973. The emphasis, including continuing studies, has been on environmental characterization of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, socioeconomic effects, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies can be obtained from the Public Information Unit referenced above or from the MMS homepage on the Internet at http://www.mms.gov. The reports may also be ordered, for a fee, from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or telephone (703) 487–4650. In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, Gulf of Mexico OCS Region (see address under ''Description of Area''), or telephone (504) 736–2896.

Summary Reports and Indices and technical and geological reports are available for review at the MMS, Gulf of Mexico OCS Region. Copies of the Gulf of Mexico OCS Regional Summary Reports may be obtained from the Technical Communication Service, Minerals Management Service, at 381 Elden Street, Herndon, Virginia 20170, telephone: (703) 787–1080.

8. Tentative Schedule

The following is a list of tentative milestone dates applicable to sales covered by this Call:

	Multisale process milestones for proposed 1998–2001 WGOM sales
Call/NOI published	Jan. 1997.
Comments due on Call/NOI.	March 1997.
Area Identification	April 1997.
Draft EIS published ...	Nov. 1997.
Public Hearings	Dec. 1997.
Final EIS published ...	May 1998.

	Sale-specific process milestones for proposed 1998–2001 WGOM sales
Request for Information to Begin Sale-Specific Process.	12 months before each sale.
Environmental Review (EA/FONSI/SEIS) published.	4 to 7 months before each sale.
Proposed Notice and Consistency Determination.	4 months before each sale.
Final Notice of Sale ...	1 month before each sale.
Tentative Sale Date ..	August of each year.

Notice of Intent To Preoare an Environmental Impact Statement

1. Authority

The NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act of 1969, as amended (42 USC 4321 et seq. (1988)(NEPA).

2. Purpose of Notice of Intent

Pursuant to the regulations implementing the procedural provisions of the NEPA, the MMS is announcing its intent to prepare a multisale EIS on the tentatively scheduled 1998–2001 oil and gas leasing proposals in the WGOM, offshore Texas and in deeper water offshore Louisiana. The NOI also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal Agencies and State and local governments and other interested parties have the opportunity to aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the areas defined in the Area Identification procedure as the proposed areas of the Federal actions. Alternatives to the proposals which may be considered for each sale are to delay the sale, cancel the sale, or modify the sale.

3. New EIS Procedure

MMS is proposing to prepare a single EIS for all four proposed WGOM sales from 1998 to 2001. The resource estimates and scenario information on which the EIS analyses are based will be presented as a range of resources and activities that would encompass any of the four proposed sales in the WGOM.

The proposal will provide several benefits. It will focus the NEPA process by making impact types and levels that change between sales more easily recognizable. New issues will be more easily highlighted for the decisionsmakers and public. For sales after 1998, the process will allow for presale planning that spans only 1 year, rather than the current 2-year process which causes confusion because of the overlap in planning for sales in successive years and makes it difficult for the decisionmaker, industry, and the public to keep track of which sale process is being referred to for any given decision point. It will also eliminate the repetitive issuance of a complete EIS for each sale, a practice that has resulted in ''review burnout'' in Federal, State, and local governments, and the public.

The proposed actions analyzed in the EIS will be each of the sales on the 5-year schedule for the Western Gulf of Mexico planning area. The EIS will include an analysis of the environmental effects of holding one sale, a sale ''typical'' of any in the planning area, which may be held in the remainder of the 5-year program. The scenario will cover a range of resources and activities that will encompass any of the four proposed actions. Later sales can then be compared to the initial analysis in an environmental assessment or supplemental environmental impact statement. Formal consultation with the public will be initiated in subsequent years to obtain input to assist in the determination of whether or not the information and analyses in the original multisale EIS are still valid. An Information Request would be issued

that will specifically describe the action for which we are requesting input.

4. Instructions on NOI To Prepare and EIS

Federal Agencies and State and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated under ''Description of Area.'' Comments should be enclosed in an envelope labeled ''Comments on the NOI to Prepare an EIS on the proposed 1998–2001 Lease Sales in the Western Gulf of Mexico.'' Comments on the NOI should be submitted no later than 45 days from publication of this Notice. Scoping meetings will be held in appropriate locations to obtain additional comments and information regarding the scope of the EIS.

Dated: January 23, 1997.

Cynthia Quarterman,

Director, Minerals Management Service.

[FR Doc. 97–2210 Filed 1–28–97; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

General Management Plan; Final Environmental Impact Statement; Manzanar National Historic Site; Record of Decision

Summary: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), and specifically to regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2, the National Park Service, Department of the Interior, has approved a Record of Decision (ROD) for the Final General Management Plan and Environmental Impact Statement, Manzanar National Historic Site, California.

The National Park Service will implement the proposed plan as identified in the Final Environmental Impact Statement, dated August, 1996.

Copies of the Record of Decision and final environmental impact statement may be obtained by writing to the Superintendent, Manzanar National Historic Site, P.O. Box 426, Independence, CA. 93526–0426 or by calling the park at (619) 878–2932.

Dated: January 8, 1997.

Stanley T. Albright,

Field Director, Pacific West Area.

[FR Doc. 97–2072 Filed 1–28–97; 8:45 am]

BILLING CODE 4310–70–P

Rock Creek Tennis Stadium Record of Decision

Summary

Pursuant to § 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332 et seq.) and the regulations promulgated by the Council of Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service, has prepared a Record of Decision on the Final Environmental Impact Statement for the Rock Creek Tennis Center and Associated Recreation Fields, Washington, D.C., (FES 950286). This Record of Decision is a concise statement of what decisions were made, what alternatives were considered, the basis for the decision, and the mitigating measures developed to avoid or minimize environmental impacts.

Background

The purpose of the Environmental Impact Statement (EIS) was to examine impacts related to the activities at the tennis center and surrounding fields so those impacts could be considered in making a decision regarding future management of the Rock Creek Park Tennis Center and associated recreation fields. Currently, two major professional tennis tournaments a year may be held at the stadium under the auspices of the Washington Tennis Foundation. The Washington Tennis Foundation, as well as other groups and organizations, has asked to use the tennis center for a variety of activities.

Decision

The National Park Service will implement alternative 2, the preferred alternative, with two modifications.

Alternative 2 allows for one professional tennis tournament to be held annually at the tennis center. Amateur and league tennis and public court use and instruction would continue. This alternative assumes that the professional tournament would be operated in accordance with the Interim Operating Plan between the National Park Service and the Washington Tennis Foundation and existing regulations (36 CFR 7.96) with regard to limited commercial activities at the tennis center.

The modifications to alternative 2 are as follows. First, the National Park Service will retain management authority to consider allowing a second large-scale tennis event on a case-by-case basis under certain circumstances (but only when such an event would generate a significant amount of funding in advance for tennis programs for youth, seniors and special populations). Second, the National Park Service will retain management authority to consider allowing parking on the grass recreational field south of Morrow Drive (the south field) on a trial basis in varying configurations provided that weather and field conditions permit and provided that recreational opportunities on the field remain and can be satisfactorily segregated.

In order to implement this decision, previous agreements with the Washington Tennis Foundation that allow a second tournament would be superseded by a new agreement restricting the use of the center to one annual professional tournament. The Washington Tennis Foundation would not have any contractual rights to a second tournament. As part of the new agreement, the National Park Service would seek funding or reimbursement from the Washington Tennis Foundation for repairs of structural defects and/or accessibility modifications to the tennis stadium.

The annual professional tennis tournament would last approximately 20 days—7 days for the setup of equipment and facilities, 8 days of tournament play, and 5 days for takedown of equipment and facilities. Attendance would be limited to 7,500 spectators per session.

In addition to restrictions for parking on the fields that were incorporated into alternative 2, the mitigation measures adopted are improving uses of remote parking lots and a shuttle bus system, attempting to restrict on-street parking, and prohibiting concurrent events at both the Rock Creek Tennis Center and the Carter Barron Amphitheatre.

Alternatives Considered

Four alternatives were dismissed from further analysis in the EIS. Changing the jurisdiction of stadium management from the National Park Service to another governmental entity such as the District of Columbia and operating all stadium activities under a concession contract were eliminated because these alternatives would not alter the magnitude of the impacts. Creating a recreational use zone encompassing the stadium and fields with distinct operational policies and objectives, and limiting the attendance levels and duration of stadium activities were incorporated into the alternatives as mitigation measures, where appropriate,

rather than treated as a separate, distinct EIS alternative.

The National Park Service considered six alternatives in the EIS. The principal difference among them was the type and number of events that would be allowed at the tennis center. The alternatives may be summarized as follows:

Alternative 1: Amateur and league tennis events only.

Alternative 2: One professional tennis tournament annually.

Alternative 3: Two professional tennis tournaments annually.

Alternative 4: Two professional tennis tournaments annually with additional impact mitigation.

Alternative 5: An unlimited number of professional tennis tournaments annually.

Alternative 6: A variety of events and activities.

Alternative 7: Provided for the relocation of professional tournaments in conjunction with removal of the stadium.

Environmentally Preferred Alternative(s)

The environmentally preferred alternatives are alternative 1 and alternative 7. These alternatives best protect, preserve, and enhance the historic, cultural, and natural resources in the area because all of their impacts except those to Washington Tennis Foundation programs benefiting youth, seniors and special populations are beneficial or negligible to minors. This is illustrated by Table 1 in the EIS.

Basis for Decision

Alternative 1, amateur and league tennis events only, and alternative 7, relocation of professional tournaments, were rejected for the same several reasons. Both these alternatives would eliminate the Washington Tennis Foundation's ability to have any professional tennis tournament in the tennis stadium. As described in the EIS, this would have, potentially, a very significant effect upon the Washington Tennis Foundation's programs, which provide recreational tennis opportunities and other benefits to youth and special populations.

There is a very high demand for new tennis recreational facilities in the District of Columbia and most of the total demand is unmet (See Figures 2 and 3 in EIS). The Brightwood area where the tennis center is located has been consistently used to provide for various passive and participatory recreational activities since at least 1904, when a summer camp for underprivileged children began operating using some of the farm buildings that existed within the park at that time. There is also a long history of providing tennis facilities for recreational and professional use within Rock Creek Park. In 1922, eight clay courts were built at the intersection of Morrow Drive and present-day Stage Road. In 1924, four additional courts were built and at least two of the original courts were converted to hard courts. An annual professional tennis tournament has occurred at the tennis center since 1969 when the Washington Star International Tennis Championships (later the Sovran Tennis Classic) was held here under the auspices of the Washington Tennis Foundation.

In addition, eliminating the Washington Tennis Foundation's contractual right would have an impact upon the Department's existing contractual agreement with the Washington Tennis Foundation, which could be costly financially. It was decided not to unnecessarily squander the $12 million dollar investment made in the stadium by the Washington Tennis Foundation and to allow at least one professional tennis tournament to occur, to help support the Washington Tennis Foundation's programs, if the environmental impacts were determined to be acceptable. Alternatives 2 and 3 were found acceptable.

Alternative 5 (unlimited number of professional tennis tournaments annually) and 6 (variety of events and activities) were rejected because they would have potentially significant adverse impacts upon noise and land uses/character that could not be mitigated, and because of their potentially significant impact upon park operations. These were considered unacceptable impacts.

Alternative 4, two professional tennis tournaments annually with impact mitigation, was rejected because it consisted merely of analysis of the several different possible mitigation measures as applied to alternative 3. Several of these mitigation measures were mutually exclusive. For example, there would be no need to construct both an onsite parking annex lot and a parking garage. Furthermore, the mitigation measures could also be applied to other alternatives, such as alternative 2. Thus, it made more sense to consider alternative 3 and other alternatives and then consider the mitigation measures analyzed under alternative 4.

The impacts of alternatives 2 and 3 were considered acceptable given the public benefits resulting from allowing a professional tennis tournament to take place at the stadium (see discussion of alternatives 1 and 7 above). Alternative 2 was the preferred alternative because the impacts would be less severe. Both alternatives 2 and 3 were ultimately rejected as too limiting of management flexibility in the future. Alternative 2 limits use to one large-scale professional tennis tournament while under Alternative 3 the Washington Tennis Foundation retains a right to hold two professional tennis tournaments.

Instead, the National Park Service decided to retain management authority to consider allowing a second large-scale tennis event during a year on a case-by-case basis under certain special circumstances. In order for the National Park Service to consider allowing a second large-scale tennis event, the Washington Tennis Foundation will have to submit details of their proposed event and evidence that the event will provide a significant sum certain in advance to be applied to the direct benefit of Washington Tennis Foundation programs for youth, seniors and special populations. The National Park Service will then decide whether the public benefit warrants allowing the proposed event to occur given the likely impacts of the event.

The National Park Service has also decided to modify alternative 2 in one other respect. In addition to allowing parking on the north field (as has been occurring for the past few years under an interim operating plan), the National Park Service has decided to retain management flexibility to consider allowing some parking on parts of the south field, on a trial basis. However, as discussed in the Mitigation section below, the National Park Service has decided to limit the conditions for parking on the south field by specifying that it be of varying configurations, on a trial basis, weather and field conditions permitting, and provided that recreational opportunities on the field remain and are segregated from the parking. In considering such experiments on a year-to-year basis, the National Park Service will consult with the community concerning tradeoffs between parking impacts and recreational use of the south field under various trial configurations.

This change to alternative 2 is consistent with the EIS. Alternative 2 in the EIS provides for the professional tennis tournament to be operated only in accordance with the Interim Operating Plan, which allows parking on the north field, subject to field conditions. However, the EIS examines the impact of allowing parking on the south field in addition to the north field in great detail under this alternative.

The south field is no less suited for parking than the north field. In fact, parking on the south field would result in less runoff and erosion and contribute lower sedimentation loads to drainage ways that eventually lead to Rock Creek. However, as evident in the EIS, the impacts of parking on both fields would be cumulative.

The restrictions placed on allowing parking on the south field (e.g., the requirement that recreational opportunities remain) means that the entire south field will never be filled to capacity with vehicles. It also means that the National Park Service could mitigate against damage to the south field by rotating the portions of the field that was used for parking, or by rotating use of the north and south fields in alternate years. The EIS analyzes the impact of parking on the entirety of both the north and south fields at the maximum capacity of those fields, weather and field conditions permitting. If only one professional tennis tournament were held in each year, the impacts that would result from the Selected Action would be less severe than those discussed in the EIS for the preferred alternative. Under a worst case scenario, such as the National Park Service allowing the Washington Tennis Foundation a second large-scale tennis event with some parking on the south field several years in a row, the long-term impacts would approach those resulting from implementation of alternative 3 in the EIS.

Mitigation

Mitigation measures were considered mostly for events with higher attendance levels (between 5,000 and 7,500 spectators) because the majority of potentially significant impacts occur at this level. The mitigation measures examined under alternative 2 were constructing an onsite parking annex lot, limiting the scale and timing of tournament sessions, improving remote parking and shuttle systems, and eliminating field parking and improving field conditions. In addition, the EIS discussed several other mitigation measures, such as constructing a parking garage, installing berms and plant materials to buffer the visual aspects of the structures, closing the Colorado Avenue exit, eliminating tennis event parking in all other areas of the park, and restricting on-street parking in the surrounding neighborhoods to residents.

The Preferred Mitigation Strategy developed for the EIS calls for restricting all onsite tennis event parking to the paved parking lots adjacent to the Stadium (Lots A, B, and C). Tennis event parking would be completely restricted in all areas of the park. Parking would not be allowed on any turf areas within the Park including the north and south fields adjacent to the stadium. On-street parking in the surrounding neighborhoods would be restricted to residents only. Patrons not parking onsite would have to park in designated remote parking areas and arrive via a shuttle bus system.

The measures in the Preferred Mitigation Strategy being adopted are improving remote parking and shuttle systems, and attempting to restrict on-street parking to residents only. Improving remote parking and shuttle systems includes providing one or more remote parking areas that are safe, easy to find and access, and are efficient with respect to the operation of the shuttle service. It also includes providing a reliable, safe, and efficient shuttle service between the remote parking areas and the tennis center. The National Park Service's ability to restrict on-street parking to residents through the use of barricades depends upon the willingness of the District of Columbia to allow and enforce these restrictions. Residents are free to establish a residential parking zone that would restrict on-street parking on event days to residents only.

The implementation plan for these mitigation measures as set forth in the EIS is not adopted. It was meant more as an example of how to implement the Preferred Mitigation Strategy and is based on a scenario where there is no parking on the fields or elsewhere within Rock Creek Park. Also, the National Park Service does not find it appropriate to dictate marketing and incentive strategies (see Appendix A of the EIS) to the Washington Tennis Foundation.

In addition to deciding to improve remote parking and shuttle systems and attempting to restrict on-street parking to residents, the National Park Service has decided to restrict parking on both fields depending on weather and soil conditions and to further restrict parking on the south field. This falls far short of eliminating field parking altogether, which was adopted as part of the Preferred Mitigation Strategy in the EIS.

Parking on the fields has impacts on natural resources, recreation, and the community. The impacts to natural resources and recreation stem from damage to the grass and soil of the fields causing erosion that leads to increased sedimentation loads to drainage ways and compaction of soils leading to a moderate to potentially significant decrease to the water quantity of Rock Creek. Damage to the grass and soil of the fields also affects recreational uses because the community may be unable to use a field while it is recovering from these impacts. Other impacts to the community from parking on the fields include traffic congestion and noise.

The National Park Service decided to restrict onfield parking rather than eliminate it entirely because most of the impacts to natural resources and recreation can be reduced significantly without eliminating parking entirely. The turfgrasses and soil structure of the fields are most susceptible to damage when vehicular traffic occurs during wet soil conditions and/or the soil is already at or near its field capacity. The bulk of the damage can be avoided by prohibiting parking on the field during such conditions.

The National Park Service has also chosen to restrict parking on the south field, but to allow for experimentation with some limited parking there on a trial basis, in varying configurations, and provided that recreational use remain and be segregated from the parking. This will further reduce damage to the grass and soil of the south field even if parking were allowed on the south field during each large-scale tennis event. In addition, the National Park Service is not obligating itself to allow any parking on the south field in any given year; the decision would be a discretionary one. The National Park Service expects to allow some level of parking on the south field, weather and field conditions permitting, during the next few years in order to implement the ''trial basis.'' This trial basis period will end when the National Park Service determines it has gathered sufficient information on different parking configurations.

Eliminating all field parking would remove the natural resource and recreation impacts from parking vehicles on the field. It would, however, increase the impacts from traffic and congestion (e.g., noise) on the surrounding neighborhoods because some tennis event patrons would choose to look for parking in the residential areas even if the shuttle service were excellent and well marketed.

Another parking measure analyzed as part of the Preferred Mitigation Strategy was the elimination of parking at other areas within Rock Creek Park such as the picnic groves, maintenance facility and nature center parking areas. This measure was ultimately rejected. Parking in these areas does not measurably add to impacts on the environment of the community.

The mitigation measures that were not parts of the Preferred Mitigation

Strategy were also considered further. The National Park Service has decided to continue to prohibit concurrent events at both the tennis center and Carter Barron Amphitheatre.

The remaining measures were rejected as impractical. The parking annex and onsite parking annex lot were eliminated because they would be very costly, would only be necessary for those few days per year when there were tournament events with more than 5,000 spectators, would not mitigate noise impacts, would require removal of vegetation, and would contribute to natural resource impacts. Limiting the scale of tournament sessions (e.g., to fewer spectators) or the days of events (e.g., 6 days of play instead of 12) were rejected because it would probably render a professional tennis tournament untenable. Limiting the timing of tournament would eliminate the ability to adjust to differing conditions such as weather. Closing the Colorado Avenue exit from lot C within the tennis center was not determined to be feasible because it would cause gridlock, and would limit access by emergency vehicles such as fire trucks or ambulances.

Additional Information

Additional copies of the approved Record of Decision may be obtained from the Superintendent, Rock Creek Park, 3545 Williamsburg Lane, NW., Washington, DC 20008. The officials responsible for implementing the selected action are the Field Director, National Capital Area, and the Superintendent, Rock Creek Park.

Dated: December 26, 1996.

Robert Stanton,

Field Director, National Capital Area.

[FR Doc. 97–2209 Filed 1–28–97; 8:45 am]

BILLING CODE 4310–70–M

Notice of Inventory Completion for Native American Human Remain From the Vicinity of Silver City, ID in the Possession of the Archaeological Survey of Idaho—Western Repository, Idaho State Historical Society, Boise, ID

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the possession of the Archaeological Survey of Idaho—Western Repository, Idaho State Historical Society, Boise, ID.

A detailed assessment of the human remains was made by Idaho State Historical Society professional staff in consultation with representatives of the Shoshone-Bannock Tribe and the Shoshone-Paiute Indian Tribe.

In 1914, human remains representing one individual were donated to the Idaho State Historical Society by Mr. O.D. Brumbaugh of Silver City, ID. Mr. Brumbaugh identified these remains as Chief Buffalo Horn, a Bannock Indian leader during the Bannock War. No associated funerary objects are present.

A document associated with this donation identified the skull as that of Chief Buffalo Horn, and states that the skull was traced and identified by one of the Silver City volunteers, Jim Griffin, a participant in the Bannock War battle at South Mountain of 1878 in the vicinity of Silver City. Although at least three alternatives of the fate of Chief Buffalo Horn are discussed in official reports and oral histories, the characteristics of this skull, including an injury to the left side of the skull, and the circumstances regarding its recovery and donation to the Idaho State Historical Society support its identification as Chief Buffalo Horn. Ms. Rosphine J. Coby, a great-great-great grandchild of Chief Buffalo Horn has made a claim of lineal descent on behalf of herself and four other great-great-great grandchildren of Chief Buffalo Horn.

Based on the above mentioned information, officials of the Idaho State Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Idaho State Historical Society have also determined that, pursuant to 25 U.S.C. 3005 (a)(5)(A), Ms. Rosphine Coby can trace her ancestry directly and without interruption by means of the traditional kinship system of the Bannock Tribe to Chief Buffalo Horn.

This notice has been sent to Ms. Rosphine Coby and officials of the Shoshone-Bannock Tribe and the Shoshone-Paiute Indian Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Robert Yohe, Director, Idaho Archaeological Survey, Idaho State Historical Society, 210 Main Street, Boise, ID 83702; telephone: (208) 334093847 before February 28, 1997. Repatriation of the human remains to Ms. Rosphine Coby may begin after that date if no additional claimants come forward.

Dated: January 22, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–2111 Filed 1–28–97; 8:45 am]

BILLING CODE 4310–70–F

Notice of Intent to Repatriate Cultural Items in the Possession of the Heard Museum, Phoenix, AZ

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the Heard Museum, Phoenix, AZ, which meet the definition of ''sacred objects'' under Section 2 of the Act.

The items consist of 37 Hopi spirit friends or katsina masks (Katsinkwaatsim). Descriptive names of the katsinum spirits are as follows: Kipok-choshoposhyaka, Masaau, Palasuwitzmi Angak'tsina, Chakwaina (two spirits), Tasaf katsina, Angak'tsinmana, Poiwamutaka, Heheya, Kweo, Koyemsi (seven spirits), Wawash katsina, Qoqlo, Angak'tsinum (five spirits), Hiilili, Ngayayataaqa katsina, tasafmana (two spirits), Qoia kasinamana (two spirits), Lenang katsina, Kokopelli, Hu-katsina, Angwusnasomtaaqa/Tumas, Piptaka, Hemis katsinmana (two spirits), and Utechem.

Twenty-seven of these Katsinkwaatsim were donated by the Fred Harvey Corporation to the Heard Museum in 1978; including four masks with no collection information; 11 masks collected by Henry Voth in the early 1900s; and 12 masks collected by Charles Owen between 1912 and 1913. Nine masks are individual donations made in 1971, 1975, 1976, and 1982, and the circumstances and date of acquisition are unknown for one mask.

Over the years, Hopi religious practitioners have visited the museum collections to provide religious care for the Katsinkwaatsim. During consultation, representatives of the Hopi Tribe identified these 37 Katsinkwaatsim as specific ceremonial objects which are needed by traditional religious leaders for the practice of the Hopi religion by present-day adherents.

Based on the above-mentioned information, officials of the Heard Museum have determined that,

pursuant to 25 U.S.C. 3001 (3)(C), these 37 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Heard Museum have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these items and the Hopi Tribe.

This notice has been sent to officials of the Hopi Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Martin Sullivan, Director, The Heard Museum, 22 E. Monte Vista Rd., Phoenix, AZ 85004–1480, telephone (602) 252–8840 before February 28, 1997. Repatriation of these objects to the Hopi Tribe may begin after that date if no additional claimants come forward.

Dated: January 21, 1997.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 97–2110 Filed 1–28–97; 8:45 am]

BILLING CODE 4310–70–F

Bureau of Reclamation

Notice of Request for Revisions of a Currently Approved Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intentions of the Bureau of Reclamation (Reclamation) to revise a currently approved information collection for Certification and Reporting Summary Forms for Acreage Limitation. Because of recent changes to the Acreage Limitation Rules and Regulations (43 CFR Part 426), revisions are needed to the summary forms. The revisions would be included on the forms starting with those distributed for the 1998 water year.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have practical utility; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments on this notice must be received by March 31, 1997 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed revised forms are available by submitting a written request to the Bureau of Reclamation, D–5200, PO Box 25007, Denver, Colorado 80225–0007 or by calling (303) 236–1061, extension 293. Written comments are to be submitted to Reclamation at the above address.

SUPPLEMENTARY INFORMATION:

Title: Certification and Reporting Summary Forms for Acreage Limitation, 43 CFR Part 426.

OMB Approval Number: 1006–0006.

Abstract: These forms are to be used by water district offices to summarize individual landholder certification and reporting forms as required by the Reclamation Reform Act of 1982 (Title II of Pub. L. 97–293) and 43 CFR Part 426, Acreage Limitation Rules and Regulations (currently titled Rules and Regulations for Projects Governed by Federal Reclamation Law). This information allows Reclamation to establish water user compliance with reclamation law.

Frequency: Annually.

Respondents: Contracting entities for Reclamation project irrigation water.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 40 hours per response.

Estimated number of Respondents: 302.

Estimated number of Responses per Respondent: 1.25.

Estimated Number of Annual Responses: 378.

Estimated Total Annual Burden on Respondents: 15,120.

Specific Changes

1. Each district will be required to indicate the Reclamation Reform Act of 1982 forms submittal threshold category, either Category 1 or Category 2, on their district summary form(s). The associated instructions will be revised to reflect this new requirement. This requirement will be included on both the summary of certification forms and the summary of reporting forms because often districts subject to the discretionary provisions may have landholders who only hold land indirectly in their district and have not conformed to the discretionary provisions. Accordingly, such districts must complete both a summary of certification forms and a summary of reporting forms.

2. All district summary forms and instructions will be reviewed and updated to ensure Code of Federal Regulations citations reflect the revised Acreage Limitation Rules and Regulations that become effective on January 1, 1998. For example, the section of those rules that addresses information requirements will change from 43 CFR 426.10 to 43 CFR 421.18 on that date.

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: January 22, 1997.

J. Austin Burke,

Director, Program Analysis Office.

[FR Doc. 97–2217 Filed 1–28–97; 8:45 am]

BILLING CODE 4310–94–M

Notice of Request for Revisions of a Currently Approved Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intentions of the Bureau of Reclamation (Reclamation) to revise a currently approved information collection for Landholders' Certification and Reporting Forms for Acreage Limitation. Because of recent changes to the Acreage Limitation Rules and Regulations (43 CFR Part 426), revisions are needed to the forms and burden hours. The revisions would be included on the forms starting with those distributed for the 1998 water year.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have practical utility; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments on this notice must be received by March 31, 1997 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT:

Copies of the proposed revised forms are available by submitting a written request to the Bureau of Reclamation, D–5200, P.O. Box 25007, Denver, Colorado 80225–0007 or by calling (303) 236–1061, extension 293. Written comments are to be submitted to Reclamation at the above address.

SUPPLEMENTARY INFORMATION:

Title: Landholders' Certification and Reporting Forms for Acreage Limitation, 43 CFR Part 426.

OMB Approval Number: 1006–0005.

Abstract: This information collection requires certain landholders (landowners and lessees) to complete forms demonstrating their compliance with the acreage limitation provisions of reclamation law. The forms establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of reclamation law. In addition, primarily through the submittal for these forms, Reclamation becomes aware of other documents to request for review from landholders and other parties, including but not limited to: leases, farm operating agreements, trusts, documents creating entities, etc. The review of these additional documents is performed to help determine the acreage limitation status and entitlements of landholders, and their westwide landholdings.

Frequency: Annually.

Respondents: Owners and lessees of land on Federal Reclamation projects whose landholding exceed specified thresholds.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.35 hours per response.

Estimated number of Respondents: 32,100.

Estimated number of Responses per Respondent: 1.02.

Estimated Number of Annual Responses: 32,750.

Estimated Total Annual Burden on Respondents: 11,500.

Specific Changes

1. The forms submittal threshold for qualified recipients changed on January 1, 1997, from 40 acres to 80 or 240 acres depending on each district's Reclamation Reform Act of 1982 (RRA) forms submittal category. This change will be reflected on the instructions for the following forms: Forms 7–2180, 7,2180EZ, 7–2181, 7–2184, and 7–21TRUST. In addition, information on the RRA forms submittal threshold categories is presented on Form 7–21INFO. This change in the RRA forms submittal threshold resulted in the reduction in burden hours reflected above.

2. The requirement for reporting landholding changes will be revised on January 1, 1998, from 15 to 30 days for district notification and from 30 to 60 days for the submittal of new certification or reporting forms. This change will be reflected on the following forms and associated instructions: Forms 7–2180, 7–2180EZ, 7–2181, 7–2184, 7–2190, 7–2190EZ, 7–2191, 7–2194, 7–21PE, 7–21TRUST, and 7–21VERIFY. In addition, this information is included on Form 7–21INFO.

3. Nonresident aliens will be required to indicate the country of which they are a citizen on Forms 7–2180, 7–2180EZ, 7–2190, and 7–2190EZ. This change to the information collection is also reflected on the associated instructions. Nonresident aliens will also be asked to provide proof of citizenship as part of their RRA forms submittal for the 1998 water year or on their initial submittal of RRA forms, whichever occurs first.

4. Entities that have not been established under State or Federal law will be required to indicate the country in which they are established on Forms 7–2181, 7–2184, 7–2191, and 7–2194. This change to the information collection is also reflected on the associated instructions. The same requirement will be included on Form 7–21TRUST, for trusts that have not been established under State or Federal law. Foreign entities and foreign trusts will be asked to provide documentation verifying they are established in the country indicated as part of their RRA forms submittal for the 1998 water year or on their initial submittal of RRA forms, whichever occurs later.

5. As of January 1, 1998, limited recipients will only need to list all part owners whose attribution of land from their interest in the limited recipient results in more than 40 acres. Currently, the actual level of interest owned in the entity (more than 4 percent) is also a criterion. This change will be reflected on Forms 7–2181 and 7–2191, and the associated instructions.

6. The option for public entities to use verification forms if certain criteria are met will be included on the instructions for Form 7–21PE. This was not an available option for public entities during the 1997 water year. The note on the instructions for Form 7–21VERIFY that states public entities cannot use that form for the 1997 water year will be removed, starting with the forms for the 1998 water year.

7. The requirement that trusts which include a class of beneficiaries, in addition to or instead of specifically named beneficiaries, cannot use the verification form (Form 7–21VERIFY) as their annual submittal will be included on the instructions to Form 7–21TRUST. This requirement will also be noted on the instructions for Form 7–21VERIFY. Prior to January 1, 1998, trusts that included a class of beneficiaries were not eligible to receive Reclamation irrigation water.

8. Trusts that are required to have Taxpayer Identification Numbers (TINs) will be required to include such on their Form 7–21TRUST. The instructions for that form will be changed to reflect this requirement.

9. The instructions for Form 7–21VERIFY concerning annual leases will be adjusted to clarify that only renewals or extensions of annual leases (leases for a term of 1 year or less) are eligible to use Form 7–21VERIFY. All other lease renewals or extensions must be reported on a standard certification or reporting form.

10. Four definitions will be updated on Form 7–21INFO to reflect the wording used in the revised rules. They are: Contract; Landholder; Lease; and Legal entity or entity.

11. The Form 7–21INFO will be revised to include information on the application of the administrative fee in addition to the compensation rate (full-cost) if Reclamation irrigation water is delivered to ineligible excess land.

12. All forms and instructions will be reviewed and updated to ensure Code of Federal Regulations citations reflect the revised Acreage Limitation Rules and Regulations that become effective on January 1, 1998. (The current rules are entitled, Rules and Regulations for Projects Governed by Federal Reclamation Law.) For example, the section of those rules that addresses information requirements will change from 43 CFR 426.10 to 43 CFR 426.18 on that date.

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: January 22, 1997

J. Austin Burke,

Director, Program Analysis Office.

[FR Doc. 97–2218 Filed 1–28–97; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–377]

Program To Maintain Investment Restrictions Database

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: January 22, 1997.

SUMMARY: Following receipt of a request on January 15, 1997, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–377, Program To Maintain Investment Restrictions Database, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Information specific to the investigation may be obtained from Mr. Richard Brown (202–205–3438) or Mr. Patrick Coleman (202–205–3459). For information on the legal aspects of this investigation, contact Mr. William Gearhart of the Commission's Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal (202–205–1810).

BACKGROUND: As requested by the USTR in a letter dated January 8, 1997, the Commission, pursuant to section 332(g) of the Tariff Act of 1930, instituted an investigation for the purpose of developing a database that identifies and provides pertinent information regarding foreign investment restrictions. The USTR's letter stated that the database would assist USTR in assessing the value of commitments undertaken by other countries and reporting on the final outcome of negotiations currently underway to develop a multilateral agreement on investment (MAI) within the Organization for Economic Cooperation and Development (OECD).

The USTR requested that the Commission provide an initial listing of investment restrictions by January 31, 1997, and provide further iterations of the document as interagency input and the results of ongoing negotiations are incorporated. USTR indicated that all or part of the database may be classified as confidential.

By order of the Commission.

Issued: January 23, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–2180 Filed 1–28–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. D & D Coal Company

[Docket No. M–96–166–C]

D & D Coal Company, 139 E. Independence Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its 7 Foot Drift Mine (I.D. No.36–08092) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction of seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. D & D Coal Company

[Docket No. M–96–167–C]

D & D Coal Company, 139 E. Independence Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1100 (quantity and location of firefighting equipment) to its 7 Foot Drift Mine (I.D. No. 36–08092) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Apogee Coal Company dba Arch of Illinois

[Docket No. M–96–168–C]

Apogee Coal Company dba Arch of Illinois, P.O. Box 308, Percy, Illinois 62272 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Conant Mine (I.D. No. 11–02886) located in Perry County, Illinois. The petitioner requests a modification of the standard to allow a diesel powered generator to be operated for supplying power to mobile mining equipment when such equipment is being moved from one area of the mine to another without grounding the neutral to a low resistance ground field. The petitioner states that mining personnel would be trained in the proper testing procedures to be used at the mine whenever this practice occurs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Burnrite Slope Coal Company

[Docket No. M–96–169–C]

Burnrite Slope Coal Company, 325 Mulberry Street, Atlas, Pennsylvania 17851 has filed a petition to modify the application of 30 CFR 75.1100 (quantity and location of firefighting equipment) to its Burnrite Slope (I.D. No. 36–08547) located in Columbia County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Burnrite Slope Coal Company

[Docket No. M–96–170–C]

Burnrite Slope Coal Company, 325 Mulberry Street, Atlas, Pennsylvania 17851 has filed a petition to modify the application of 30 CFR 75.1200 (d) & (i) (mine map) to its Burnrite Slope Mine (I.D. No. 36–08547) located in Columbia County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Burnrite Slope Coal Company

[Docket No. M–96–171–C]

Burnrite Slope Coal Company, 325 Mulberry Street, Atlas, Pennsylvania 17851 has filed a petition to modify the

application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Burnrite Slope Mine (I.D. No. 36–08547) located in Columbia County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Burnrite Slope Coal Company

[Docket No. M–96–172–C

Burnrite Slope Coal Company, 325 Mulberry Street, Atlas, Pennsylvania 17851 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Burnrite Slope (I.D. No. 36–08547) located in Columbia County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use an increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Martin County Coal Corporation

[Docket No. M–96–173–C]

Martin County Coal Corporation, P.O. Box 5002, Inez, Kentucky 41224 has filed a petition to modify the application of 30 CFR 75.513–1 (electric conductor; size) to its Pegasus Mine (I.D. No. 15–17330) located in Martin County, Kentucky. The petitioner proposes to install current limiting devices in conveyor belt drive electrical installations to ensure deenergization of the circuit before a rise in temperature from normal operation will damage the insulating materials of electrical conductors. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Mallie Coal Company. Inc.

[Docket No. M–96–174–C]

Mallie Coal Company, Inc., Route 1, Box 173, Woodbine, Kentucky 40771 has filed a petition to modify the application of 30 CFR 75.380(f)(4)(i) (escapeways; bituminous and lignite mines) to its Mine No. 5 (I.D. No. 15–17314) located in Knox County, Kentucky. The petitioner proposes to install two five-pound or one ten-pound portable chemical fire extinguisher in the operators deck of each Mescher tractor operated at the mine; to have the fire extinguisher readily accessible to the operator; and to have each fire extinguisher inspected daily by the equipment operator prior to entering the escapeway. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Apex Minerals, Inc.

[Docket No. M–96–175–C]

Apex Minerals, Inc., P.O. Box 117, Kimper, Kentucky 41539 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 1 (I.D. No. 15–02096) located in Pike County, Kentucky. The petitioner proposes to use permanently installed, spring-loaded locking devices on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Rawl Sales and Processing Company

[Docket No. M–96–176–C]

Rawl Sales and Processing Company, P.O. Box 722, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Tall Timber Mine (I.D. No. 15–13720) located in Pike County, Kentucky. The petitioner proposes to use a diesel generator to power mobile equipment in and out of its mine. The petitioner asserts that the use of this generator as a mobile unit used in conjunction with the tramming of mobile equipment does not enable attaching the unit to the mine's ground fields. The petitioner has outlined in this petition specific changes and adjustments that would be made to the generator set to ensure that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Road Fork Development Company

[Docket No. M–96–177–C]

Road Fork Development Company, P.O. Box 565, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Calloway Mine (I.D. No. 15–17252); its Pegs Branch Mine (I.D. No. 15–17541); its Burnwell Energy Mine (I.D. No. 15–16599); and its Extra Energy Mine (I.D. No. 15–15386) all located in Pike County, Kentucky. The petitioner proposes to use a diesel generator to power mobile equipment in and out of the mines. The petitioner asserts that the use of this generator as a mobile unit used in conjunction with the tramming of mobile equipment does not enable attaching the unit to the mine's ground fields. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

13. Dry Fork Energy, Inc.

[Docket No. M–96–178–C]

Dry Fork Energy, Inc., P.O. Box 157, McCarr, Kentucky 41544 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment) to its Mine No. 1 (I.D. No. 15–17385) located in Pike County, Kentucky. The petitioner proposes to use permanently installed, spring-loaded locking devices on mobile battery-powered machines to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

14. Dry Fork Energy, Inc.

[Docket No. M–96–179–C]

Dry Fork Energy, Inc., P.O. Box 157, McCarr, Kentucky 41544 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Mine No. 1 (I.D. No. 15–17385) located in Pike County, Kentucky. The petitioner proposes to use a diesel generator to power mobile equipment in and out of the mines. The petitioner asserts that the use of this generator as a mobile unit used in conjunction with the tramming of mobile equipment does not enable attaching the unit to the mine's ground fields. The petitioner has outlined in this petition specific changes and adjustments that would be made to the

generator set to ensure that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

15. Dry Fork Energy, Inc.

[Docket No. M–96–180–C]

Dry Fork Energy, Inc., P.O. Box 157, McCarr, Kentucky 41544 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Mine No. 1 (I.D. No. 15–17385) located in Pike County, Kentucky. The petitioner proposes to use a diesel generator to power mobile equipment in and out of its mine. The petitioner asserts that the use of this generator as a mobile unit used in conjunction with the tramming of mobile equipment does not enable attaching the unit to the mine's ground fields. The petitioner has outlined in this petition specific changes and adjustments that would be made to the generator set to ensure that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

16. Apex Minerals, Inc.

[Docket No. M–96–181–C]

Apex Minerals, Inc., P.O. Box 329, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Mine No. 1 (I.D. No. 15–02096) located in Pike County, Kentucky. The petitioner proposes to use a diesel generator to power mobile equipment in and out of its mine. The petitioner asserts that the use of this generator as a mobile unit used in conjunction with the tramming of mobile equipment does not enable attaching the unit to the mine's ground fields. The petitioner has outlined in this petition specific changes and adjustments that would be made to the generator set to ensure that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

17. Apex Minerals, Inc.

[Docket No. M–96–182–C]

Apex Minerals, Inc., P.O. Box 329, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its Mine No. 1 (I.D. No. 15–02096) located in Pike County, Kentucky. The petitioner proposes to use a diesel generator to power mobile equipment in and out of its mine. The petitioner asserts that the use of this generator as a mobile unit used in conjunction with the tramming of mobile equipment does not enable attaching the unit to the mine's ground fields. The petitioner has outlined in this petition specific changes and adjustments that would be made to the generator set to ensure that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

18. Kerr-McGee Coal Corporation

[Docket No. M–96–183–C]

Kerr-McGee Coal Corporation, Caller Box 3013, Gillette, Wyoming 82717 has filed a petition to modify the application of 30 CFR 77.1304(a) (blasting agents; special provisions) to its Jacobs Ranch Mine (I.D. No. 48–00997) located in Campbell County, Wyoming. The petitioner proposes to use petroleum-based lubrication oil, which would be drained from its Jacobs Ranch Mine equipment, blended with fuel oil to create an Ammonium Nitrate Fuel Oil (ANFO) blasting agent. The petitioner also proposes to submit proposed revisions to its part 48 training plan, which include initial and refresher training regarding compliance to its petition, to the District Manager within 60 days after granting of this petition. The petitioner has outlined in this petition specific procedures that would be followed in creating the ANFO and using the blasting agent. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

19. M & H Coal Company

[Docket No. M–96–184–C]

M & H Coal Company, P.O. Box 559, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200 (d) & (i) (mine map) to its Mercury Slope (I.D. No. 36–01920) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

20. M & H Coal Company

[Docket No. M–96–185–C]

M & H Coal Company, P.O. Box 559, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Mercury Slope (I.D. No. 36–01920) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

21. M & H Coal Company

[Docket No. M–96–186–C]

M & H Coal Company, P.O. Box 559, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Mercury Slope (I.D. No. 36–01920) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction of seals using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

22. Sheldon Derck

[Docket No. M–96–187–C]

Sheldon Derck, 133 E. Academy Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Slope No. 1 Mine (I.D. No. 07018) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

23. Sheldon Derck

[Docket No. M–96–188–C]

Sheldon Derck, 133 E. Academy Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1200 (mine map) to its Slope No. 1 Mine (I.D. No. 07018) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

24. Sheldon Derck

[Docket No. M–96–189–C]

Sheldon Derck, 133 E. Academy Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1100 (quantity and location of firefighting equipment) to its Slope No. 1 Mine (I.D. No. 07018) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

25. Jordan Coal Company

[Docket No. M–96–190–C]

Jordan Coal Company, 133 E. Academy Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Jordan No. 1 Slope Mine (I.D. No. 07681) located in Northumberland County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

26. Jordan Coal Company

[Docket No. M–96–191–C]

Jordan Coal Company, 133 E. Academy Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1200 (mine map) to its Jordan No. 1 Slope Mine (I.D. No. 36–07681) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

27. Jordan Coal Company

[Docket No. M–96–192–C]

Jordan Coal Company has filed a petition to modify the application of 30 CFR 75.1100 (quantity and location of firefighting equipment) to its Jordan No. 1 Slope Mine (I.D. No. 36–07681) located in Northumberland County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

28. Consolidation Coal Company

[Docket No. M–96–193–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Shoemaker Mine (I.D. No. 46–01436) located in Marshall County, West Virginia. Due to deteriorating roof and rib conditions in certain areas of the return aircourse, traveling the area in entirety would be unsafe. The petitioner proposes to establish two check points to monitor the affected area; to maintain these check points in a safe condition; to have a certified person test for methane and the quantity of air on a weekly basis at each check point; and to have the person making examinations and tests record their initials, date, and time in a record book kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

29. Apogee Coal Company dba Arch of Illinois

[Docket No. M–96–194–C]

Apogee Coal Company dba Arch of Illinois, P.O. Box 308, Percy, Illinois 62272–0308 has filed a petition to modify the application of 30 CFR 75.333(b)(3) (ventilation controls) to its Conant Mine (I.D. No. 11–02886) located in Perry County, Illinois. The petitioner requests a modification of the standard to allow permanent stoppings to be built and maintained to a point not to exceed 900 feet from the point of deepest penetration in the conveyor belt entry or to a distance from the point of deepest penetration in the conveyor belt entry not to exceed 1½ time the length of the Archveyor continuous face haulage system. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

30. Sargent Hollow Mining Corporation

[Docket No. M–96–195–C]

Sargent Hollow Mining Corporation, P.O. Box 2560, Wise, Virginia 24293 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Mine No. 1 (I.D. No. 44–06795) located in Wise County, Virginia. Due to deteriorating roof conditions in certain areas of the return aircourse, traveling the area in entirety would be unsafe. The petitioner proposes to evaluate the quality and quantity of air in the affected area at S.S. No. 323 inby, and S.S. No. 270 outby the dangerous roof area. The petitioner asserts that the proposed alternative method would not result in a diminution of safety to the miners.

31. Freedom Energy Mining Company

[Docket No. M–96–196–C]

Freedom Energy Mining Company, P.O. Box 239, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 1 (I.D. No. 15–07082) located in Pike County, Kentucky. The petitioner proposes to use permanently installed, spring-loaded locking devices on mobile battery-powered equipment to prevent

unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

32. Rockhouse Energy Mining Company

[Docket No. M–96–197–C]

Rockhouse Energy Mining Company, P.O. Box 239, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Rockhouse Mine No. 1 (I.D. No. 15–17651) located in Pike County, Kentucky. The petitioner proposes to use permanently installed, spring-loaded locking devices on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

33. Solid Energy Mining Company

[Docket No. M–96–198–C]

Solid Energy Mining Company, P.O. Box 368, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 1 (I.D. No. 15–07475) located in Pike County, Kentucky. The petitioner proposes to use permanently installed, spring-loaded locking devices on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

34. Clean Energy Mining Company

[Docket No. M–96–199–C]

Clean Energy Mining Company, P.O. Box 267, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 1 (I.D. No. 15–10753) located in Pike County, Kentucky. The petitioner proposes to use permanently installed, spring-loaded locking devices on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

35. Sidney Coal Company, Inc.

[Docket No. M–96–200–C]

Sidney Coal Company, Inc., P.O. Box 299, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its subsidiaries: the Black Diamond Coal Company, Mine No. 1 (I.D. No. 15–17356); the Clean Energy Mining Company, Mine No. 1 (I.D. No. 15–10753); the Freedom Energy Mining Company, Mine No. 1 (I.D. No. 15–07082); the Rockhouse Energy Mining Company, Rockhouse Mine No. 1 (I.D. No. 15–17651); and the Solid Energy Mining Company, Mine No. 1 (I.D. No. 15–07475) all located in Pike County, Kentucky. The petitioner proposes to use a diesel generator to power mobile equipment in and out of these mines. The petitioner asserts that the use of this generator as a mobile unit used in conjunction with the tramming of mobile equipment does not enable attaching the unit to the mines' ground fields. The petitioner has outlined in this petition specific changes and adjustments that would be made to the generator set to ensure that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

36. Golden Oak Mining Company, L.P.

[Docket No. M–96–201–C]

Golden Oak Mining Company, L.P., HC 85, Box 177, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.362(d)(2) (on-shift examination) to its Tango Mine (I.D. No. 15–13294), its Golden Oak 3–A Mine (I.D. No. 15–02046), its Golden Oak No. 3 Mine (I.D. No. 15–17372) all located in Letcher County, Kentucky; and its Black Oak Mine No. 10 (I.D. No. 15–17592) located in Knott County, Kentucky. The petitioner proposes to use a 20-foot probe to conduct methane tests in all unbolted places; in all working places where roof bolting is being performed; in working places where a continuous miner is actively cutting coal, and to attach a device to the continuous miner holding a methane detector to conduct the test within 36 inches of the deepest point of penetration in the cut, if the cut is deeper than 20 feet; and to calibrate the methane monitor on the continuous miner to warn the operator at 1.0% methane and to deenergize the machine at 1.5% methane. The petitioner has outlined in this petition specific procedures to be followed when using its alternative method. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

37. Blue Mountain Energy, Inc.

[Docket No. M–96–202–C]

Blue Mountain Energy, Inc., Box 1067, Rangely, Colorado 81648 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Deserado Mine (I.D. No. 05–03505) located in Rio Blanco County, Colorado. The petitioner proposes to use 2,400-volt cables to power longwall equipment in the active pillar workings; to implement additional safety procedures and devices; and to provide training to all mining personnel before the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

38. Elk Run Coal Company, Inc.

[Docket No. M–96–203–C]

Elk Run Coal Company, Inc., P.O. Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, and high-voltage cables and transformers) to its Black Knight II Mine (I.D. No. 46–08402) located in Boone County, West Virginia. The petitioner proposes to use 2,300-volt cables to power longwall equipment in the active pillar workings; to implement additional safety

procedures devices; and to provide training to all mining personnel before the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 28, 1997. Copies of these petitions are available for inspection at that address.

Dated: January 22, 1997.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 97–2122 Filed 1–28–97; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: February 21, 1997; 8:00 A.M.–5:00 P.M.

Place: Room #770, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Michael Mayhew, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1557.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Postdoctoral Research Fellowship Applications as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 24, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–2228 Filed 1–28–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199)

Date and Time: February 20, 1997: 8:30 a.m. to 5:00 p.m.; February 21, 1997: 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Bobby Wilson, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1634.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Centers of Research Excellence in Science and Technology (CREST) Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 24, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–2227 Filed 1–28–97; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Long Term Projects in Environmental Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Long Term Projects in Environmental Biology.

Date and Time: February 24–26, 1997.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 310, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Meredith Lane, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1481.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Biotic Surveys and Inventory proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 24, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–2226 Filed 1–28–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that a Special Emphasis Panel in Physics (1208) will be holding telephone conferences for the purpose of reviewing proposals submitted to the Theoretical Physics Program. In order to review the large volume of proposals, telephone panel conferences will be held February 18–21(6), and February 24–28(6), 1997. All meetings will be closed to the public and will be held at the National Science Foundation, Room 1015, 4201 Wilson Blvd., Arlington, VA between 8:30 a.m. and 6:30 p.m.

Contact Person: Dr. Boris Kayser, Program Director for Theoretical Physics, Division of Physics, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1889.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), 4 and (6) of the Government in the Sunshine Act.

Dated: January 24, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–2225 Filed 1–28–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Illinois Power Company, Soyland Power Cooperative; Consideration of Approval of Transfer of License and Issuance of Conforming License Amendments, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order approving, under 10 CFR 50.80, the transfer of Facility Operating License No. NPF–62, to the extent now held by Soyland Power Cooperative (Soyland), to Illinois Power Company (IP, the licensee) with respect to the Clinton Power Station, Unit No. 1 (CPS), located in DeWitt County, Illinois, and issuance of conforming amendments under 10 CFR 50.90.

CPS presently is jointly owned by IP (86.79%) and Soyland (13.21%) with IP authorized to act as agent for Soyland and having exclusive responsibility and control over the operation and maintenance of the facility. Soyland is proposing to transfer its 13.21% minority ownership interest to IP, resulting in IP becoming the sole owner of CPS. The license would be amended to reflect the transfer of ownership.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of a license, or any right thereunder, after notice to interested persons. Such approval is contingent upon the Commission's determination that the proposed transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission. If the Commission determines that approval should be given, it will issue an order setting forth its consent to the transfer.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because it merely revises the Operating License to indicate the transfer of a minority ownership interest to the current majority owner and sole operator of the facility. This proposed amendment represents an administrative rather than operational change and, therefore, has no impact on accidents previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because there will be no change to the plant's physical configuration or operation as a result of this proposed amendment.

3. The proposed amendment does not involve a significant reduction in the margin of safety because it is only an administrative change and will have no impact on any margin of safety related to the design or operation of the facility.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 28, 1997, the licensee may file a request for a hearing with respect to the issuance of an order regarding the proposed transfer of the license to the extent now held by Soyland to IP and issuance of conforming amendments to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the

nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the transfer approval or amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested with respect to the proposed amendments, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any such amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Gail H. Marcus, Director, Project Directorate III–3: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Leah Manning Stetzner, Vice President, General Counsel and Corporate Secretary, 500 South 27th Street, Decatur, Illinois 62525, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application dated October 17, 1996, as modified and supplemented by letter dated December 13, 1996, regarding the transfer of license and amendment, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727. The submittal dated October 17, 1996, originally identified the proposed transferee as Illinova Power Marketing, Inc., an unregulated power marketing subsidiary of Illinova Corporation, the parent of IP. The submittal dated December 13, 1996, modified the original application such that the proposed transferee is now IP. This notice supersedes that published in the Federal Register on November 6, 1996 (61 FR 57486).

Dated at Rockville, Maryland, this 23rd day of January 1997.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Deputy Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–2161 Filed 1–28–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–282 and 50–306]

Northern States Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–42 and DPR–60 issued to Northern States Power Company (the licensee) for operation of the Prairie Island Nuclear Generating Plant, Units 1 and 2, located in Goodhue County, Minnesota.

The proposed amendments would revise the Technical Specifications governing the cooling water system. The changes are proposed to improve plant operation based on operational experience with the vertical motor-driven cooling water pump. The changes are also proposed to incorporate information gathered by the licensee during its self-assessment Service Water System Operational Performance Inspection (SWSOPI) completed in late 1995.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or

consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Probability

The Cooling Water System is provided in the plant to mitigate accidents and it is not a Design Basis Accident initiator, thus these proposed changes do not increase the probability of an accident.

Consequences

Entry into LCO [Limiting Condition for Operation] 3.3.D.2.a

This License Amendment proposes to allow the plant to remain in Specification 3.3.D.2.a when 121 Cooling Water Pump is available for operation. Consequences of an accident would only be impacted if there was no cooling water supply to cool plant equipment. Remaining in Specification 3.3.D.2.a does not involve an increase in the consequences of an accident because, even though the plant operators may not align 121 Cooling Water Pump in accordance with Specification 3.3.D.1.a under this proposed amendment, the pump is still available to automatically start, it is powered by a safeguards Bus (normally Bus 25) and if there is an SI [safety injection] signal it will automatically align to Train A if the SI signal is generated Unit 1 or Train B if the SI signal is generated by Unit 2. Since one active component has already been declared inoperable (the diesel driven Cooling Water Pump which has been removed from service) the remaining diesel driven Cooling Water Pump and 121 Cooling Water Pump will provide Cooling Water sufficient to meet the design basis of [the] plant. The primary safety benefit of upgrading 121 Cooling Water Pump was providing it with a safeguards power source. This proposed amendment does not change this safety enhancement. Thus this change does not involve an increase in the consequences of an accident.

Isolation Valve Actuation Circuit Testing

Changing the actuation circuitry testing frequency from quarterly to each refueling outage does not significantly increase the consequences of an accident. Plant and industry experience has shown that testing SI circuitry each refueling outage provides adequate assurance that the SI actuation circuitry will function as designed. Thus testing the Cooling Water isolation actuation circuitry each refueling outage also provides assurance that these circuits will perform as designed.

Design Features Amendment

Conformance of Sections 5.1 and 5.4 to the Improved Standard Technical Specifications is administrative in nature. The current Technical Specifications descriptions will be maintained under site administrative controls (Updated Safety Analysis Report), thus the consequences of an accident are not affected.

Conclusion

In total, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment[s] will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The Cooling Water System is provided in the plant to mitigate accidents and it is not a Design Basis Accident initiator, thus these proposed changes do not increase the possibility of a new or different kind of accident.

In total, the possibility of a new or different kind of accident previously evaluated would not be created by these amendments to the Cooling Water Technical Specifications.

3. The proposed amendment[s] will not involve a significant reduction in the margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety because the current Technical Specifications requirements for safe operation of the Prairie Island plant are maintained or increased.

Entry Into LCO 3.3.D.2.a

This License Amendment proposes flexibility to remain in Specification 3.3.D.2.a when 121 Cooling Water Pump is available for operation. This change does not involve a significant reduction in the margin of safety because 121 Cooling Water Pump is still available to perform safety functions when Specification 3.3.D.2.a is entered under the provisions of this amendment which means the pump is still available to automatically start, it is powered by a safeguards Bus (normally Bus 25), and if there is an SI signal it will automatically align to Train A if the SI signal is generated by Unit 1 or Train B if the SI signal is generated by Unit 2. Since one active component has already been declared inoperable (the diesel driven Cooling Water Pump which has been removed from service) the remaining diesel driven Cooling Water Pump and 121 Cooling Water Pump will provide cooling water sufficient to meet the plant design basis. The primary safety benefit of upgrading 121 Cooling Water Pump was providing it with a safeguards power source. This proposed amendment does not change this safety enhancement. Thus this change does not involve a significant reduction in the plant margin of safety.

Isolation Valve Actuation Circuit Testing

Changing the actuation circuitry testing frequency from quarterly to each refueling outage does not significantly reduce the margin of plant safety. Plant and industry experience has shown that testing SI circuitry each refueling outage provides adequate assurance that the SI actuation circuitry will function as designed. Thus testing the Cooling Water isolation actuation circuitry each refueling outage also provides assurance that these circuits will perform as designed.

Design Features Amendment

Relocation of plant descriptions from Technical Specifications is administrative in nature and, therefore, does not significantly reduce the plant margins of safety.

Conclusion

Therefore, a significant reduction in the margin of safety would not be involved with these Cooling Water amendments.

Based on the evaluation described above, and pursuant to 10 CFR part 50, § 50.91, Northern States Power Company has determined that operating the Prairie Island Nuclear Generating Plant in accordance with the proposed license amendment request[s] does not involve any significant hazards considerations as defined by Nuclear Regulatory Commission regulations in 10 CFR part 50, § 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike,

Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 28, 1997, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment requests involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment requests involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John N. Hannon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated November 6, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, MD., this 23rd day of January 1997.

For the Nuclear Regulatory Commission.

Beth A. Wetzel,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–2164 Filed 1–28–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Revised

The 438th meeting of the Advisory Committee on Reactor Safeguards scheduled to be held on February 5–8,

1997, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland, has been rescheduled for February 6–8, 1997. The meeting will begin at 8:30 a.m. on Thursday, February 6, 1997, instead of 1:00 p.m. on Wednesday, February 5, 1997. The discussion of the item on ''Design-bases Verification'' scheduled for Wednesday, February 5, 1997, has been postponed to a future meeting as requested by the NRC staff. All other items pertaining to this meeting remain the same as published in the Federal Register on Thursday, January 23, 1997 (62 FR 3539).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 A.M. and 4:15 P.M. EST.

Dated: January 23, 1997.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 97–2165 Filed 1–28–97; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 4, 1997, through January 16, 1997. The last biweekly notice was published on January 15, 1997 (62 FR 2185).

Notice of Consideration of Issuance of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 28, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party. 2

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: December 30, 1996

Description of amendment request: The amendment revises (1) chemistry data (nickel content) shown on Technical Specification (TS) Figures 3.4-2 and 3.4-3 for TS 3/4.4.9, ''Pressure/Temperature Limits,'' and (2) the associated Bases 3/4.4.9 to reflect changes to chemistry and material properties and changes to comply with recent U.S. Nuclear Regulatory Commission (NRC) rule changes to 10 CFR 50, Appendix G.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

There are no physical changes to any plant equipment created by the proposed changes. The chemistry and material property changes do not impact the ability of the reactor vessel to maintain [its] pressure boundary integrity as previously evaluated. The decrease in EOL USE [End-of-Life Upper Shelf Energy] for weld heat 5P6771 is relatively minor and remains above the required value that has been prescribed by the NRC to provide the necessary level of ductility assumed for reactor vessel integrity evaluations. Therefore, the accident initiating and mitigating aspects of the pressure vessel are not affected. In addition, neither the proposed change requiring the ISLH [In-Service Leak and Hydrostatic] test to be complete before the core is critical nor the proposed change allowing fuel in the reactor vessel during ISLH affects any accident initiating mechanisms. The proposed change requiring the ISLH test to be completed before the core is critical will not increase the consequences of previously evaluated accidents because it conservatively assures the core is subcritical. Although the proposed change allows fuel in the vessel during ISLH utilizing the ISLH Pressure-Temperature (P-T) limits, the consequences of a pressure boundary leak have not changed because ISLH testing is already allowed using the normal plant P-T limits. In addition, the ISLH will be required to be completed before the core is allowed to go critical. The consequences of a leak with fuel in the vessel during ISLH are the same using either the normal P-T limits or the ISLH limits.

Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no physical changes to any plant equipment or new components created by the proposed changes. The chemistry and material property changes do not impact the pressure boundary integrity of the reactor vessel. The decrease in EOL USE for weld heat 5P6771 is relatively minor and remains above the required value that has been prescribed by the NRC to provide the necessary level of ductility assumed for reactor vessel integrity evaluations. Therefore, the accident initiating aspects of the pressure vessel are not affected. In addition, neither the proposed change requiring the ISLH test to be complete before the core is critical nor the proposed change allowing fuel in the reactor vessel during ISLH creates any new accident initiating mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The changes in chemical and material properties do not adversely affect any reactor vessel integrity evaluations, such as PTS [Pressurized Thermal Shock] or P-T limits. The USE for weld heat 5P6771 does decrease slightly as described in TS Bases Table B 3/4.4-1. However, the predicted EOL USE remains above the value prescribed in 10 CFR 50, Appendix G and is not a significant reduction in the margin of safety. With regard to the proposed changes allowing fuel in the reactor vessel during ISLH, the existing TS Bases specifically state that fuel is not to be in the reactor vessel when the ISLH P-T curve is utilized. However, this change is consistent with the revised 10 CFR 50, Appendix G rule and as such, is not a significant reduction in the margin of safety.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Mark Reinhart, Acting

Commonwealth Edison Company, Docket No. 50-010, Dresden Nuclear Generating Station, Unit 1, Grundy County, Illinois

Date of amendment request: October 23, 1996

Description of amendment request: The proposed change would amend the Dresden Unit 1 Appendix A Technical Specifications (TS). The proposed amendment is a complete revision of the TS to the same format as Dresden Unit 2/3 TS.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility according to this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. In general the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis (Decommissioning Plan). Implementation of these changes will not reduce reliability of equipment assumed to operate in the current safety analysis (Decommissioning Plan), or will provide continued assurance that specified parameters remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. The proposed amendment for Dresden Station Unit 1's Technical Specifications in general is based on STS [Standard Technical Specifications] guidelines or NRC accepted changes to other facilities such as Trojan or San Onofre Unit 1. Any deviations from STS requirements do not significantly increase the probability or consequences of any previously evaluated accidents for Dresden Station Unit 1. The proposed amendment is consistent with the current safety analysis (Decommissioning Plan) and has been previously determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analysis (Decommissioning Plan), or provide continued assurance that specified parameters remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

2. Will operation of the facility according to this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated.

No. In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis (Decommissioning Plan). Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the operation of the station; however, these provide additional restrictions which are in accordance with the current safety analysis (Decommissioning Plan).

The proposed amendment for Dresden Station Unit 1's Technical Specifications in general is based on STS guidelines or NRC accepted changes to other facilities such as Trojan or San Onofre Unit 1. The proposed amendment has been reviewed for acceptability at the Dresden Nuclear Power Station considering similarity of system or component design versus the STS of later operating plants. Any deviations from STS requirements do not create the possibility of a new of different kind of accident previously evaluated for Dresden Station, Unit 1. No new modes of operation are introduced by the proposed changes. The proposed changes maintain at least the present level of operability. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility according to this proposed change involve a significant reduction in a margin of safety?

No. In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis (Decommissioning Plan). Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. Some of the later individual items may introduce minor reductions in the margin of safety when compared to the current requirements. However, other individual changes are the adoption of new requirements which will provide significant enhancement of the reliability of human performance assumed in the safety analysis (Decommissioning Plan), or provide enhanced assurance that specified parameters remain within their acceptance limits. These enhancements compensate for the individual minor reductions, such that taken together, the proposed changes will not significantly reduce the margin of safety.

The proposed amendment to Technical Specification Section 6.0 implements present requirements, or the intent of present requirements in accordance with the guidelines set forth in the STS. Any deviations from STS requirements do not significantly reduce the margin of safety for Dresden Station. The proposed changes are intended to improve readability, usability, and the understanding of technical specification requirements while maintaining acceptable levels of safe operation. The proposed changes have been evaluated and found to be acceptable for use at Dresden based on system design, safety analysis requirements and operational performance. Since the proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Dresden and maintain necessary levels of system or component reliability, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450

Attorney for licensee: Michael I. Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Seymour H. Weiss

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: December 2, 1996

Description of amendment request: The proposed amendments would

revise Technical Specification 3/4.4.2 to reduce the number of required Safety/Relief Valves (SRVs). This change will support a modification to remove five of the currently installed SRVs due to the current excess capacity, and to reduce maintenance costs and worker radiation dose. The current requirement for 17 of the 18 installed SRVs to be operable would be changed to require 12 of the 13 installed SRVs to be operable.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The probability of an accident previously evaluated will not increase as a result of this change, because the change in valve configuration, and the accompanying piping modification does not alter any of the initiators of an accident or cause them to occur more frequently. The piping modifications will be performed consistent with the current piping classifications for the affected components. Removal of the SRVs will not impact the ability of the remaining SRVs to perform their functions, as described below.

The consequences of an ASME Overpressurization Event are not significantly increased and do not exceed the previously accepted licensing criteria for this event. General Electric (GE) has calculated the revised peak vessel pressure for LaSalle Station to be 1341 psig, which is below the 1375 psig criterion of the ASME Code for upset conditions, referenced in Section 5.2.2, Overpressurization Protection, of the Updated Final Safety Analysis Report (UFSAR), and NUREG-0519 (Safety Evaluation Report related to the operation of LaSalle County Station, Units 1 and 2, March 1981), and Section 15.2-4, Closure of Main Steam Isolation Valves (BWR) of NUREG-0800 (Standard Review Plan). The consequences of this event will continue to be verified on a cycle-specific basis, beginning with LaSalle Unit 1 Cycle 9 (L1C9). These analysis results will be approved as part of the normal reload licensing 10 CFR 50.59 processes.

GE has also performed an analysis of the limiting Anticipated Transient Without Scram (ATWS) event, which is the MSIV Closure Event (MSIVC). This analysis calculated the peak vessel pressure to be 1378 psig, which is well below the 1500 psig criterion of the ASME Code for emergency conditions. General Electric has verified that these results will not be impacted with the introduction of Siemens fuel.

The conclusions given in the safety analyses with regards to primary containment dynamic loads, main steam piping loads, Loss-of-Coolant Accident (LOCA) impact, Minimum Critical Power Ratio (MCPR) impact and SRV availability also show that current accident and transient analyses are not impacted by this change beyond those reanalyzed by GE and discussed above.

There is no increase in the amount or types of radioactive release for any of the affected accidents or transients.

Therefore, there is not a significant increase in the consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The as-left SRV piping configuration will continue to be consistent with the current classifications for these piping and supports, and have been evaluated by Sargent and Lundy analyses. This ensures no different types of events may be caused by piping failures at these locations. This is the only physical modification proposed by this submittal, and it will not create the possibility of a new or different kind of accident from those previously evaluated. Other systems are not modified with this change and have been shown in this submittal to continue to function as intended with the new system configuration, with the exception of the abandoned discharge line snubbers which may be replaced with struts, except where they will be retained as snubbers due to thermal expansion requirements. The changed supports are required to function only as struts with the revised piping. Consideration and evaluation of this function ensure no new or different accidents are created.

3) Involve a significant reduction in the margin of safety because:

While the calculated peak vessel pressures for the ASME Overpressurization Event and the MSIVC ATWS Event are increased due to the proposed SRV removals, the new peak pressures remain below the respective licensing acceptance limits associated with these events.

The actual cycle-specific reload analysis of the ASME Overpressurization Event will be verified to be within the licensing acceptance limit for that event prior to each cycle startup, as required in the normal reload 10CFR50.59 process. These licensing acceptance limits have been previously evaluated as providing a sufficient margin of safety. For other accidents and transients, including suppression pool loadings, the SRV removals have a negligible, if any, effect on the results, so the margin of safety is preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 14, 1996

Description of amendment request: The proposed amendment would revise Technical Specification Sections 3.3 (Engineered Safety Features) and 6.9.1.9 (Core Operating Limits Report (COLR)); the basis of Section 3.3, 3.6 (Containment) and 3.10 (Control Rods). These changes would incorporate the best estimate approach into the licensing basis for the Indian Point Unit No. 2 large break loss-of-coolant accident (LOCA) analysis.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

No physical changes are being made by this change. The plant conditions assumed in the analysis are bounded by the design conditions for all equipment in the plant. Therefore, there will be no increase in the probability of a loss-of-coolant accident. The consequences of a LOCA are not being increased. That is, it is shown that the emergency core cooling system is designed so that its calculated cooling performance conforms to the criteria contained in 50.46 paragraph b, that is it meets the five criteria listed in Section II [see application dated August 14, 1996] of this evaluation. No other accident is potentially affected by this change. Therefore, neither the probability nor the consequences of an accident previously analyzed is increased due to the proposed change.

2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously analyzed?

Response:

There are no physical changes being made to the plant. No new modes of plant operation are being introduced. The parameters assumed in the analysis are within the design limits of existing plant equipment. All plant systems will perform equally during the response to a potential accident. Therefore, the possibility of a new or different kind of accident than previously analyzed will not be increased.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response:

It has been shown that the analytic technique used in the analysis realistically describes the expected behavior of the Indian Point Unit No. 2 reactor system during a

postulated loss of coolant accident. Uncertainties have been accounted for as required by 10 CFR 50.46. A sufficient number of loss of coolant accidents with different break sizes, different locations and other variations in properties have been analyzed to provide assurance that the most severe postulated loss of coolant accidents were calculated. It has been shown by the analysis that there is a high level of probability that all criteria contained in 10 CFR 50.46 paragraph b) are met. Therefore the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: S. Singh Bajwa, Acting Director

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 21, 1996

Description of amendment request: The proposed amendment would change the licensee's Technical Specifications (TSs) Section 3.3.G (Hydrogen Recombiner System and Post-Accident Containment Venting System), the basis for Section 3.3.G, and Section 4.4, Table 4.4-1 (Containment Isolation Valves). The change would remove the existing flame-type hydrogen recombiners, its supporting equipment, and replace it with passive autocatalytic recombiners (PARs). In addition, the design basis analysis of post-accident hydrogen generation would be recalculated.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Neither the probability nor the consequences of a post-LOCA [loss-of-coolant accident] combustible gas accident are increased by the change in recombiners or in the change to hydrogen generation analysis. The probability of a 10 CFR 59.44 type LOCA is not affected. The consequences of such an accident are not significantly changed.

Accidents associated with failure of the flame-recombiner flue (hydrogen/oxygen) system as well as with failure of the flame-recombiner containment isolation valves have been eliminated.

No other accident is potentially affected by this change.

2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

No new modes of plant operation are being introduced other than elimination of operation of the flame-type recombiners and associated support equipment. Recombiner failure is believed to be far less likely with the PAR design but in any event, the containment vent system is being maintained in its current role as backup to recombiner systems. All other plant systems will perform equally during the response to a potential accident. Therefore, the possibility of a new or different kind of accident than previously analyzed will not be increased.

3) Does the proposed amendment involve a significant reduction in the margin of safety?

The proposed amendment involves margin in the hydrogen flammability limit, in the hydrogen generation assumptions and in the number of PAR devices assumed. Furthermore, sensitivity analysis on PAR effectiveness indicates that additional margin exists for success even with degraded PAR performance. It has been shown by the analysis that the criteria of 10 CFR 50.44(d) can be met with margin. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: S. Singh Bajwa, Acting Director

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 22, 1996

Description of amendment request: The proposed amendment would revise the licensee's Technical Specification Sections 3.3 and 4.5 (Engineered Safety Features). The proposed revision would delete the requirement to utilize sodium hydroxide (NaOH) as an additive in the posted-accident containment spray system.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

...consistent with the Commission's criteria in 10 CFR 50.92, we have determined that the proposed change does not involve a significant hazards consideration because the operation of Indian Point Unit No. 2 in accordance with this change would not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed revisions are based on conservative analyses utilizing new, approved methodologies. The analysis shows the sodium hydroxide spray additive can be removed without significantly affecting the radiological consequences of a postulated LOCA [loss-of-coolant accident] and that the calculated off-site doses would remain within the 10 CFR 100 guidelines. In order to maintain acceptable pH levels in the recirculating ECC [emergency core cooling] solution, baskets of trisodium phosphate will be stored in strategic locations in containment.

2) create the probability of a new or different kind of accident from any accident previously evaluated. The proposed change allows the containment safeguards to mitigate the consequences of a design basis LOCA in a manner equivalent to that previously approved.

3) involve a significant reduction in a margin of safety. With the proposed change, all safety criteria previously evaluated are still met and remain conservative.

Therefore, based on the above, we conclude that the proposed changes do not constitute a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: S. Singh Bajwa, Acting Director

Duke Power Company, Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: January 3, 1997

Description of amendment request: The proposed amendments would eliminate from various parts of the Technical Specifications any requirement for the low steam pressure

signal as an initiator of safety injection. The licensee stated that the function of the signal is adequately performed by other signals (such as the low pressurizer pressure signal).

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change, to delete the SI [safety injection] signal on low steam line pressure, will only prevent an unnecessary SI actuation as an event occurs which involves secondary system depressurization. No consequences will significantly increase, because for each event previously analyzed it has been shown that either SI on low steam pressure is not demanded, or that another SI signal (e.g., low pressurizer pressure) is generated in sufficient time to meet applicable acceptance criteria. The probability of an accident will not increase.

2. The proposed change will not create the possibility of any new accident not previously evaluated.

The initiation of SI on a low steam line pressure signal may occur during events which involve a depressurization of the secondary side, including excessive auxiliary feedwater addition. There are other SI initiation signals which will accomplish this same function if needed. Removing this actuation signal will not create any new failure modes or necessitate any new hardware configurations (other than the deletion of the signal itself). No new accident scenarios are created.

3. There is no significant reduction in a margin of safety.

Analysis has shown that for any transient for which SI would have occurred on low steam line pressure, transient response is maintained within acceptable limits. Steam line break mass and energy releases inside containment do not violate the existing environmental qualification envelope. Steam line breaks outside containment are not adversely affected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendments involve no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit Nos. 1 (ANO-1), Pope County, Arkansas

Date of amendment request: November 26, 1996

Description of amendment request: Change Reactor Coolant System Pressure and Temperature Curvers

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change revises the pressure/temperature limits in accordance with the 10 CFR 50.60 requirements or in accordance with Code Case N-514. This approach utilizes the latest NRC guidelines relative to estimating neutron irradiation damage of the reactor vessel, as well as maintaining conservative limits with respect to the low temperature overpressure protection (LTOP) system. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change will not create the possibility of a new or different kind of accident from any previously evaluated since it does not introduce new systems, failure modes or plant perturbations. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in Margin of Safety.

The proposed change will not involve a significant reduction in the margin of safety since the proposed pressure/temperature limitations have been developed consistent with the requirements of 10 CFR 50.60. The operational limits have been developed to maintain the necessary margins of safety through 32 effective full power years using methodologies previously reviewed and approved by the NRC. The objective of these limits is to prevent non-ductile failure during any normal operating condition, including anticipated operational occurrences and system hydrostatic tests.

The LTOP safety factors are based on reanalyzed conditions for 32 effective full power years of operation utilizing methodology contained in ASME Code Case N-514. The LTOP evaluation under Code Case N-514 for low temperature transients is considered more appropriate than the ASME Section XI. The code case establishes a factor of 110% of the pressure determined to satisfy Appendix G, paragraph G-2215 of ASME Section XI, Division 1 as a design limit, instead of 100% required by Section XI. This proposed alternative is acceptable because the Code Case recognizes the conservatism of the ASME Appendix G curves and allows establishing a LTOP setpoint which retains an acceptable margin of safety while maintaining operational margins for reactor coolant pump operation at low temperatures and pressures. The Code Case provides an acceptable margin of safety against flaw initiation and reactor vessel failure, and reduces the potential for an undesired LTOP actuation. The application of Code Case N-514 for ANO-1 will ensure an acceptable level of safety. Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: October 7, 1996

Description of amendment request: Modify Plant Protection System Test Interval to 123 days.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed changes included in this amendment request are being made to surveillance intervals, allowances to use CISAM elements and various administrative changes. These changes do not alter the functional characteristics of any plant component and do not allow any new modes of operation of any components. These changes do not involve a significant increase in the probability of any event initiator to occur. Therefore, this amendment request does not involve a significant increase in the probability of any accident previously evaluated.

Increasing the surveillance interval for the RPS and ESFAS instrumentation has two principal effects with opposing impacts on risk. The first impact is a slight increase in core damage frequency that results from the increased unavailability of the

instrumentation in question from the extended testing interval. The unavailability of the tested instrumentation components is translated to result in a failure of the reactor to trip, an anticipated transient without a scram, or a failure of the appropriate engineered safety feature to actuate when required. The opposing impact on risk is the corresponding reduction in core damage frequency that would result due to the reduced exposure of the plant to test induced transients.

Representative fault tree models were developed for ANO-2 and the corresponding core damage frequency increases and decreases were quantified in CEN-327 and CEN-327 Supplement 1. The NRC staff found that changes in the RPS unavailabilities that result from extending the surveillance test interval (STI) from 30 days to 90 days were not considered to be significant. Estimates of the reduction in scram frequency from the reduction in test induced scrams and the corresponding reduction in core damage frequency were found acceptable. Sequential testing intervals of 90 days were found to result in a net reduction in risk.

CE NPSD-576 employed the same methodology used in CEN-327 and its supplement to evaluate the impact of extending the surveillance intervals from monthly sequential testing to every four months (triannual) on a staggered test basis. The corresponding changes in RPS and ESFAS unavailabilities are quantified in CE NPSD-576 and are shown to be less than their counterparts in CEN-327 and its supplement. Thus, triannual staggered testing should be acceptable as it results in lower RPS and ESFAS unavailabilities than for a 90 day test interval with sequential testing which has been found to be acceptable to the NRC.

The TS amendment request provided the option to use cycle independent shape annealing matrix (CISAM) elements. The CISAM elements will be validated during startup testing and will be required to meet additional acceptance criteria as well as that used for the cycle specific shape annealing matrix (SAM) elements. If the CISAM is determined to be no longer valid, a cycle specific SAM will be calculated and used in the CPCs. Therefore, the CPCs will operate as designed and this change will not affect the consequences of any accident previously evaluated.

The CPC addressable constant surveillance requirements and the various administrative changes affected by this TS change do not affect the consequences of any accident previously evaluated.

Therefore, these changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

This amendment request does not involve any changes in equipment and will not alter the manner in which the plant will be operated.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The RPS/ESFAS extended testing interval yields no significant reduction in the margin to safety. The instrument drift occurring over the proposed STI will not cause the setpoint values to exceed those assumed in the safety analysis and specified in the TS. There are no changes to equipment or plant operations that will result from this change. The implementation of these proposed changes is expected to result in an overall improvement in safety due to the fact that reduced testing will result in fewer inadvertent trips, less frequent actuation of EFAS components, and less frequent distraction of the operations personnel.

The CPC addressable constant surveillance interval extension included in this amendment request is consistent with the methodology found in NUREG-1432, ''Standard Technical Specifications Combustion Engineering Plants'' (ISTS). Requiring the addressable constant verification to be performed as part of the CPC channel functional test should detect an error in these constants prior to restoring the channel to operable status instead of allowing the error to go undetected until the next surveillance period. Although the surveillance interval is extended by this TS change, this change does not involve a significant reduction in the margin of safety.

The CPC CISAM elements and the various administrative changes included in this TS change do not involve a significant reduction in the margin of safety.

Therefore, these changes do not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: December 19, 1996

Description of amendment request: Change Request Concerning Addition to the Core Operating Limit Report References

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change to add the technical manual for the Combustion Engineering Nuclear Transient Simulation (CENTS) code to the Core Operating Limits Report (COLR) references is administrative in nature. The CENTS code has been reviewed and approved by the NRC. The physical design or operation of the plant is not impacted by this proposed change. The proposed change does not adversely impact transient analysis assumptions or results. The COLR-related safety analyses will continue to be performed utilizing NRC-approved methodologies, and specific reload changes will be evaluated under the provisions of 10CFR50.59. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change to reference the NRC-approved CENTS code is administrative in nature. No physical alterations of plant configuration, changes to plant operating procedures, or operating parameters are proposed. No new equipment is being introduced, and no equipment is being operated in a manner inconsistent with its design. The COLR-related safety analyses will continue to be performed utilizing NRC-approved methodologies. A 10CFR50.59 safety review will continue to be performed to evaluate specific reload changes. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change to reference the CENTS code is administrative in nature. Existing technical specification operability and surveillance requirements are not reduced by the proposed change. The cycle-specific COLR limits for future reloads will continue to be developed based on NRC-approved methodologies. Technical specifications will continue to require that the core be operated within these limits and specify appropriate actions to be taken if the limits are violated. The COLR-related safety analyses will continue to be performed utilizing NRC-approved methodologies, and specific reload changes will be evaluated per 10CFR50.59. Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: December 19, 1996

Description of amendment request: Change Request Concerning Power Calibration Requirements

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change will redefine the tolerance band allowed for linear power level, the Core Protection Calculator (CPC) delta T Power, and CPC nuclear power signals. Changing the tolerance range from [plus or minus] 2% to between -0.5% and 10% between 15% and 80% rated thermal power, will require more conservative tolerances than are currently allowed. This change will ensure that the power indications are more conservative relative to the existing safety analyses. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change to Technical Specification power calibration tolerance limits are conservative relative to the current requirements. This amendment request does not change the design or operation of any plant systems or components. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in Margin of Safety.

The allowed tolerance band for the linear power level, CPC delta T power, and CPC nuclear power signals between 15 and 80% power has been redefined. The new requirements are more conservative than the tolerances that currently exist in the Technical Specifications. This change will ensure that the power indications are more conservative relative to the existing safety analyses. Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: December 19, 1996

Description of amendment request: Change Request Concerning Reactor Coolant System Volume

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

This proposed change allows the relocation of the reactor coolant system volume in the design features section of technical specifications to the safety analysis report. Future changes will be controlled under 10CFR50.59. This change is considered administrative in nature. Appropriate values of reactor coolant system volume are used in the safety analyses. This change does not affect any system or component functional requirements. The operation of the plant is not affected by this change.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The relocation of existing requirements from the technical specifications to another licensee controlled document is administrative in nature. This change does not modify or remove any plant design requirement. The proposed change will not affect any plant system or structure, nor will it affect any system functional or operability requirements. Therefore, no new failure modes are introduced as a result of this change.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed amendment request relocates the coolant system volume located in the technical specifications design feature section to another licensee controlled document, the ANO-2 Safety Analysis Report, which is controlled under 10CFR50.59. The proposed change is administrative in nature because the design requirements for the facility remain the same. The proposed change does not represent a change in the configuration or operation of the plant.

Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: December 19, 1996

Description of amendment request: Change Control Room Ventillation System Requirements

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The control room emergency ventilation and air conditioning systems are not initiators of an accident previously evaluated. Extension of the allowable outage time for one inoperable control room emergency air conditioning system from 7 days to 30 days is acceptable based on the low probability of an event occurring that would require control room isolation and a concurrent or subsequent failure of the remaining operable control room emergency air conditioning system. An evaluation using probabilistic safety assessment techniques has shown the frequency of this event to be an acceptably low level (4.67E-6/yr). The ANO-1 surveillance requirements for the control room emergency ventilation and air

conditioning system have been updated for consistency with the ANO-2 requirements and are consistent with RG 1.52, March 1978, Revision 2 and ASTM D3803-1989. The change in the ANO-2 Mode of Applicability for the control room radiation monitoring instrumentation is acceptable because the only identified accident scenario requiring control room isolation on high radiation while in Modes 5 and 6 is the fuel handling accident and this analysis shows that the dose consequences to the control room operators are acceptable in the event of a fuel handling accident, assuming that the normal control room ventilation system is properly isolated. The remainder of the changes have been made for consistency between the ANO-1 and ANO-2 TS and are considered to be more restrictive or administrative in nature.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The control room emergency ventilation and air conditioning systems are not accident initiators. The proposed changes introduce no new mode of plant operation and no new possibility for an accident is introduced by modifying the ANO-1 surveillance testing requirements for the control room emergency ventilation and air conditioning systems.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

With the exception of the AOT extension and the relaxation of the ANO-2 Mode of Applicability for the control room radiation monitoring instrumentation, all the ANO-1 and ANO-2 changes are considered administrative or more restrictive and are intended to clarify and make consistent the requirements of the control room emergency habitability equipment. Although the AOT extension does involve an incremental reduction in the margin of safety due to slight increase in the frequency of an event requiring control room isolation, followed by failure of the operable emergency control room chiller, a probabilistic safety assessment has shown this slight increase in frequency (approximately 3.58E-6/yr) to be acceptably low. The change in the ANO-2 Mode of Applicability for the control room radiation monitoring instrumentation is acceptable because the only identified accident scenario requiring control room isolation on high radiation while in Modes 5 and 6 is the fuel handling accident and this analysis shows that the dose consequences to the control room operators are acceptable in the event of a fuel handling accident, assuming that the normal control room ventilation system is properly isolated.

Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: William D. Beckner

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of amendment request: December 3, 1996

Description of amendment request: The two proposed changes would revise Technical Specification (TS) 2.1.1.2 for Hatch Nuclear Plant, Unit 2, Safety Limit Minimum Critical Power Ratio (SLMCPR) values. The revision is based upon unique plant evaluations for the current Cycle 13 and the use of General Electric (GE) GE-13 fuel, a 9 x 9 fuel design, in the next Cycle 14. The proposed SLMCPRs for Hatch Unit 2 are 1.08 and 1.09 (single-loop operation) for the current Cycle 13, and 1.12 and 1.14 (single-loop operation) for Cycle 14.

The new SLMCPRs were calculated using NRC-approved methods and interim implementing procedures. The SLMCPRs are set high enough to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The SLMCPRs incorporate a margin for uncertainty in the core operating state for uncertainties that are fuel-type dependent, including fuel bundle nuclear characteristics, critical power correlation, and manufacturing tolerances. These interim procedures were revised to incorporate the following cycle-specific parameters: (1) Actual core loading, (2) Conservative variations of projected control blade patterns, (3) Actual bundle parameters (e.g., local peaking), and (4) Full cycle exposure range.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the change involve a significant increase in the probability of consequences of an accident previously evaluated?

The derivation of the revised SLMCPRs for Plant Hatch Unit 2 for incorporation into the Technical Specifications, and its use to determine cycle-specific thermal limits, were performed using NRC-approved methods. Additionally, interim implementing procedures incorporating cycle-specific parameters were used. Based upon the use of these calculations, revised SLMCPRs cannot increase the probability or severity of an accident. The basis of the SLMCPR calculation is to ensure that ≤ 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling and fuel damage in the event of a postulated accident. Thus, it can be concluded that the probability of fuel damage is not increased and the proposed Technical Specifications changes do not involve an increase in the probability or consequences of an accident evaluation.

2. Do the proposed changes create the possibility of a new or different type of accident from any previously evaluated?

The SLMCPR is a Technical Specifications numerical value designed to ensure that fuel damage from transition boiling does not occur as a result of the limiting postulated accident. The SLMCPRs were calculated using NRC-approved methods. Additionally, interim procedures incorporating cycle-specific parameters were used in the analysis. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

The margin of safety as defined in the Bases will remain the same. The new SLMCPRs were calculated using NRC-approved methods which are in accordance with the current fuel design and licensing criteria. Additionally, interim implementing procedures, which incorporate cycle-specific parameters were used. The SLMCPR remains high enough to ensure that ≤ 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: January 7, 1997

Description of amendment request: The proposed amendments would change the Technical Specifications (TS) for Plant Hatch, Units 1 and 2, associated with Surveillance Requirement (SR) testing that requires manually actuating every safety/relief valve (S/RV) during each unit startup from a refueling outage. The proposed changes would provide an alternate method of testing the S/RVs during shutdown conditions rather than during unit startup as is currently done. This approach would reduce valve leakage, thereby reducing the possibility of inadvertent valve actuation and resultant plant transients. Additionally, deletion of testing for the safety mode of the S/RVs is proposed since other testing provides operability verification.

Furthermore, the licensee proposes relief from the applicable requirements of the ASME OM Code (1995), Appendix I, paragraph I 3.4.1(d), which also requires manual actuating of S/RVs during unit startup.

Current Unit 1 and Unit 2 SRs 3.5.1.12 and 3.6.1.6.1 require that each S/RV be manually actuated at pressure conditions. Georgia Power Company (GPC) proposes to revise SRs 3.5.1.12 and 3.6.1.6.1 that would require the S/RVs to be manually actuated in the relief mode during a plant outage before steam is generated. The solenoid valve would be energized, the actuator would stroke, and the pilot rod lift would be measured. This in-situ test would verify that, given a signal to the solenoid, the pilot disc rod would lift. If steam were present, the pilot disc would open and initiate opening of the main stage.

The licensee also proposes to delete current Units 1 and 2 SR 3.4.3.2, which also requires that each S/RV be manually actuated because this test is not necessary to assure S/RV operability in the safety mode since other tests, taken together, confirm the entire S/RV assembly functions adequately.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Georgia Power Company [GPC] has reviewed the proposed license amendment request and determined its adoption does not involve a significant hazards consideration. In support of this determination, an evaluation of each of the three 10 CFR 50.92 standards follows.

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Since the proposed Technical Specifications changes and ASME Code relief do not impose any physical changes to the S/RVs, their design function is unaffected. The submittal only proposes changes to the manner in which the S/RVs are tested. As discussed in Enclosure 1 [of the licensee's submittal], the combination of current S/RV testing and the proposed alternate

testing will continue to adequately demonstrate the operability of the S/RVs for both the safety and relief modes. Under the proposed testing requirements, it is expected that S/RV leakage will decrease; thus, the probability of occurrence of an inadvertent S/RV actuation is actually reduced.

FSAR [Final Safety Analysis Report] analyzed events, such as MSIV [main steam isolation valve] closure, generator load reject, turbine trip with failure of switchyard breakers to open, and pressure regulator failure, take credit for the S/RVs mitigating the consequences of these events. These proposed changes will not increase the consequences of these events, since a series of S/RV tests (on the bench and installed) will ensure all S/RV components necessary to ensure valve opening will function. The S/RVs will therefore be capable of performing their design functions.

Furthermore, reducing the number of manual actuations of the S/RVs decreases the likelihood of a stuck open S/RV, which is an analyzed event in the Hatch FSAR.

Therefore, the probability of occurrence and the consequences of previously analyzed events are not increased.

2. The proposed changes do not create the possibility of [a new or different kind of accident from any accident] previously evaluated.

The proposed changes affect the manner in which S/RV operability is verified in that one Technical Specifications SR [surveillance requirement] is being deleted and two are being revised; however, they do not affect the way the S/RVs are operated. The S/RVs will not be operated or tested in a manner contrary to their design. As a result, no new mode of operation is introduced. That is, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The present method of S/RV testing unnecessarily challenges the valves, and is linked to S/RV degradation through pilot valve and/or main valve leakage. This Technical Specifications change should decrease S/RV leakage and improve S/RV reliability by reducing the potential for spurious valve actuation at full power. In this sense, the margin of safety is actually increased; e.g., the likelihood for spurious S/RV actuation is reduced.

Deleting the test of installed S/RVs at rated temperature and pressure will not significantly reduce the margin of safety for events in which S/RV actuation is assumed, since each S/RV receives a series of tests which insure each component necessary for successful opening of the S/RV functions properly. Thus, the S/RV is assured of opening in either the safety or the relief mode. For example, at Wyle Labs, the valves undergo testing at operating steam pressure. This test ensures operability of the pilot and main discs and also verifies set pressure, reseat pressure, and main steam stroke time. As noted previously, upon successful completion of these tests, including verification of zero seat leakage, the valves receive a written certification from the lab and are returned to Plant Hatch for installation.

GPC further proposes that, upon installation, but before steam is generated, the valves receive a test requiring the solenoid to be energized. This test provides additional verification that the pilot disc opens. The remaining segments of the S/RV tests verify the ability of ADS and LLS logic to energize the solenoid.

In summary, this amendment does not involve a significant reduction in the margin of safety, because of the reduction in S/RV degradation, and because remaining tests confirm the valves will function properly when required.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: December 16, 1996

Description of amendment request: The amendment request, if approved, would reflect the change in the legal name of the operator of TMI-1 from GPU Nuclear Corporation to GPU Nuclear Inc. and reflect in the TMI-1 license and the Technical Specifications the registered trade name of GPU Energy.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

GPU Nuclear Inc. has determined that the proposed TMI-1 license amendment and technical specification change request

involve no significant hazards consideration as defined in 10 CFR 50.92 because:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment adds to the license and the technical specifications the trade name of the Owners of TMI-1. The change in the legal name of the operator of TMI-1 is a cosmetic change made to reflect the name changes made throughout the GPU family of companies. The name change has no impact on plant design or operation.

Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because no new failure modes are created by the proposed changes. The use of a common trade name for the Owners of TMI-1 and the change in the legal name of the operator of TMI-1 has no impact on plant design or operation. Thus, there is no creation of the possibility of a new or different kind of accident from those previously evaluated.

Operation of the facility in accordance with the proposed amendment will not involve a signficant reduction in a margin of safety. The proposed amendment does not change any operating limits for reactor operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037. NRC Acting Project Director: Patrick D. Milano

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendment request: August 4, 1995 as supplemented December 20, 1996 [AEP:NRC:1129E and 1129M]

Description of amendment request: The proposed amendment would modify the technical specifications (T/S) to allow for repair of hybrid expansion joint (HEJ) sleeves under redefined repair boundary limits. This alternate plugging criterion would assess the integrity of parent tube indications based on the degraded joint geometry, with reference to the specific location of the flaw. The continued operability of the HEJ sleeved tube would be based on the measured diameter difference, or diameter delta (delta D), between the sleeve peak hardroll diameter and the diameter of the sleeve adjacent to the parent tube flaw in the upper joint.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Conformance of the proposed amendments to the standards for a determination of no significant hazard as defined in 10 CFR 50.92 (three factor test) is shown in the following.

(1) Operation of Cook Nuclear Plant unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The HEJ sleeved tube structural integrity limits defined by this amendment provide for structural integrity consistent with the guidance of RG 1.121. Tube structural integrity consistent with the most limiting RG 1.121 loading is inherently provided by a measured [delta D] of less than 1 mil, although the criterion specifies a minimum of 3 mils must be verified. The structural integrity characteristics of a postulated degraded parent tube with a 3 mil [delta D] provides for axial restraint capability of more than double the most limiting RG 1.121 loading, which indicates that the postulated separated tube would not become axially displaced relative to the sleeve during any plant condition.

Based on tube pull data from Cook Nuclear Plant and other plants it is expected that TSP intersections would provide a substantial axial restraint capability. This interaction is neglected in the analysis of the criterion, and provides for extra safety margin.

Based on the destructive examination results for sections of HEJ sleeved tubes removed in 1994 from another plant, the parent tube flaw morphology is described as circumferentially oriented with multiple initiation sites. This segmented morphology indicates that the previously performed structural capability testing is conservative. Additional axial load bearing capability is provided by the segmented morphology since end cap loading would be transmitted through the tube by the non-degraded ligaments of the segmented crack network, and tube separation therefore, is not likely or credible.

The consequences of any postulated failure of a sleeved tube to which the criteria has been applied would be bounded by the current steam generator tube rupture event discussed in the Cook Nuclear Plant Final Safety Analysis Report (FSAR). Axial displacement of any tube, sleeved or unsleeved, is bounded by approximately 1.1 inch. A tube which experiences axial displacement by this amount would be expected to exhibit a release rate well below the normal makeup capacity. In order for a HEJ sleeved tube to exhibit reactor coolant system release rates approaching the release rates assumed in the FSAR the tube must be displaced by approximately 3 inches. In order for the postulated separated tube to experience axial displacement of any magnitude, it must be assumed that the HEJ hardroll provides no structural benefit and that the tube-to-TSP interaction is frictionless.

Postulated primary to secondary leakage during a main steam line break event will be assessed against the limit of 8.4 gpm in the faulted loop, calculated as part of the voltage based plugging limit for tube support plate intersections. The total of all leakage sources must be shown to be less than this value.

Application of the 3 mil [delta D] criterion (excluding eddy current uncertainty) does not change existing reactor coolant system flow conditions, therefore, existing LOCA analysis results will be unaffected. Plant response to design basis accidents for the current tube plugging and flow conditions are not affected by the repair process; no new tube diameter restriction is introduced.

(2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Application of the proposed 3 mil [delta D] HEJ sleeved tube structural integrity criterion will not introduce significant or adverse changes to the plant design basis. The 3 mil [delta D] criteria provides for structural integrity of the HEJ sleeved tube assembly which significantly exceeds the limiting RG 1.121 loading condition. Under these conditions neither a single nor a multiple tube rupture event is considered credible.

The general outline of the HEJ sleeve is unaffected, and the application of the proposed criterion does not change the sleeve configuration or size/shape. The application of the criterion also does not represent a potential to affect other plant components.

(3) The proposed license amendment does not involve a significant reduction in a margin of safety.

The proposed criterion has been shown to provide structural integrity of the tube bundle consistent with the most limiting RG 1.121 tube integrity recommendations. In order for tube rupture to occur, the degraded parent tube must experience a complete circumferential separation and be subsequently axially displaced by approximately 3 inches. The inherent structural integrity provided by the interference fit of the HEJ in addition to the axial restraint provided by tube support plate intersections above the HEJ provides for structural integrity far exceeding the RG 1.121 loading of 2264 lb. Even in the event that a degraded HEJ sleeved parent tube were to experience axial displacement, the maximum amount of displacement the tube could experience is bounded by 1.11 inch. Postulating that the tube were to become displaced by this amount, primary to secondary leakage would be limited to well less than the normal makeup capacity due to the proximity between the hydraulically expanded sleeve OD and tube ID.

Pulled HEJ sleeved tube samples from another plant with HEJ sleeved tubes indicate that the crack morphology is described as circumferentially oriented cracking with multiple initiation sites. This segmented

morphology provides for additional structural margin not modeled in the testing program.

Existing flow equivalency calculations for the HEJ sleeved tubes will be unaffected by the application of the criterion.

Based on the preceding analysis it is concluded that operation of Cook Nuclear Plant unit 1 following the application of the 3 mil [delta D] HEJ sleeved tube structural integrity limit does not increase the probability of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or reduce any margins to plant safety. Therefore, the license amendment does not involve a significant hazards consideration as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Gail H. Marcus

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: October 30, 1996

Description of amendment request: These amendments revise the safety limit minimum critical power ratios (SLMCPRs) at Peach Bottom Atomic Power Station, Unit 3.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed TS [technical specification] changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the cycle-specific SLMCPRs for incorporation into the TS, and its use to determine cycle-specific thermal limits, have been performed using USNRC [U.S. Nuclear Regulatory Commission]-approved methods as discussed in ''General Electric Standard Application for Reactor Fuel,'' NEDE-24011-P-A-11, and U.S. Supplement, NEDE-24011-P-A-11-US, November 17, 1995 and interim (reconfirmation) implementing procedures. This change in SLMCPRs cannot increase the probability or severity of an accident.

The basis of the SLMCPR calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling and fuel damage in the event of a postulated accident. The fuel licensing acceptance criteria for the SLMCPR calculation apply to PBAPS [Peach Bottom Atomic Power Station], Unit 3, Cycle 11 in the same manner as they have applied previously. The probability of fuel damage is not increased. Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2) The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The SLMCPR is a TS numerical value, designed to ensure that transition boiling does not occur in 99.9% of all fuel rods in the core during the limiting postulated accident. It cannot create the possibility of any new type of accident. The new SLMCPRs are calculated using USNRC-approved methods (≥General Electric Standard Application for Reactor Fuel,'' NEDE-24011-P-A-11, and U.S. Supplement, NEDE-24011-P-A-11-US, November 17, 1995) and interim (reconfirmation) implementing procedures.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident, from any accident previously evaluated.

3) The proposed TS changes do not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS Bases will remain the same. The new SLMCPRs are calculated using USNRC-approved methods (≥General Electric Standard Application for Reactor Fuel,'' NEDE-24011-P-A-11, and U.S. Supplement, NEDE-24011-P-A-11-US, November 17, 1995) and interim (reconfirmation) implementing procedures which are in accordance with the current fuel licensing criteria. The SLMCPRs ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity. Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101

NRC Project Director: John F. Stolz

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: January 15, 1997

Description of amendment request: The amendment proposes to relocate the snubber operability, surveillance, and record requirements for components (snubbers) in the Technical Specifications (TS) to plant controlled documents.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, based on the following:

1. These changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The changes relocate operability, surveillance, and record requirements for components (snubbers) which do not meet the criteria for inclusion in the Technical Specifications (TS). The affected components are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The snubber requirements will be relocated from the TS to plant controlled documents. These requirements will be maintained pursuant to 10 CFR 50.59. Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The changes do not create the possibility of a new or different type of accident previously evaluated because:

The changes do not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or affect parameters governing normal plant operation. Adequate control of future changes to snubber requirements will be maintained. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated for the plant.

3. The proposed changes do not involve a reduction in a margin of safety because:

The changes do not involve a change to the operability, surveillance, and record requirements for the snubber program as they currently exist in the TS, nor do they impact on any safety analysis assumptions. The proposed changes relocate snubber requirements from the TS to plant controlled documents. Changes to the requirements in these documents are subject to the requirements of 10 CFR 50.59. In addition, exceptions to code requirements for testing will require NRC approval. Regulations and

FitzPatrick commitments to the NRC contain the necessary programmatic requirements for the plant controlled documents. Operating limitations will continue to be imposed, and required surveillances will continue to be performed in accordance with regulations, FitzPatrick commitments to the NRC, and written procedures and instructions that are auditable by the NRC. If snubber inoperability causes a TS system or component to be inoperable, then the affected system or component Limiting Condition for Operation (LCO) will be entered. Based on the above, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: S. Singh Bajwa, Acting Director

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: January 7, 1997

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3/4.2.5 to incorporate an exception to the provisions of TS 4.0.4 and to clarify the time at which the surveillance can be performed by adding that the surveillance is to be performed within 24 hours after attaining steady state conditions at or above 90% rated thermal power. The revised surveillance would also contain editorial enhancements that do not change the intent of the current surveillance. TS Table 3.2-1 for Salem Unit 1 would be revised to delete reference to three loop operation (which is not permitted at Salem Unit 1) in order to eliminate potential confusion when applying this table.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes proposed on the RCS [Reactor Coolant System] flow measurement and exemption to Specification 4.0.4 do not affect the operation of the equipment during conditions when they are required to perform their safety function. No physical changes to the plant result from the proposed changes made to the surveillance requirements. The measurement of RCS flow does not impact the probability of an accident.

Testing is being performed with the plant in the condition in which the automatic initiation signals for low RCS flow would result in a time consistent with the TS requirements.

Protection System in providing a reactor trip upon a loss of RCS flow. Degradations in flow will occur over a long duration; however, testing will continue to be performed within twenty-four hours upon achieving steady state greater than or equal to 90% RTP [Rated Thermal Power] after refueling which is a sufficiently short duration after startup to identify flow degradations.

Changes proposed to refer to Table 3.2-1 for the DNB [Departure from Nucleate Boiling] parameters and to delete the Unit 1 three loop operation parameters, and the inclusion of the type of test performed are editorial in nature.

Therefore, the consequences of an accident previously evaluated are not significantly increased by the proposed changes.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any modifications to existing plant equipment, do not alter the function of any plant systems, do not introduce any new operating configurations or new modes of plant operation, nor change the safety analyses. The point at which RCS flow is measured using a heat balance will not impact the ability to maintain or monitor Reactor Coolant flows. The proposed changes will, therefore, not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changes proposed to refer to Table 3.2-1 for the DNB parameters and to delete the Unit 1 three loop operation parameters, and the inclusion of the type of test performed are editorial in nature.

[The proposed changes will, therefore, not create the possibility of a new or different kind of accident from any accident previously evaluated.]

3. The proposed change does not involve a significant reduction in a margin of safety.

The changes to the RCS flow surveillance do not decrease the scope of the existing testing, but will clarify the point at which the testing is performed.

The time in which testing is performed, after achieving steady state conditions after reaching greater than or equal to 90% RTP ensures that testing is performed in a timely manner. Flow margins established as a result of previous testing will not be significantly reduced in light of recent outage activities. Future changes that might impact margins established by the testing will be reviewed in accordance with the requirements of 10 CFR 50.59.

Changes proposed to refer to Table 3.2-1 for the DNB parameters and to delete the Unit 1 three loop operation parameters, and the inclusion of the type of test performed are editorial in nature.

All changes are consistent with the intent of Salem's current TS [Technical Specification] and with the 18 month surveillances specified in NUREG-1431, Revision 1.

The proposed change, therefore, does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Southern Nuclear Operating Company, Inc., Docket No. 50-348, Joseph M. Farley Nuclear Plant, Unit 1, Houston County, Alabama

Date of amendments request: December 26, 1996

Description of amendments request: The proposed amendment would revise Technical Specification 3/4.4.6 ''Steam Generators'' and its associated Bases. Specifically, the steam generator repair limit would be modified to clarify that the appropriate method for determining serviceability for tubes with outside diameter stress corrosion cracking at the tube support plate is by a methodology that more reliably assesses structural integrity. This amendment request is in accordance with NRC's Generic Letter 95-05, ''Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking.''

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Operation of Farley units in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Testing of model boiler specimens for free standing tubes at room temperature conditions shows burst pressures as high as approximately 5000 psi for indications of outer diameter stress corrosion cracking with voltage measurements as high as 26.5 volts. Burst testing performed on pulled tubes,

including tubes pulled from Farley Unit 1, with up to 7.5 volt indications show burst pressures in excess of 5300 psi at room temperature. ... [T]ube burst criteria are inherently satisfied during normal operating conditions by the presence of the tube support plate. Furthermore, correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature), tube burst capability significantly exceeds the R.G. [Regulatory Guide] 1.121 criterion requiring the maintenance of a margin of 1.43 times the steam line break pressure differential on tube burst if through-wall cracks are present without regard to the presence of the tube support plate. Considering the existing data base, this criterion is satisfied with bobbin coil indications with signal amplitudes over twice the 2.0 volt voltage-based repair criteria, regardless of the indicated depth measurement. This structural limit is based on a lower 95% confidence level limit of the data at operating temperatures. The 2.0 volt criterion provides an extremely conservative margin of safety to the structural limit considering expected growth rates of outside diameter stress corrosion cracking at Farley. Alternate crack morphologies can correspond to a voltage so that a unique crack length is not defined by a burst pressure to voltage correlation. However, relative to expected leakage during normal operating conditions, no field leakage has been reported from tubes with indications with a voltage level of under 7.7 volts for a 3/4 inch tube with a 10 volt correlation to 7/8 inch tubing (as compared to the 2.0 volt proposed voltage-based tube repair limit). Thus, the proposed amendment does not involve a significant increase in the probability or consequences of an accident.

Relative to the expected leakage during accident condition loadings, the accidents that are affected by primary-to-secondary leakage and steam release to the environment are Loss of External Electrical Load and/or Turbine Trip, Loss of All AC Power to Station Auxiliaries, Major Secondary System Pipe Failure, Steam Generator Tube Rupture, Reactor Coolant Pump Locked Rotor, and Rupture of a Control Rod Drive Mechanism Housing. Of these, the Major Secondary System Pipe Failure is the most limiting for Farley in considering the potential for off-site doses. The offsite dose analyses for the other events which model primary-to-secondary leakage and steam releases from the secondary side to the environment assume that the secondary side remains intact. The steam generator tubes are not subjected to a sustained increase in differential pressure, as is the case following a steam line break event. This increase in differential pressure is responsible for the postulated increase in leakage and associated offsite doses following a steam line break event. In addition, the steam line break event results in a bypass of containment for steam generator leakage. Upon implementation of the voltage-based repair criteria, it must be verified that the expected distributions of cracking indications at the tube support plate intersections are such that primary-to-secondary leakage would result in site boundary dose within the current licensing basis. Data indicate that a threshold voltage of 2.8 volts could result in through-wall cracks long enough to leak at steam line break conditions. Application of the proposed repair criteria requires that the current distribution of a number of indications versus voltage be obtained during the refueling outages. The current voltage is then combined with the rate of change in voltage measurement and a voltage measurement uncertainty to establish an end of cycle voltage distribution and, thus, leak rate during steam line break pressure differential. The leak rate during a steam line break is further increased by a factor related to the probability of detection of the flaws. If it is found that the potential steam line break leakage for degraded intersections planned to be left in service coupled with the reduced allowable specific activity levels result in radiological consequences outside the current licensing basis, then additional tubes will be plugged or repaired to reduce steam line break leakage potential to within the acceptance limit. Thus, the consequences of the most limiting design basis accident are constrained to present licensing basis limits, and therefore there is no change to the probability or consequences of an accident previously evaluated.

2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed voltage-based tube repair criteria does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism that could result in an accident outside of the region of the tube support plate elevations. Neither a single or multiple tube rupture event would be expected in a steam generator in which the repair criteria have been applied during all plant conditions. The bobbin probe signal amplitude repair criteria are established such that operational leakage or excessive leakage during a postulated steam line break condition is not anticipated. Southern Nuclear has previously implemented a maximum leakage limit of 140 gpd per steam generator. The R.G. 1.121 criterion for establishing operational leakage limits that require plant shutdown are based upon leak-before-break considerations to detect a free span crack before potential tube rupture. The 140 gpd limit provides for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. R.G. 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the length that provides a factor of safety of 1.43 against bursting at steam line break pressure differential. A voltage amplitude of approximately 9 volts for typical outside diameter stress corrosion cracking corresponds to meeting this tube burst requirement at the 95% prediction interval on the burst correlation. Alternate crack morphologies can correspond to a voltage so that a unique crack length is not defined by the burst pressure versus voltage correlation. Consequently, a typical burst pressure versus through-wall crack length correlation is used below to define the ''longest permissible crack'' for evaluating operating leakage limits.

The single through-wall crack lengths that result in tube burst at 1.43 times steam line break pressure differential and steam line break conditions are about 0.54 inch and 0.84 inch, respectively. Normal leakage for these crack lengths would range from about 0.4 gallons per minute to 4.5 gallons per minute, respectively, while lower 95% confidence level leak rates would range from about 0.06 gallons per minute to 0.6 gallons per minute, respectively.

An operating leak rate of 140 gpd per steam generator has been implemented. This leakage limit provides for detection of 0.4 inch long cracks at nominal leak rates and 0.6 inch long cracks at the lower 95% confidence level leak rates. Thus, the 140 gpd limit provides for plant shutdown prior to reaching critical crack lengths for steam line break conditions at leak rates less than a lower 95% confidence level and for three times normal operating pressure differential at less than nominal leak rates.

Considering the above, the implementation of voltage-based repair criteria will not create the possibility of a new or different kind of accident from any previously evaluated.

3) The proposed license amendment does not involve a significant reduction in margin of safety.

The use of the voltage-based repair criteria is demonstrated to maintain steam generator tube integrity commensurate with the requirements of Generic Letter 95-05 and R.G. 1.121. R.G. 1.121 describes a method acceptable to the NRC staff for meeting GDC [General Design Criteria] 2, 14, 15, 31, and 32 by reducing the probability of the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criteria, even under the worst case conditions, the occurrence of outside diameter stress corrosion cracking at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The most limiting effect would be a possible increase in leakage during a steam line break event. Excessive leakage during a steam line break event, however, is precluded by verifying that, once the criteria are applied, the expected end of cycle distribution of crack indications at the tube support plate elevations would result in minimal, and acceptable primary to secondary leakage during the event and, hence, help to demonstrate radiological conditions are less than an appropriate fraction of the 10 CFR [Part] 100 guideline.

The margin to burst for the tubes using the voltage-based repair criteria is comparable to that currently provided by existing technical specifications.

In addressing the combined effects of LOCA [loss-of-coolant accident] + SSE [safe shutdown earthquake] on the steam generator

component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case as the tube support plates may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate due to either the LOCA rarefaction wave and/or SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse.

There are two issues associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the RCS [reactor coolant system] flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase Peak Clad Temperature (PCT). Second, there is a potential the partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse or that short through-wall indications would leak at significantly higher leak rates than included in the leak rate assessments.

Consequently, a detailed leak-before-break analysis was performed and it was concluded that the leak-before-break methodology (as permitted by GDC 4) is applicable to the Farley reactor coolant system primary loops and, thus, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design basis of the plant. Excluding breaks in the RCS primary loops, the LOCA loads from the large branch line breaks were analyzed at Farley and were found to be of insufficient magnitude to result in steam generator tube collapse or significant deformation.

Regardless of whether or not leak-before-break is applied to the primary loop piping at Farley, any flow area reduction is expected to be minimal (much less than 1%) and PCT margin is available to account for this potential effect. Based on analyses' results, no tubes near wedge locations are expected to collapse or deform to the degree that secondary to primary in-leakage would be increased over current expected levels. For all other steam generator tubes, the possibility of secondary-to-primary leakage in the event of a LOCA + SSE event is not significant. In actuality, the amount of secondary-to-primary leakage in the event of a LOCA + SSE is expected to be less than that originally allowed, i.e., 500 gpd per steam generator. Furthermore, secondary-to-primary in-leakage would be less than primary-to-secondary leakage for the same pressure differential since the cracks would tend to tighten under a secondary-to-primary pressure differential. Also, the presence of the tube support plate is expected to reduce the amount of in-leakage.

Addressing the R.G. 1.83 considerations, implementation of the tube repair criteria is supplemented by 100% inspection requirements at the tube support plate elevations having outside diameter stress corrosion cracking indications, reduced operating leakage limits, eddy current inspection guidelines to provide consistency in voltage normalization, and rotating probe inspection requirements for the larger indications left in service to characterize the principle degradation mechanism as outside diameter stress corrosion cracking.

As noted previously, implementation of the voltage-based repair criteria will decrease the number of tubes that must be taken out of service with tube plugs or repaired. The installation of steam generator tube plugs or tube sleeves would reduce the RCS flow margin, thus implementation of the voltage-based repair criteria will maintain the margin of flow that would otherwise be reduced through increased tube plugging or sleeving.

Considering the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety as defined in the Final Safety Analysis Report or any bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Herbert N. Berkow

Southern Nuclear Operating Company, Inc., Docket No. 50-348, Joseph M. Farley Nuclear Plant, Unit 1, Houston County, Alabama

Date of amendments request: January 10, 1997

Description of amendments request: The proposed amendments would implement repair of tubes using laser welded tube sleeves for the steam generators at Farley Units 1 and 2 as described in WCAP-13088, Revision 4, and WCAP-14740. In addition, for Unit 2, references to a one-cycle limited implementation of L* are being removed. The approval for the limited implementation of L* expired at the last Unit 2 outage in the fall of 1996.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Farley Units 1 and 2 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The laser welded sleeve configurations as described within WCAP-13088, Revision 4 and WCAP-14740 have been designed and analyzed in accordance with the requirements of the ASME Code [American Society of Mechanical Engineers Boiler and Pressure Vessel Code]. Fatigue and stress analyses of the sleeved tube assemblies produced acceptable results. Mechanical testing has shown that the structural strength of Alloy 690 sleeves under normal, faulted and upset conditions is within acceptable limits. Leakage testing for 7/8 inch tube sleeves has demonstrated that significant primary-to-secondary leakage is notexpected during all plant conditions, including the case where the seal weld is not produced in the lower joint of the tubesheet sleeve.

Initial acceptance of welded joints uses ultrasonic inspection to verify that all weld thicknesses meet the minimum specified conditions over the entire circumference. A plugging limit of 24% allowable depth of penetration of the sleeve tube wall thickness applies for each type of laser welded sleeve that may be installed in the Farley Nuclear Plant steam generators and is determined for uprated conditions with a limiting steam pressure for reduced T_{hot} and 20% steam generator tube plugging conditions. These conditions represent the limiting primary-to-secondary operating pressure differential, which is bounding for the sleeve plugging limit and structural analysis inputs. However, the state-of-the-art in eddy current inspection capability is such that no probes are qualified to size the depth of penetration of stress corrosion cracking. It is generally believed that the detection threshold of these probes is well below 40% throughwall. Southern Nuclear Operating Company will plug on detection any crack-like indications that may occur in the sleeve using the sleeve inspection probe of record until an inspection process is qualified to size depth of penetration of stress corrosion cracking into the tube wall.

The hypothetical consequences of failure of the sleeve would be bounded by the current steam generator tube rupture analysis included in the Farley Nuclear Plant FSAR [Final Safety Analysis Report]. Due to the slight reduction in diameter caused by the sleeve wall thickness, it is expected that primary coolant release rates would be slightly less than assumed for the steam generator tube rupture analysis (depending on the break location), and therefore, would result in lower total primary fluid mass release to the secondary system. Combinations of tubesheet sleeves and tube support plate sleeves would reduce the primary fluid flow through the sleeved tube assembly due to the series of diameter reductions the fluid would have to pass on its way to the break area. The overall effect would be reduced steam generator tube rupture release rates.

As addressed previously, the proposed Technical Specification change to support the installation of full length tubesheet, elevated tubesheet, or tube support plate elevation Alloy 690 laser welded sleeves as described in WCAP-13088, Revision 4 and WCAP-14740 does not adversely impact any other previously evaluated design basis accident or the results of LOCA [loss-of-coolant accident] and non-LOCA accident analyses for the current Technical Specification minimum reactor coolant

system flow rate. The results of the analyses and testing, as well as plant operating experience, demonstrate that the sleeve assembly is an acceptable means of restoring tube integrity to a condition consistent with its original design basis. Also, per Regulatory Guide 1.83, Revision 1 recommendations, the condition of the sleeved tube can be monitored through periodic inspections with present eddy current techniques.

Conformance of the sleeve design with the applicable sections of the ASME Code and results of the leakage and mechanical tests support the conclusion that the installation of laser welded tube sleeves will not increase the probability or consequences of an accident previously evaluated. Depending upon the break location for a postulated steam generator tube rupture event, implementation of tube sleeving could act to reduce the radiological consequences to the public due to reduced primary to secondary flow rate through a sleeved tube compared to a non-sleeved tube based on the restriction afforded by the sleeve wall thickness.

Removal of the references to the interim use of an L* repair criteria will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of laser welded sleeving will not introduce significant or adverse changes to the plant design basis. Sleeving also does not represent a potential to affect any other plant component. Stress and fatigue analysis of the repair has shown the ASME Code minimum stress values are not exceeded. Implementation of laser welded sleeving maintains overall tube bundle structural and leakage integrity at a level consistent to that of the originally supplied tubing during all plant conditions. Leak and mechanical testing of sleeves support the conclusions of the calculations that each sleeve joint retains both structural and leakage integrity during all conditions. Sleeving of tubes does not provide a mechanism resulting in an accident outside of the area affected by the sleeves. Any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing tube rupture accident analysis. Since the sleeve design does not affect any other component or location of the tube outside of the immediate area repaired, in addition to the fact that the installation of sleeves and the impact on current plugging level analyses is accounted for, the possibility that laser welded sleeving creates a new or different type of accident is not credible.

Removal of the references to the interim use of an L* repair criteria will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in margin of safety.

The laser welded sleeving repair of degraded steam generator tubes as identified in WCAP-13088, Revision 4, has been shown by analysis to restore the integrity of the tube bundle consistent with its original design basis condition as the requirements of the ASME Code are satisfied. The safety factors used in the design of sleeves for the repair of degraded tubes are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in steam generator design. The design of the tubesheet sleeve lower joints for the 7/8 inch sleeves (for both the full length and elevated tubesheet sleeve) have been verified by testing to preclude realistic leakage during normal and postulated accident conditions.

The portions of the installed sleeve assembly which represent the reactor coolant pressure boundary can be monitored for the initiation and progression of sleeve/tube wall degradation, thus satisfying the recommendations of Regulatory Guide 1.83, Revision 1 and the surveillance requirements included in Specification 4.4.6.0. The portion of the tube bridged by the sleeve joints is effectively removed from the pressure boundary, and the sleeve then forms the new pressure boundary. The areas of the sleeved tube assembly which require inspection are defined in WCAP-13088, Revision 4.

The effect of sleeving on the design transients and accident analyses have been reviewed based on the installation of sleeves up to the level of steam generator tube plugging coincident with the minimum reactor flow rate. The installation of sleeves is to be evaluated as the equivalent of some level of steam generator tube plugging. Evaluation of the installation of sleeves is based on the determination that LOCA evaluations for the licensed minimum reactor coolant flow bound the effect of a combination of tube plugging and sleeving up to an equivalent of the actual steam generator tube plugging limit. Information provided in WCAP-13088, Revision 4, describes the method to determine the flow equivalency for all combinations of tubesheet and tube support plate sleeves in order that the minimum flow requirements are met.

Implementation of laser welded sleeving will reduce the potential for primary-to-secondary leakage during a postulated steam line break while maintaining available primary coolant flow area in the event of a LOCA. By effectively isolating degraded areas of the tube through repair, primary pressure boundary integrity is restored and the potential for primary-to-secondary leakage during all plant conditions is minimized. These degraded tubes are returned to a condition consistent with the design basis. While the installation of a sleeve causes a reduction in primary coolant flow, the reduction is significantly below the reduction incurred by plugging. Therefore, greater primary coolant flow area is maintained through sleeving.

Removal of the references to the interim use of an L* repair criteria will not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Herbert N. Berkow

Tennessee Valley Authority, Docket No. 50-390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: January 10, 1997

Description of amendment request: The proposed amendment would modify the Watts Bar Nuclear Plant (WBN) Unit 1 Technical Specifications (TS) in order to implement the 1995 rule change to 10 CFR Part 50, Appendix J. The revised Appendix J provided an Option B which allows performance based testing for containment leakage rate testing. The TS in Section 3.6 and associated Bases, TS Section 3.0.2 and TS Section 5.7 would be changed. Also, the schedular exemption for containment airlock testing now specified in the facility license in Section 2.D(1) would no longer be required and would be deleted.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment to WBN TSs is in accordance with Option B to 10 CFR 50, Appendix J. The proposed amendment adds a voluntary performance-based option for containment leak-rate testing. The changes being proposed do not affect the precursor for an accident or transient analyzed in Chapter 15 of WBN Final Safety Analysis Report. The proposed change does not increase the total allowable primary containment leakage rate. The proposed change does not reflect a revision to the physical design and/or operation of the plant. [T]herefore, operation of the facility, in accordance with the proposed change, does not significantly affect the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to WBN TSs is in accordance with the new performance-based option (Option B) to 10 CFR 50,

Appendix J. The changes being proposed will not change the physical plant or the modes of operation defined in the facility license. The proposed changes do not increase the total allowable primary containment leakage rate. The changes do not involve the addition or modification of equipment, nor do they alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the propsoed change does not create the possibility of a new or diferent kind of accident from any previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in margin of safety.

The proposed change to WBN TSs is in accordance with the new option to 10 CFR 50, Appendix J. The proposed option is formulated to adopt performance-based approaches. This option removes the current prescriptive details from the TS. The proposed changes do not affect plant safety analyses or change the physical design or operation of the plant. The proposed change does not increase the total allowable primary containment leakage rate. Therefore, operation of the facility, in accordance with the proposed change, does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET llH, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: November 26, 1996, as supplemented December 17, 1996

Description of amendment request: The proposed amendments would allow a one-time only change necessary to replace the existing 125-volt dc battery cells with new cells. Date of publication of individual notice in Federal Register: December 13, 1996 (61 FR 65605)

Expiration date of individual notice: January 13, 1997

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina 28223-0001

Notice Of Issuance Of Amendments To Facility Operating LIcenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: August 23, 1996

Brief description of amendment: This amendment makes Technical Specifications changes allowing fuel enrichment of up to 5.0 weight percent Uranium-235. The previous limit was 4.1 weight percent. This change allows Arkansas Nuclear One, Unit-2, to receive, store, and use nuclear fuel of 5.0 weight percent Uraninum-235.

Date of issuance: January 14, 1997

Effective date: January 14, 1997

Amendment No.: 178

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 9, 1996 (61 FR 52964) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: November 24, 1996, as supplemented on December 2, 1996.

Brief description of amendment: This amendment adds small break-loss-of coolant accident methodology CENPD-137, Supplement 1-P and its approval letter by the NRC as a reference to Section 6.9.5.1. This code previously approved by the NRC increases the steam generator tube plugging limit to 30% with an associated reduction of 10% in RCS flow. This amendment also corrects a typographical error in Specification 6.9.5.1.8, and Specifications 6.9.5.1.10 through 6.9.5.1.14 are numbered to accommodate these changes.

Date of issuance: January 14, 1997

Effective date: January 14, 1997

Amendment No.: 179

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 3, 1996 (61 FR 64173) However, on December 9, 1996,

the licensee verified that the number of plugged tubes would not exceed their current 10% limit established by the old code. This determination removed the basis for considering this request as exigent. Since the potential does exist for the plugging to exceed the 10% in the future, the technical specification amendment request is therefore, a valid request on a normal schedule. This change did not alter the staff's initial proposed no safety hazard condition determination, therefore noticing was not warranted. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 1997.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: October 24, 1996

Brief description of amendment: The amendment revises the technical specifications to delete the accelerated testing requirements for the standby diesel generators. This action is consistent with the provisions of Generic Letter 94-01, ''Removal of Accelerated Testing and Special Reporting Requiremets for Emergency Diesel Generators,'' dated May 31, 1994.

Date of issuance: January 14, 1997

Effective date: January 14, 1997

Amendment No.: 90

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications/operating license.

Date of initial notice in Federal Register: December 4, 1996 (61 FR 64384) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 1997.No significant hazards consideration comments received. No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 30, 1996

Brief description of amendment: The amendment revises the technical specification surveillance requirement 3.8.3.4 to specify a 5-start pressure for the air recievers associated with the Division III, High Pressure Core Spray emergency diesel generator.

Date of issuance: January 16, 1997

Effective date: January 16, 1997

Amendment No.: 91

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 3, 1996 (61 FR 34892) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 1997.No significant hazards consideration comments received. No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: September 23, 1996

Brief description of amendment: Changes to Technical Specification (TS) to delete a note for the Surveillance Requirement 3.3.7.1 for the Engineered Safeguard Actuation System Logic.Date of issuance: January 6, 1997

Effective date: January 6, 1997

Amendment No.: 155

Facility Operating License No. DPR-72. Amendment revised the TS.

Date of initial notice in Federal Register: October 23, 1966 (61 FR 55034) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 6, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: October 23, 1996, as supplemented by letter dated November 6, 1996.

Brief description of amendments: The amendments revised Technical Specification 3.4.6.1, regarding reactor coolant system leakage detection instrumentation, to adopt the requirements found in NUREG-1431, ''Standard Technical Specifications Westinghouse Plants,'' for the reactor coolant system leakage detection instrumentation.

Date of issuance: January 8, 1997

Effective date: January 8, 1997

Amendment Nos.: Unit 1 - Amendment No. 86; Unit 2 - Amendment No. 73

Facility Operating License Nos. NPF-76 and NPF-80. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 4, 1996 (61 FR 64387) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 8, 1997.No significant hazards consideration comments received: No

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: April 19, 1996, and as supplemented on August 15, 1996

Brief description of amendment: The amendment introduces new Technical Specification (TS) 3.10.10, ''Single Control Rod Withdrawal - Refueling,'' under TS 3.10, ''SPECIAL OPERATIONS.'' The purpose of this Special Operations LCO is to permit the withdrawal of a single control rod for testing in MODE 5 without imposing the requirements for establishing the secondary containment and main control room boundaries as normally required during Core Alterations.

Date of issuance: January 13, 1997

Effective date: January 13, 1997

Amendment No.: 112

Facility Operating License No. NPF-62: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 22, 1996 (61 FR 25707) and September 25, 1996 (61 FR 50344). The August 15, 1996, submittal changed the focus of the original amendment request, therefore, it was re-noticed in the FEDERAL REGISTER. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 1997.No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: September 12, 1995

Brief description of amendment: The amendment revises Technical Specification 6.3.1 to add a requirement that the Assistant Operations Manager hold a senior reactor operator (SRO) license if the Operations Manager does not hold an SRO license for Millstone Unit 3.

Date of issuance: January 7, 1997

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 132

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 27, 1996 (61 FR 13530) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 7, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 26, 1996, as supplemented August 23, 1996.

Brief description of amendment: The amendment changes requirements regarding reactor coolant system leakage testing following refueling outage and other sytem pressure testing of reactor coolant system following repairs, replacements, or modifications.

Date of issuance: January 7, 1997

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 171

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 5, 1996 (61 FR 28602) The August 23, 1996, letter provided clarifying information that did not change the initial no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 7, 1997No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 29, 1996

Brief description of amendment: The amendment corrects an error with respect to Table 3.3.2-1, Function 6c of the Technical Specifications (TSs) which references the incorrect Required Action for inoperable channels of the auxiliary feedwater pump actuation on Steam Generator Level - Low Low logic. The TSs are revised to correct the Required Action to place the inoperable channel in ''trip'' within 6 hours or initiate a plant shutdown to Mode 4.

Date of issuance: January 9, 1997

Effective date: January 9, 1997

Amendment No.: 66

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 4, 1996 (61 FR 64395) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 9, 1997No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 29, 1996

Brief description of amendment: This amendment revises the MODE of applicability for the motor-driven auxiliary feedwater pump actuation on opening of the main feedwater pump breakers to correct an error introduced during Amendment No. 61.

Date of issuance: January 9, 1997

Effective date: January 9, 1997

Amendment No.: 67

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 4, 1996 (61 FR 64395) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 9, 1997No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: April 29, 1996, as supplemented October 21, December 2, and December 16, 1996

Brief description of amendments: These amendments revise Technical Specification (TS) Section 15.3.14, ''Fire Protection System,'' and Section 15.4.15, ''Fire Protection System,'' and relocate the requirements of the fire protection program from the TS and incorporate, by reference, the NRC-approved fire protection program into the Final Safety Analysis Report. In addition, the amendments revise the operating licenses to include the NRC's standard fire protection condition. The amendments also approve administrative changes consistent with the relocation as well as corrections to several typographical errors.

Date of issuance: January 8, 1997

Effective date: January 8, 1997, and implementation within 90 days from the date of issuance. Implementation shall include the relocation of Technical Specification requirements to the appropriate licensee-controlled document as identified in the licensee's application dated April 29, 1996, as supplemented October 21, December 2, and December 16, 1996, and reviewed in the staff's safety evaluation dated January 8, 1997.

Amendment Nos.: Unit 1 - 170, Unit 2 - 174

Facility Operating License Nos. DPR-24 and DPR-27: Amendments revise the Technical Specifications and the operating licenses.

Date of initial notice in Federal Register: June 5, 1996 (61 FR 28621) The October 21, December 2, and December 16, 1996, supplements provided corrected license and TS pages and a 90-day implementation schedule. These supplements were within the scope of the original application and did not change the staff's initial proposed no significant hazards considerations determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 8, 1997.No significant hazards consideration comments received: No

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: October 31, 1996

Brief description of amendment: The amendment revises Kewaunee Nuclear Power Plant Technical Specification 6.9, ''Reporting Requirements,'' by deleting the annual requirement to submit a description of changes made pursuant to 10 CFR 50.59. Administrative changes are also made to correct inconsistencies in the TS Table of Contents and in a footnote for Table TS 3.5-1.

Date of issuance: January 6, 1997

Effective date: January 6, 1997

Amendment No.: 131

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 4, 1996 (61 FR 64397) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 6, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001

Dated at Rockville, Maryland, this 22nd day of January 1997.

For The Nuclear Regulatory Commission

Elinor G. Adensam,

Deputy Director, Division of Reactor Projects - III/IV, Office of Nuclear Reactor Regulation

[Doc. 97–1994 Filed 1-28-97; 8:45 am]

BILLING CODE 7590-01-F

[Docket Nos. 50–255 and 72–7]

Consumers Power Co., Palisades Nuclear Plant, License Nos. DPR–20; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Acting Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a Petition dated September 19, 1995, as amended on September 30, 1996, filed by Don't Waste Michigan and Lake Michigan Federation (Petitioners) under Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The Petition requested that the NRC (1) find that Consumers Power Company (licensee) violated NRC requirements related to unloading procedures for dry storage casks for spent nuclear fuel, (2) suspend the licensee's use of the general license provisions related to dry cask storage of spent nuclear fuel, (3) require a substantial penalty be paid by the licensee, and (4) conduct hearings related to unloading procedures for dry storage casks at Palisades.

The Acting Director of the Office of Nuclear Reactor Regulation has determined that Petition should be granted in part and denied in part for the reasons stated in the ''Director's Decision Under 10 CFR 2.206'' (DD–97–01), the complete text of which follows this notice. The decision and documents cited in the decision are available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located in the Van Wylen Library at Hope College in Holland, Michigan.

A copy of this decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided therein, this decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the decision within that time.

Dated at Rockville, MD., this 23d day of January 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

Director's Decision Under 10 CFR 2.206

I. Introduction

On September 19, 1995, the organizations Don't Waste Michigan and Lake Michigan Federation (Petitioners) filed a Petition pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206) requesting that the U.S. Nuclear Regulatory Commission (NRC) (1) find that Consumers Power Company (licensee) violated NRC requirements related to unloading procedures for dry storage casks for spent nuclear fuel, (2) suspend the licensee's use of the general license provisions related to dry cask storage of spent nuclear fuel, (3) require a substantial penalty be paid by the licensee, and (4) conduct hearings related to unloading procedures for dry storage casks at Palisades.

On September 30, 1996, the Petitioners amended the Petition by including additional information in support of their position that the licensee did not have a workable unloading procedure before loading the 13 dry storage casks currently in the Palisades independent spent fuel storage installation (ISFSI).

The Petition has been referred to me pursuant to 10 CFR 2.206. The NRC letter dated October 24, 1995, to Dr. Sinclair and Mr. Skavroneck, on behalf of the Petitioners, acknowledged receipt of the Petition. Notice of receipt was published in the Federal Register on October 31, 1995 (60 FR 55388).

On the basis of the NRC staff's evaluation of the issues and for the reasons given below, the Petitioners' requests are granted in part and denied in part.

II. Background

NRC regulations contain a general license that authorizes nuclear power plants licensed by the NRC, such as Palisades, to store spent nuclear fuel at the reactor site in storage casks approved by the NRC. (See 10 CFR part 72, subpart K.) In regard to dry cask storage of spent nuclear fuel at Palisades, the licensee opted to use the VSC–24 Cask Storage System designed by Sierra Nuclear Corporation. The VSC–24 Cask Storage System was added to the list of NRC certified casks in May 1993 (58 FR 17948). The associated certificate of compliance, Certificate Number 1007, specifies the conditions for use of VSC–24 casks under the general license provisions of 10 CFR part 72. Section 1.1.2, ''Operating Procedures,'' in the certificate of compliance for the VSC–24 casks, requires that licensees prepare an operating procedure related to cask unloading. Specifically, the condition states

> Written operating procedures shall be prepared for cask handling, loading, movement, surveillance, and maintenance. The operating procedures suggested generically in the SAR (safety analysis report) are considered appropriate, as discussed in Section 11.0 of the SER (safety evaluation report), and should provide the basis for the user's written operating procedures. The following additional written procedures shall also be developed as part of the user operating procedures:
>
> 1. A procedure shall be developed for cask unloading, assuming damaged fuel. If fuel needs to be removed from the multi-assembly sealed basket (MSB), either at the end of service life or for inspection after an accident, precautions must be taken against the potential for the presence of oxidized fuel and to prevent radiological exposure to personnel during this operation. This activity can be achieved by the use of the Swagelok valves, which permit a determination of the atmosphere within the MSB before the removal of the structural and shield lids. If the atmosphere within the MSB is helium, then operations should proceed normally, with fuel removal, either via the transfer cask or in the pool. However, if air is present within the MSB, then appropriate filters should be in place to permit the flushing of any potential airborne radioactive particulate from the MSB, via the Swagelok valves. This action will protect both personnel and the operations area from potential contamination. For the accident case, personnel protection in the form of respirators or supplied air should be

considered in accordance with the licensee's Radiation Protection Program.

The licensee for Palisades began loading casks in May 1993 after implementing pertinent certificate conditions, including those in Section 1.1.2.

In July 1994, the licensee discovered radiographic indications of possible defects in a weld in multi-assembly sealed basket (MSB) No. 4. MSB No. 4 had been loaded with spent fuel earlier that month and placed, inside a ventilated concrete cask, on the ISFSI storage pad. The licensee evaluated the flaw indications and determined that the MSB continued to meet its design basis and was capable of safely storing spent fuel for the duration of the certificate (20 years). Nevertheless, the licensee stated that MSB No. 4 would be unloaded to support additional inspections and evaluations related to its future use.[1] In preparation for the unloading of MSB No. 4, the licensee reviewed the unloading procedure issued in May 1993 (Revision 0) and identified several technical questions. A revision of the unloading procedure (Revision 1) was subsequently developed to resolve the identified technical questions.

The technical questions and the associated procedural changes were discussed during meetings with the NRC staff, and additional information was provided in submittals from the licensee to the NRC. Evaluation of the revised unloading procedure by the NRC staff was initially made through the review of submittals from the licensee and has continued through an inspection of the licensee's revised unloading procedure.

As a result of its inspections and reviews, the NRC staff recognized that some licensees, including Consumers Power Company, had developed unloading procedures that tended to be simplistic and lacked sufficient details and contingencies. In order to address these issues, an item related to cask loading and unloading procedures was added to the NRC dry cask storage action plan that was implemented in July 1995. Some issues, such as the thermal-hydraulic behavior of casks during the unloading process, were included largely as a result of questions related to the original unloading procedure at Palisades. Experience at other facilities using storage and transportation casks resulted in the identification of other issues. For example, as a result of the turbidity of the spent fuel pool during the unloading of a transportation cask at the Shearon Harris Nuclear Power Plant, the NRC staff assessed the potential for and significance of deposits on fuel assembly surfaces becoming loose during the unloading of dry storage casks. Evaluations and inspections were used to resolve these issues for specific facilities and revisions to NRC guidance documents have been prepared to resolve generic concerns.

Completion of the NRC inspection of the revised unloading procedure for Palisades was postponed following an event at the Point Beach Nuclear Plant.[2] Following the hydrogen ignition event at Point Beach, the NRC issued confirmatory action letters (CALs) to those licensees using or planning to use VSC–24 casks for the storage of spent nuclear fuel (i.e., licensees for Point Beach, Palisades, and Arkansas Nuclear One). The CALs document the licensees' commitments not to load or unload a VSC–24 cask without resolution of material compatibility issues identified in NRC Bulletin 96–04, ''Chemical, Galvanic, or Other Reactions in Spent Fuel Storage and Transportation Casks,'' and confirmation of corrective actions by the NRC.[3]

The NRC staff is continuing to review the bulletin responses and corrective actions for the Palisades facility, and, therefore, the licensee is restrained from loading or unloading additional VSC–24 casks. Completion of the ongoing NRC inspection of the revised unloading procedure at Palisades will be coordinated with the staff's review of the licensee's response to the bulletin. Further, the NRC has committed to State officials and members of the public that the exit meeting for the inspection at Palisades will be open to the public, the meeting will be noticed sufficiently in advance to allow interested parties to attend, and the NRC staff will allocate time to discuss issues with the public following the meeting with the licensee.

III. Discussion

The Petition requests four actions by the NRC on the basis of the contention that the original unloading procedure (Revision 0) implemented by the licensee was inadequate, and therefore, the licensee violated NRC regulations requiring the licensee, prior to using an approved cask, to establish that all conditions in a dry storage cask certificate of compliance have been met (see 10 CFR 72.212(b)(2)).

(1) Determine That the Licensee Violated NRC Requirements

In support of the Petition's contention that the licensee violated NRC requirements related to the original unloading procedure, the Petitioners claim that issues identified in licensee documents dated November 11, 1994, and June 2, 1995, regarding revisions to the unloading procedure to support the planned unloading of Cask No. 4, demonstrate that the original procedure was inadequate. The amendment to the Petition filed on September 30, 1996, included issues related to material compatibility identified in NRC Bulletin 96–04 as additional evidence that the licensee's original unloading procedure was inadequate.

The primary information offered by the Petitioners in support of their claim that the original procedure violated NRC requirements is identified in the licensee's document dated November 11, 1994. Although the issues identified by the Petitioners have been represented by the licensee as improvements or enhancements to the original unloading procedure to support the planned unloading of Cask No. 4 at Palisades, a potential inference that might be drawn from the November 11 document is that the original unloading procedure could not adequately support the unloading of Cask No. 4. However, the licensee's letter dated December 29, 1994, affirmed the licensee's position that the original unloading procedure was adequate, and therefore complied with the certificate of compliance. Additional information, including the revised unloading procedure and the supporting engineering analyses, was provided in the licensee's submittal to the NRC dated June 2, 1995. The NRC staff requested additional information from the licensee, and that information was provided by the licensee in submittals dated October 16, 1995, December 20, 1995, and July 19, 1996.

On the basis of its review, the NRC staff concluded that, had the licensee attempted to unload a cask using the

[1] The schedule for unloading MSB No. 4 remains indefinite. The staff has recently learned that the licensee may postpone the unloading until a multi-purpose cask is available. This would allow the spent fuel currently stored in MSB No. 4 to be transferred to a cask that would support both storage and transportation of the spent fuel. The NRC staff is reviewing this plan and will initiate discussions pertaining to this matter with the licensee and other affected parties.

[2] On May 28, 1996, a hydrogen gas ignition occurred during the welding of the shield lid on a VSC–24 cask at the Point Beach Nuclear Plant. The hydrogen was formed by a chemical reaction between a zinc-based coating (Carbo Zinc 11) and the borated water in the spent fuel pool.

[3] On December 3, 1996, the NRC staff informed the licensee for the Arkansas Nuclear One facility in Russellville, Arkansas, that it had completed its reviews and inspections associated with that facility and found that the licensee had satisfactorily completed the commitments documented in the CAL. Shortly thereafter, the licensee initiated cask-loading activities.

original unloading procedure, certain deficiencies associated with the original procedure would have prevented completion of the unloading process. The original unloading procedure's administrative limit for maximum cask pressure would have prevented the licensee from establishing a continuous cooling cycle because the internal cask pressure would not have been sufficient to force steam to the outlet of the discharge piping at the bottom of the spent fuel pool. Other weaknesses in the original unloading procedure that would have hampered cask unloading included a restrictive venting capacity due to reliance upon a small vent line with an installed Swagelok fitting, scant guidance for personnel performing tasks such as drawing a gas sample from the MSB to check for damaged fuel, and several examples of references to the wrong step within the procedure. Such deficiencies and weaknesses would have required the licensee to suspend activities at one or more times during the unloading process in order to evaluate the problems encountered and implement necessary revisions to the procedure. Therefore, because the original unloading procedure would have required revision in order to complete the unloading process, this was a violation of requirements that all activities affecting quality be prescribed by procedures appropriate for the circumstances and that procedures are reviewed for adequacy. (See Criteria V and VI in Appendix B to 10 CFR Part 50.)[4] However, the staff also determined that the deficiencies in the original unloading procedure would not have challenged the integrity of the cask or fuel contained in the cask and that the licensee would have ultimately been able to safely unload a cask. Thus, given the limited safety significance of the procedural deficiencies and the fact that the licensee identified and corrected the deficiencies, the NRC exercised its discretion to refrain from issuing a Notice of Violation or a civil penalty for the violation.

The purpose and objective of the NRC's enforcement program are focused on using enforcement actions (1) as a deterrent to emphasize the importance of compliance with requirements, and (2) to encourage prompt identification and prompt, comprehensive correction of violations. Mitigation of enforcement sanctions, such as refraining from issuing a civil penalty and/or a Notice of Violation, is described in Section VII.B of the ''General Statement of Policy and Procedures for NRC Enforcement Actions (Enforcement Policy),'' for those cases in which a licensee identifies a problem and corrects it within a reasonable time. These mitigating factors were applicable to the subject Severity Level IV violation pertaining to the original unloading procedure at Palisades and the violation was, therefore, dispositioned as a Non-Cited Violation.[5]

As noted, the licensee, in various correspondence, took the position that the original unloading procedure was adequate and that subsequent changes incorporated into the revised procedure were enhancements based on lessons learned from operating experience and additional evaluations. Several statements in the licensee's correspondence appear to assert that unloading procedures for dry storage casks do not need to maintain fuel integrity during the unloading process in order to satisfy requirements of the certificate of compliance or NRC regulations. The NRC staff disagrees with this interpretation. NRC requirements mandate that the unloading process should be developed with due consideration to maintaining fuel integrity (see 10 CFR 72.122(h), 72.122(l), and 72.236(h)). Unloading activities are required to prevent gross ruptures of the fuel cladding in order to prevent operational safety problems. Unloading procedures are also required to include contingencies in case fuel cladding has degraded during storage such that additional measures are necessary to address increased radiological hazards during the unloading process. The NRC staff has concluded that the original unloading procedure would have supported unloading of undamaged fuel assemblies without causing a significant loss of fuel cladding integrity.

The issues identified by the licensee in the document of November 11, 1994, and for which the Petitioners claim that the original unloading procedure was inadequate, are addressed below.

MSB Cooling Skid

The licensee modified the configuration of the fill and vent piping and components from that used in the original unloading procedure. An increase in the venting capacity and the use of the previous vent path for instrumentation necessitated these modifications. The original unloading procedure included steps to remove a gas sample for analysis, connect the venting arrangement to the spent fuel pool, and connect the cooling water supply from the spent fuel pool to the vacuum drying system water pump and the MSB drain line. Neither the Petitioners nor the NRC staff have identified fundamental safety concerns with the arrangement used in the original unloading procedure.

Thermal Hydraulic Modeling

In order to verify that undamaged fuel could be safely removed from MSB No. 4 and to support preparing the revised unloading procedure, the licensee performed multiple analyses by modeling the thermal hydraulic behavior of the cask during the cooling process. These analyses were used to estimate the pressure response of the cask, to estimate the time requirements for cooling the cask, and to select the appropriate venting capacity in the revised unloading procedure. The analyses performed by the licensee showed that the venting capacity available for the original unloading procedure would have supported the cooling and refill of the MSB. These analyses also showed that cask unloading using the original procedure would have taken significantly longer than the time estimated for the revised procedure. However, no violations of regulatory requirements would have resulted from taking longer to complete the unloading process. The licensee's performance of the analyses during preparation of the revised unloading procedure highlighted the lack of supporting analyses or evaluations for the original version of the unloading procedure and contributed to the staff's finding that the licensee had violated the requirements of Criterion VI of appendix B to 10 CFR part 50 by issuing the original procedure without sufficient reviews to determine its adequacy.

[4] Section 1.1.3 of the certificate of compliance for the VSC–24 cask states that activities at the ISFSI shall be conducted in accordance with the requirements of 10 CFR part 50, appendix B. Requirements related to quality assurance for ISFSIs are also contained in subpart G to 10 CFR part 72. The requirements of Criteria V and VI in appendix B to 10 CFR part 50 are the same as the requirements stated in 10 CFR 72.150 and 10 CFR 72.152. In the case of the original cask unloading procedure at Palisades, the number of problems in the original procedure and the failure of the licensee to identify these problems during reviews performed prior to approval of the procedure resulted in the finding that a violation of NRC regulations had occurred. This finding is documented in NRC Inspection Report 50–255/96014.

[5] Although the NRC staff has identified weaknesses and deficiencies in the unloading procedure developed by the licensee, these problems resulted from the licensee giving insufficient consideration to the complexity of the activity. As part of its evaluation pertaining to the mitigation of enforcement sanctions, the NRC staff concluded that the licensee had not knowingly and willfully violated NRC requirements related to having an unloading procedure for dry storage casks as was claimed by the Petitioners.

Maximum Allowable Pressurization

During its review of the unloading procedure, the licensee determined that the cask should be limited to 38.3 psig in order to satisfy criteria established by the American Society of Mechanical Engineers Boiler and Pressure Vessel Code. This value is conservative with respect to the pressure that would challenge the structural integrity of the MSB. The original unloading procedure included precautions to maintain the internal pressure less than 10 psig and thus was bounded by the subsequent evaluations and the acceptable conditions specified in the revised procedure.

However, the staff has concluded that the procedural limitation of 10 psig in the original unloading procedure would have introduced problems in establishing the cooling cycle because the pressure would have been too low to force steam or water from the MSB to the coolant discharge at the bottom of the spent fuel pool. These problems, in turn, likely would have prevented completion of cask unloading without revising the procedure. However, the problems would not have challenged the integrity of the cask or otherwise introduced a safety concern. Rather, upon identifying the problems caused by the administrative limit of 10 psig, the licensee could have revised the procedure, proceeded to establish the desired cooling cycle, and completed unloading of a cask.

Fuel Integrity During Cooling

In support of preparing the revised unloading procedure, the licensee, with support from the nuclear fuel supplier, analyzed the allowable temperature differences between fuel assembly components and cooling water. Additional analyses determined maximum expected fuel temperatures before establishing the cooling flow to the MSB. These evaluations and the expected thermal response of the MSB and fuel assemblies following the introduction of coolant during the unloading procedure confirmed that thermal shocking would not challenge the integrity of the fuel assemblies in the MSB.

Fuel Heatup While the MSB is in the Transport Cask

As previously mentioned, the licensee and the contractors analyzed the maximum fuel temperatures that could be experienced during the time that the MSB is in the transfer cask before establishing the cooling flow from the spent fuel pool to the MSB interior. These analyses were performed for various heat loads and time periods and included conservative analysis assumptions. The analyses showed that fuel temperature limits would not be exceeded before establishing the cooling flow from the spent fuel pool using the original (or the revised) unloading procedure.

MSB Lid Removal

The revised unloading procedure uses more advanced cutting technologies in order to incorporate operating experience, ease lid removal, and minimize personnel exposure. The capability of the original unloading procedure to control removal of the MSB lid was verified by the licensee during mockups before loading casks at Palisades. Some of the improvements in the revised procedure are related to problems experienced during that exercise. However, the licensee has demonstrated that techniques for lid removal in the original unloading procedure were adequate to remove the lids and provide access to the fuel assemblies in compliance with NRC requirements.

Criticality Prevention

The original unloading procedure included steps for sampling the spent fuel pool boron concentration and establishing time limits for lid removal following termination of recirculation flow. The NRC staff considers the original procedure's lack of a detailed contingency for preventing bulk boiling, as was incorporated into the revised procedure, a procedural weakness. However, the weakness does not translate into a concern related to public health and safety or personnel exposure because of the inherent conservatisms related to reactivity control for storage casks, such as assuming nonirradiated fuel assemblies in supporting calculations, and the time that would be available for the licensee to implement compensatory actions.

10 CFR 50.59 Evaluation Related to the MSB Cooling Skid

Modifications to the MSB cooling skid led the licensee to question whether an unreviewed safety question was introduced by a possible break of the return line to the spent fuel pool. Upon further review, the licensee determined that the cooling system configuration did not create the possibility for an accident or a malfunction of a different type than any evaluated previously in the facility's final safety analysis report or otherwise exceed the criteria that define an unreviewed safety question under 10 CFR 50.59. The licensee has stated that this conclusion is also applicable for the original unloading procedure. Neither the Petitioners nor the NRC staff have identified a safety or compliance issue regarding the licensee's conclusion.

Rigging Procedures

The licensee investigated several minor changes to the rigging process during the development of the revised unloading procedure. These changes are intended to ease the operations and reduce personnel radiation exposures. However, the staff determined that the guidance provided by the original procedure, combined with expected skill of licensee personnel, would have been adequate to control the lifting of the various loads associated with unloading a cask.

Helium Sampling

During the development of the revised unloading procedure, the licensee recognized possible difficulties in drawing a gas sample from the MSB before initiating the cooling operation. The original unloading procedure included a step to ''remove a gas sample from the cask,'' but did not include the more detailed guidance that is incorporated into the revised procedure. This lack of guidance in the original procedure may have resulted in licensee personnel underestimating the helium concentration in the MSB. The original unloading procedure included provisions to suspend the unloading process if the sampling indicated air within the MSB. Therefore, this potential weakness in the original unloading procedure would not have introduced adverse safety consequences but instead may have erroneously caused the licensee to suspend cask unloading activities in order to conduct management briefings and determine compensatory measures due to the potential oxidation of the fuel cladding.

Summary for (1) ''Determine That the Licensee Violated NRC Requirements''

On the basis of its evaluation of the licensee's original unloading procedure, the NRC staff affirmed the licensee's determination that the procedure had numerous weaknesses. The staff believes that the administrative limit of 10 psig for maximum cask pressure and other identified weaknesses in the original unloading procedure would have required the licensee to suspend activities at one or more times during the unloading process in order to evaluate the problems encountered and implement necessary revisions to the procedure. Given the number of weaknesses in the original unloading procedure and the licensee's failure to

perform the necessary levels of review and analysis to have determined its adequacy prior to its issuance, the NRC staff found that the licensee violated NRC requirements contained in Criteria V and VI of appendix B to 10 CFR part 50. The first request in the Petition, to find that the licensee violated NRC requirements related to unloading procedures for dry storage casks for spent nuclear fuel, is therefore granted. The violation was dispositioned as a Non-Cited Violation consistent with the NRC Enforcement Policy.

The Petitioners' amendment to the Petition dated September 30, 1996, claims that the original unloading procedure was inadequate because of its lack of controls related to the generation of hydrogen gas from a chemical reaction between coatings used on the VSC–24 casks and the borated water in the spent fuel pool. The chemical reactions and hydrogen issue were identified following an event that occurred during welding of the shield lid on a spent fuel storage cask at the Point Beach plant on May 28, 1996. The need to include special precautions in the unloading procedures for VSC–24 casks in order to prevent ignition of hydrogen gas had not been recognized by the cask vendor, licensees, or the NRC staff prior to the event at Point Beach. The licensee's original unloading procedure was developed before the event at Point Beach caused the recognition of the potential for ignition of hydrogen gas during the unloading of a VSC–24 cask. Accordingly, the NRC cannot reasonably fault the licensee, by taking enforcement action, for not having accounted for an issue that was not known to the NRC staff, the vendor, or the licensee.

(2) Suspend the Licensee's Use of the General License

On the basis of the contention that the licensee's unloading procedure was inadequate, the Petitioners requested that the licensee's use of the general license provisions of 10 CFR part 72 be suspended until such time as the significant issues described in the licensee's document of June 2, 1995, have been resolved, the NRC has documented its review, approved the licensee's revised procedure, and Cask No. 4 has been safely unloaded.

The licensee's submittal of June 2, 1995, provided Revision 1 of the unloading procedure and supporting engineering analyses. The Petition includes specific questions and comments regarding the licensee's submittal of June 2, 1995, in support of the Petitioners' position that actions taken by the licensee had not resolved significant safety issues. In response to questions from the NRC staff, the licensee provided additional information related to the submittal dated June 2, 1995. The subsequent submittals were dated October 16, and December 20, 1995.[6] In addition, the NRC staff was reviewing and will continue to review the issues included in the submittal dated June 2, 1995, as part of the ongoing NRC inspection of the revised unloading procedure. Further, as described above, the NRC staff has already concluded that the deficiencies in the original unloading procedure violated NRC requirements, and that the violation should be treated as a Non-Cited Violation because of the limited safety significance of the procedural deficiencies and consideration of mitigating factors defined in the NRC Enforcement Policy.

On June 3, 1996, the NRC issued CALs to the licensee and other users of the VSC–24 cask system. The CALs confirmed a commitment made by each licensee to the NRC staff to refrain from loading or unloading a VSC–24 cask pending completion of investigations and implementation of corrective actions. On June 27, 1996, a supplement to the CAL was issued to confirm a further commitment by the licensee to refrain from placing a VSC–24 cask into the spent fuel pool until after the NRC has reviewed and accepted applicable responses to NRC Bulletin 96–04 and verified corrective actions taken in response to the bulletin. CALs are among the administrative mechanisms that the NRC uses to supplement Notices of Violation, civil penalties, and orders in its enforcement program. CALs may be issued to confirm an agreement by a licensee or vendor to take certain actions to remove significant concerns about health, safety, safeguards, or the environment. The NRC expects licensees and vendors to adhere to stated obligations or commitments included in a CAL and will not hesitate to issue appropriate orders to ensure that such obligations or commitments are met.

The NRC issued the CALs and Bulletin 96–04 in recognition of the fact that the generation of hydrogen gas during the loading of VSC–24 casks at Point Beach was evidence that possible material compatibility issues were not fully addressed during the design or certification reviews associated with some spent fuel storage and transportation casks. It is not unusual for the NRC to use such administrative mechanisms to address generic issues. Given that the generation of flammable gases was a particular concern for the users of the VSC–24 cask system, those licensees, including Consumers Power Company, were issued CALs to confirm that VSC–24 casks would not be loaded, unloaded, or otherwise placed in a spent fuel pool before the resolution of issues identified in NRC Bulletin 96–04.

In regard to those issues contained in the amendment to the Petition, the existing CAL documents the licensee's commitment to refrain from loading, unloading, or otherwise placing a VSC–24 cask into the spent fuel pool pending verification of corrective actions related to NRC Bulletin 96–04. Given the licensee's commitment not to load or unload a cask, the NRC does not, in this instance, envision the need to issue an order as requested by the Petitioners.

Those portions of the Petition that address NRC's approval of the revised unloading procedure and include the unloading of Cask No. 4 as a condition for resuming normal activities under the general license are denied. The NRC staff does not generally review and approve specific procedures developed by licensees. NRC regulations, facility licenses, and NRC-approved quality assurance programs require licensees to establish and maintain a formal process for the preparation and issuance of procedures and changes thereto. NRC assessments of licensee procedures are generally conducted as part of the NRC's inspection program. In this instance, given the licensee's commitment to refrain from action until completion of NRC's inspections, the inspections will confirm that applicable regulatory requirements are satisfied before use of the licensee's revised unloading procedure. As previously mentioned, the NRC staff will resume its inspection activities related to the revised unloading procedure when the licensee has resolved the issues identified in NRC Bulletin 96–04. If, and provided that, there is satisfactory resolution of the issues identified in NRC Bulletin 96–04 and any other questions that may arise during the inspection of the licensee's revised unloading procedure, then the NRC will have reasonable assurance of the licensee's compliance with regulatory requirements. Accordingly, the staff would not have any basis or reason to require the licensee to unload Cask No. 4 before resuming normal activities under the general license at Palisades. Thus, following resolution of all issues to the satisfaction of the NRC staff, the determination of the sequence of events

[6] These documents, like all others identified in this decision, are available to the public at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and from the local public document room located in the Van Wylen Library at Hope College in Holland, Michigan.

related to the planned unloading of Cask No. 4 and the loading of additional casks at Palisades will be at the discretion of the licensee. As noted above, the NRC staff has committed to open the exit meeting with the licensee to the public at the conclusion of the ongoing inspection and will document its review in an inspection report that will be available for public review.

(3) Require the Licensee to Pay a Substantial Penalty

On the basis of the contention that the licensee's original unloading procedure was inadequate, the Petitioners requested that the NRC levy a monetary penalty of $1.3 million against the licensee. As previously mentioned, the NRC staff determined that, although finding that the deficiencies in the original unloading procedure violated NRC requirements, the violation satisfied the criteria to be treated as a Non-Cited Violation because of the limited safety significance of the procedural deficiencies and consideration of mitigating factors defined in the NRC Enforcement Policy. Enforcement sanctions, including issuance of civil penalties and orders, are normally used as a deterrent to emphasize the importance of compliance with requirements, and to encourage prompt identification and prompt, comprehensive correction of violations. In this case, the licensee identified the deficiencies that constituted the violation of NRC requirements and subsequently revised the unloading procedure to resolve the identified technical issues. It was the judgement of the NRC staff that the violation should be dispositioned as a Non-Cited Violation in order to convey the appropriate regulatory message in this case. Further, even if the violation had been cited, it is the NRC staff's judgment that it would have been categorized at a Severity Level IV, for which a civil penalty would not ordinarily be issued.

In regard to the hydrogen issues identified in the amendment to the Petition, the NRC staff has utilized an administrative mechanism in its enforcement policy (CALs) to ensure that the licensee takes certain actions to resolve this safety concern. As previously mentioned, the specific contentions raised by the Petitioners pertaining to hydrogen issues and the original unloading procedure do not warrant additional enforcement actions by the NRC.

(4) Allow Petitioners to Review Procedure, Require NRC to Hold Hearings, and Allow Petitioners to Participate in Proceedings

The original unloading procedure and the first revision of the unloading procedure have been provided to the Petitioners. In addition, correspondence between the NRC and the licensee regarding the procedures have been furnished to the Petitioners. Further, due to the course of events following the licensee's decision to unload Cask No. 4—including the licensee's evaluation of the original unloading procedure, identification of improvements to the unloading process, and the submittal of this Petition—the original and first revision of the unloading procedure and related documentation have been available for public review. Accordingly, Petitioners have had the opportunity to review the unloading procedure. Further, as noted elsewhere, it is the NRC staff's intention to hold a public meeting in the vicinity of the Palisades Nuclear Plant at the conclusion of its ongoing inspection of the licensee's revised unloading procedure.

The Petitioners' request for hearings and participation in proceedings has been addressed in previous correspondence with the Petitioners and the Attorney General for the State of Michigan. In that correspondence, the NRC staff explained that neither the general licensing provisions of 10 CFR part 72 nor the petition process described in 10 CFR 2.206 require the NRC to institute a proceeding. Under § 2.206, the NRC office director responsible for the subject matter of the request ''shall either institute the requested proceeding in accordance with this subpart or shall advise the person who made the request in writing that no proceeding will be instituted in whole or in part, with respect to the request, and the reasons for the decision.''

As set forth in this Director's Decision, the NRC has determined not to institute the proceeding as requested by the Petition.

IV. Conclusion

Petitioners requested that the NRC determine that Consumers Power Company violated NRC requirements, suspend the licensee's use of the general license, impose a substantial penalty, and hold hearings related to the licensee's unloading procedure for dry storage casks. In response, the NRC determined the licensee violated NRC requirements insofar as the original unloading procedure (Revision 0) would have required revision in order to have completed the unloading process. Further, NRC staff determined that the violation, which was identified and corrected by the licensee, should be treated as a Non-Cited Violation consistent with the NRC's Enforcement Policy. Therefore, to this extent, Petitioners' request for a determination that the licensee violated NRC requirements is granted. The available information is sufficient to conclude, however, that no substantial safety issue has been raised regarding the operation of Palisades or its associated ISFSI given the licensee's commitment not to load or unload a cask until the NRC staff is satisfied that the licensee's procedures are adequate. Therefore, the NRC has determined that no adequate basis exists for granting Petitioners' requests for suspension of Consumers Power Company's use of the general license for dry cask storage of spent nuclear fuel at Palisades or imposition of a civil penalty.

A copy of this decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c).

As provided by this regulation, this decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Md., this 23d day of January 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

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Individual Plant Examination Program; Perspectives on Reactor Safety and Plant Performance Volume 1, Part 1 and Volume 2, Parts 2–5, Draft

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of revised deadlines for public comments on draft NUREG–1560.

SUMMARY: The Nuclear Regulatory Commission has published a draft of ''Individual Plant Examination Program: Perspectives on Reactor Safety and Plant Performance,'' NUREG–1560, Volumes 1 and 2. Volume 1, Part 1 is a summary report from a review of the Individual Plant Examinations (IPE) submitted to the agency in response to Generic Letter

88–20. Volume 2, Part 2–5 provides an in-depth discussion of the insights and findings summarized in Volume 1, Part 1. In addition, the NRC staff will conduct a public workshop (April 7, 8, 9, 1997) to discuss the contents of the draft NUREG and to solicit comments (See FR notices 61 FR 58429 and 61 FR 65248). In response to requests for additional time to comment, the deadline for public comments on the draft NUREG–1560 is postponed for one month to March 14, 1997, and any additional public comments after the workshop are due within 30 days of the workshop, by May 9, 1997.

SUPPLEMENTARY INFORMATION: Draft NUREG–1560 (Volume 1, Part 1 and Volume 2, Parts 2–5) is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street N.W. (Lower Level), Washington DC 20555–0001. A free single copy of Draft NUREG–1560, to the extent of supply, may be requested by writing to Distribution Series, Printing and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Since there is a wealth of information in the draft NUREG–1560 which provides in-depth discussions on insight findings, the staff recognizes that the public may need extra time to review the draft NUREG and provide relevant comments on the accuracy of the reported results in the IPEs and the appropriateness of the interpretation of the results. In addition, some IPEs/PRAs have been modified and may have an impact on the perspectives discussed in the draft NUREG. Therefore, the deadline for public comments has been extended from February 14, 1997 to March 14, 1997, and any additional public comments after the workshop are due within 30 days of the workshop, by May 9, 1997.

Mail comments on Draft NUREG–1560 (Volumes 1 and 2) by March 14, 1997 to Branch Chief, Rules Review and Directive Branch, Office of Administration, MS: T6-D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Edward Chow, Office of Nuclear Regulatory Research, MS T10E50, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–6571.

Dated at Rockville, Maryland this 21st day of January 1997.

For the Nuclear Regulatory Commission.

Mark Cunningham,

Chief, Probabilistic Risk Analysis Branch, Division of Systems Technology, Office of Nuclear Regulatory Research.

[FR Doc. 97–2163 Filed 1–28–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 30a–1; File No. 270–210; OMB Control No. 3235–0219
Form N–54A; File No. 270–182; OMB Control No. 3235–0237
Form N–54C; File No. 270–184; OMB Control No. 3235–0236
Form N–6F; File No. 270–185; OMB Control No. 3235–0238

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is publishing the following summaries of collections for public comment.

Form N–54A [17 CFR 274.53] is the notification of election to be regulated as a business development company. The annual burden is about .5 hours per respondent.

Form N–54C [17 CFR 274.54] is used to notify the Commission that a company withdraws its election to be regulated as a business development company. The annual burden is about 1 hour per respondent.

Form N–6F [17 CFR 274.15] permits a company that has lost its exclusion from the Investment Company Act of 1940 because it intends to make a public offering as a business development company, but is not ready to file Form N–54A, to remain exempt from the Act for up to 90 days. The annual burden is about .5 hour per respondent.

Rule 30a–1 [17 CFR 270.30a–1] requires every registered investment company to file a semi-annual report with the Commission. The burden of meeting the requirement of this rule is the burden of filing Form N–SAR, the reporting form prescribed under the rule. Approval for Form N–SAR has been given separately.

The estimates of burden hours set forth above are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 15, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2098 Filed 1–28–97; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–12546]

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration (Pacific Gulf Properties Inc., Common Stock, $.01 Par Value)

January 23, 1997.

Pacific Gulf Properties Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, it has complied with Rule 18 of the Amex by filing with such Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its securities from listing on the Amex and by setting forth in detail to such Exchange the reasons for such proposed withdrawal, and the facts in support thereof. The Security of the Company has been listed on the New York Stock Exchange, Inc. (''NYSE'') as of October

29, 1996. In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and the division of the market resulting from dual listing on the Amex and NYSE.

Any interested person may, on or before February 13, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–2203 Filed 1–28–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38187; File No. SR–CHX–96–29]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Approval of Applicants to Membership

January 21, 1997.

On December 6, 1996,[1] the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder.[3] The proposed rule change would amend Article I, Rule 5 and Rule 6 of its rules relating to approval procedures for applicants to membership.

Notice of the proposed rule change as amended, together with the substance of the proposal, was published in the Federal Register.[4] No comment letters were received. This order approves the proposed rule change.

I. Background

Rules 5 and 6 of Article I of the Exchange's rules govern the application and approval process for applicants to Exchange membership. Once an application for membership has been submitted in writing to the Exchange, the rules require the staff to investigate the applicant's qualifications to determine if such applicant meets the requirements for membership. If the staff recommends that the applicant not be admitted to membership, the applicant may appeal such staff recommendation to the Executive Committee. If the staff recommends that an applicant be elected to membership, the applicant then must go through a 10 business day posting period before membership may be transferred. The purpose of the 10 business day posting period is to allow any member to file an objection to the election of the applicant to membership. At the expiration of the posting period, the Executive Committee then must consider the applicant and vote upon the applicant for membership. Transfers of memberships become effective upon election to membership.

Because the Act requires the CHX to approve an applicant to become a member of the Exchange if such applicant meets the requirements of the Act and the Exchange's rules for becoming a member, the Executive Committee has limited discretion in approving a qualified applicant to become a member. As a result, the purpose of the proposed rule change is to limit the role of the Executive Committee during the approval process to situations where an objection is raised, or material adverse information is received, during the posting period, or where the staff does not recommend an applicant for membership and the applicant decides to appeal.

II. The Terms of Substance of the Proposed Rule Change

Under Rules 5 and 6 of Article I, as proposed to be amended, if the staff recommends an applicant for membership and if no objections are received, and no material adverse information is received, during the subsequent posting period, the membership transfer would become effective at the beginning of the next business day following completion of the posting without any action taken by the Executive Committee. As with the existing procedure, the Executive Committee would hear an appeal if the staff does not recommend an applicant for membership. Similarly, the Executive Committee would either approve or disapprove the applicant if an objection or material adverse information is received during the posting period.

Finally, the proposed rule change reduces the affirmative vote required to elect an applicant to membership from the current requirement of not less than two-thirds affirmative votes of the members of the Executive Committee present at the time of voting to a majority of the affirmative votes of the members.

III. Discussion

The proposed rule change is consistent with Section 6(b)(7) of the Act in that the rules of the exchange, in general, provide a fair procedure for the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof. The proposed rule change reduces a possible obstacle to the election of an applicant to membership by reducing the affirmative votes of the members of the Executive Committee present at the time of voting required to elect an applicant to membership from the current not less than two-thirds to a majority of the affirmative votes of the members.

Furthermore, the proposed rule change is consistent with Section 3 of the Act in that the proposed rule change will promote efficiency, competition, and capital formation. The new procedure would eliminate the requirement that the Executive Committee perform the pro forma role of approving each membership transfer. At the same time, it would allow the Executive Committee to make a determination if there is some information brought to the Exchange's attention during the posting period which was not known to the staff at the time of its investigation.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–CHX–96–29 be, and hereby is, approved.

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[1] The proposal was originally filed with the Commission on November 6, 1996. The CHX subsequently submitted Amendment No. 1 to the filing. Amendment No. 1 amends Rule 6 of Article I to change the vote required by the Executive Committee to approve an applicant to membership. Currently, CHX rules require the affirmative vote of not less than two-thirds of the members of the Executive Committee present at the time of the vote. Amendment No. 1 changes the requirement to an affirmative vote of a majority of the Executive Committee present at the time of the vote. Letter from David T. Rusoff, Foley & Lardner to Karl J. Varner, Division of Market Regulation, SEC, dated December 6, 1996.

[2] 15 U.S.C. § 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1993).

[4] Securities Exchange Act Release No. 38034 (December 6, 1996), 61 FR 66065 (December 16, 1996).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2100 Filed 1–28–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38196; File No. SR–NASD–96–51]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending Rule 11890 Regarding Clearly Erroneous Transactions

January 22, 1997.

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 December 17, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD and The Nasdaq Stock Market, Inc. (''Nasdaq''). On January 17, 1997, the NASD and Nasdaq submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Section 19(b)(1) under the Act and Rule 19b–4 thereunder, the NASD and Nasdaq are submitting this rule filing to amend Rule 11890, the rule related to clearly erroneous transactions. The proposed amended language for Rule 11890 is set forth below. [new text is italicized; deleted text is bracketed].

11890. Clearly Erroneous [Trades] *Transactions*

(a) Authority to [Declare] *Review* Transactions [Void]

(1) [In circumstances in which the Association deems it necessary to maintain a fair and orderly market and to protect investors and the public interest, the Association may, pursuant to the procedures set forth in paragraph (b) below, declare any transaction arising out of the use or operation of any automated quotation, execution, or communication system owned or operated by the Association or any subsidiary thereof and approved by the Commission, null and void on the grounds that one or more of the terms of the transaction are clearly erroneous.

(2)] For the purposes of this Rule, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

(2) Officers of The Nasdaq Stock Market, Inc. (''Nasdaq'') designated by the President of Nasdaq shall, pursuant to the procedures set forth in paragraph (b) below, have the authority to review any transaction arising out of the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq and approved by the Commission. A Nasdaq officer shall review transactions with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the Officer shall decline to act upon a disrupted transaction if the officer believes that the transaction under dispute is not clearly erroneous, or, if the officer determines the transaction in dispute is clearly erroneous, he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Nasdaq officer shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, that they would have been in had the error not occurred. Nasdaq shall promptly provide oral notification of a determination to the parties involved in a disputed transaction and thereafter issue a written confirmation of the determination.

(b) Procedures for *Reviewing* [Declaring a] Transactions [Void]

(1) Any member or person associated with a member that seeks to have a transaction *reviewed* [declared null and void] pursuant to paragraph (a) hereof, shall *submit a written complaint, via facsimile or otherwise, to Nasdaq Market Operations in accordance with the following time parameters:*

(A) for transactions occurring prior to 10:00 a.m., Eastern Time, complaints must be submitted 10:30 a.m., Eastern Time; and

(B) for transactions occurring on or after 10:00 a.m., Eastern Time, complaints must be submitted within thirty minutes.

[notify an officer of the Association designated by the President of the transaction during Nasdaq operating hours on the same business day the transaction occurs, and shall provide such official all facts and information necessary for a determination under paragraph (a). Information communicated orally shall be confirmed promptly in writing.]

(2) Once a complaint has been received in accord with subparagraph (b)(1) above:

(A) the complainant shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(2), via facsimile or otherwise;

(B) the counterparty to the trade shall be verbally notified of the complaint by Nasdaq staff and shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(2), via facsimile or otherwise; and

(C) either party to a disputed trade may request the written information provided by the other party pursuant to this subparagraph.

(3) Notwithstanding paragraph (b)(2) above, once a party to a disputed trade communicates that it does not intend to submit any further information concerning a complaint, the party may not thereafter provide additional information unless requested to do so by Nasdaq staff. If both parties to a disputed trade indicate that they have no further information to provide concerning the complaint before their respective thirty-minute information submission period has elapsed, then the matter may be immediately presented to a Nasdaq officer for a determination pursuant to paragraph (a)(2) above.

(4) Each member and/or person associated with a member involved in the transaction shall provide the Association with any information requested by the Association in order to resolve the matter on a timely basis *notwithstanding the time parameters set forth in paragraph (b)(2) above.*

(5) Once a party has applied to Nasdaq for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered pursuant to paragraph (a)(2).

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[5] 17 CFR 200.30–3(a)(12).

[1] *See* letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, SEC, dated January 17, 1997. Amendment No. 1 corrects typographical errors in the text of the proposed rule change.

[(2) An officer of the Association designated by the President shall review the information submitted and determine whether the transaction in dispute is clearly erroneous and detrimental to the maintenance of a fair and orderly market and the protection of investors and the public interest and may declare that the transaction be null and void. The official may decline to act upon a disputed transaction if he or she believes that action is unnecessary or inappropriate. The Association shall immediately issue a written determination of the matter, setting forth the actions taken and the reasons therefor.]

(c) Procedures for Reviewing Transactions Executed During System Disruptions or Malfunctions

In the event of a disruption or malfunction in the use or operation of any automated quotation, execution, or communications system owned or operated by Nasdaq and approved by the Commission, Nasdaq, acting through an officer designated by the President of Nasdaq pursuant to paragraph (a)(2), may, on its own motion pursuant to the standards set forth in paragraph (a), declare transactions arising out of the use or operation of such systems during the period of such disruption or malfunction null and void or modify the terms of these transactions; provided that, in the absence of extraordinary circumstances, a Nasdaq officer must take action pursuant to this paragraph within thirty (30) minutes of detection of the erroneous transaction(s), but in no event later than 6:00 p.m., Eastern Time, on the next trading day following the date of the trade at issue. When Nasdaq takes action pursuant to this subparagraph, the member firms involved in the transaction shall be notified as soon as is practicable and shall have a right to appeal such action in accordance with paragraph (d)(1) below.

(d) [(3)] *Review by the Market Operations Review Committee (''MORC'')*

(1) A member or person associated with a member may appeal *a determination made under paragraphs (a)(2) or (c)* [the determination under subparagraph (2)] to the *MORC* [Market Operations Review Committee] provided such appeal is made *in writing, via facsimile or otherwise,* within [four market hours of] *thirty (30) minutes after the member or person associated with a member receives verbal* notification of such determination. [For the purposes of this Rule, ''market'' hours shall mean those hours the Nasdaq market is open in the United States, Eastern Time.] *Once a written appeal has been received, the counterparty to the trade will be notified of the appeal and both parties shall be able to submit any additional supporting written information, via facsimile or otherwise, up until the time the appeal is considered by the Committee. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the Committee shall not operate as a stay of the determination made pursuant to paragraph (a)(2) above. Once a party has appealed a determination to the Committee, the determination shall be reviewed and a decision rendered, unless both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered by the Committee.* Upon consideration of the record, and after such hearings as it may *in its discretion* order, the Committee, *pursuant to the standards set forth in paragraph (a),* shall affirm, modify, reverse, [dismiss,] or remand the determination *made* under [sub]paragraph *(a)*(2) *or (c)* above.

(2) [(4)] The decision of the Committee shall be final and binding upon any member or person associated with a member and shall constitute final Association action on the matter in issue. *Any adverse determination by a Nasdaq officer pursuant to paragraph (a)(2) or (c) or any adverse decision by the Committee pursuant to paragraph (d)(1) shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD and Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD and Nasdaq have 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 NASD and Nasdaq have determined to amend Rule 11890, the NASD's rule governing the review and resolution of erroneous transaction complaints. In general, the proposed amendments provide greater specificity regarding declarations of erroneous transactions. As explained in more detail below, the proposed amendments would:

- Provide Nasdaq officials the authority to efficiently and expeditiously adjust the price and size of erroneous transactions (currently Nasdaq officials may only nullify, affirm, or decline to act with respect to an allegedly erroneous transaction);
- Shorten the time period to submit erroneous transactions complaints from same day submission to submission within 30 minutes of the transaction;
- Clarify the procedures by which the parties to an allegedly erroneous transaction may submit written information concerning the transaction;
- Provide Nasdaq officials the requisite authority to cancel or adjust erroneous transactions on their own motion;
- Discourage regulatory arbitrage by prohibiting a member from withdrawing an erroneous transaction complaint unless the other party to the trade agrees to withdraw the matter;
- Shorten the time period to appeal an erroneous transaction determination from four ''market'' hours to thirty minutes; and
- Clarify that an appeal of an erroneous transaction determination does not operate as a stay of the determination.

A. Background

In April 1990, the SEC approved an NASD proposal to add Section 70 to the Uniform Practice Code (now NASD rule 11890) to permit the NASD to declare clearly erroneous transactions null and void if they arise out of the use or operation of any automated quotation, execution, or communication system owned or operated by the NASD. Previously, the NASD had no authority to cancel a transaction, even if one or more terms of the transaction clearly was in error. For example, one of the catalysts for adopting Rule 11890 was that a member had complained that a trade executed over Nasdaq's SelectNet service was ten points away from the inside quotation, clearly an error, but the contra party refused to cancel the trade. With the adoption of rule 11890, the NASD now has the ability to resolve disputes involving obvious errors in an expeditious manner, akin to an exchange floor governor ruling.[2]

[2] *See, e.g.,* New York Stock Exchange Rule 75.

Briefly, the current procedures for canceling a clearly erroneous trade require one party to contact the NASD on trade day and in writing state the basis for the requested action. Thereafter, an officer of Nasdaq: (1) advises the contra party to the trade that the transaction is in dispute; (2) obtains additional information concerning the transaction, if necessary; (3) reviews the trade information; and (4) makes a determination as to whether the trade should stand or be broken. If either party wishes to appeal the staff determination, it may seek review by the MORC.

While the current Erroneous Transaction procedures have served as a vehicle to correct or cancel erroneous transactions, experience with the operation of Rule 11890 has shown that the Rule can be improved to enhance the fairness and expediency with which erroneous transaction complaints are resolved. Experience with the Rule also has revealed shortcomings in the scope of Nasdaq's authority to take action with respect to clearly erroneous transactions. In particular, there have been instances in the past where it would have been appropriate for Nasdaq to declare a series of transactions erroneous even though the parties to the transactions were immediately unaware of any error. The proposed changes to the rule are intended to eliminate the shortcomings and to provide additional capabilities to resolve clearly erroneous transactions.

B. Proposed Changes to Rule 11890

(i) *Authority of Nasdaq Officers to Adjust the Terms of Erroneous Transactions:* While Nasdaq officers and the MORC both have the authority to nullify, affirm, or decline to act with respect to an allegedly erroneous transaction, only the MORC can presently adjust the terms of an erroneous transaction. In order to enhance the efficiency with which erroneous transaction disputes are resolved, it is appropriate to grant Nasdaq officers the requisite authority with respect to allegedly erroneous transactions that the MORC possesses. Accordingly, the NASD and Nasdaq propose that Rule 11890 be amended to afford Nasdaq officers the authority to adjust the terms of a clearly erroneous transaction. In particular, the NASD and Nasdaq believe Nasdaq officers should be able to adjust the price and/or size of a transaction to achieve an equitable correction of an error that would place the parties to the transaction in the same position, or as close as possible to the same position, that they would have been in had the error not occurred.

(ii) *Time Parameters For the Submission of Erroneous Transaction Complaints:* Rule 11890 presently provides that a member can submit an erroneous transaction complaint ''during Nasdaq operating hours on the same business day the transaction occurs. . . .'' Because members can file erroneous transaction complaints any time during the trading day, however, the rule has been used by some firms to seek to cancel trades that were not erroneous at the time of execution, but which became unprofitable due to subsequent market movement. For example, when a trade occurs on SelectNet at 10:00 a.m. and a party does not complain of an error until 5:00 p.m., the complainant has had the opportunity to watch for positive or negative market movements, prior to requesting NASD action. If the market moves in a direction that is unfavorable to the trade, the member will contact the NASD to cancel the trade after the close of the market, leaving the other side of the transaction at risk, without giving adequate notice of the disputed trade in close proximity to the time of execution.[3]

Accordingly, the NASD and Nasdaq believe that Rule 11890 should be amended to require the timely submission of notifications of allegedly erroneous transactions. The NASD and Nasdaq are proposing two different time periods depending upon the time of day when the allegedly erroneous transaction occurred to take into account the peak trading period that occurs at the market's opening. Because of the pace and volume of trades that occur in the first half hour of trading each morning, the proposal establishes a separate timeframe for reporting clearly erroneous transactions that occur between 9:30 and 10:00. Thus, notifications would be required according to the following time table:

(a) for transactions occurring prior to 10:00 a.m., Eastern Time, complaints must be submitted by 10:30 a.m., Eastern Time; and

(b) for transactions occurring at or after 10:00 a.m., Eastern Time, complaints must be submitted within thirty minutes.

In addition, the NASD proposes to amend Rule 11890 to clarify several procedural aspects concerning the submission of erroneous transaction complaints. Specifically, the amendments would clarify that:

(a) a complaint will not be deemed to have been submitted until Market Operations receives a written complaint, via facsimile or otherwise;

(b) once a timely complaint is received, a complainant will have up to thirty minutes to submit any supporting written information concerning the complaint, via facsimile or otherwise;

(c) once a timely complaint is received, the counter-party will be notified by Market Operations of the complaint and afforded a thirty-minute period to submit any supporting written information concerning the disputed trade, via facsimile or otherwise;

(d) either party to a disputed trade may request the written information submitted by the other party;

(e) notwithstanding the thirty-minute period to submit information, once a party to a disputed trade communicates that it has no further information to provide, it may not thereafter provide additional information unless requested to do so by the staff; and

(f) if both parties to a disputed trade indicate that they have no further information to provide concerning the complaint before their respective thirty-minute information submission period has elapsed, then the matter may be immediately presented to a Nasdaq officer for a determination.

(iii) *Authority of Nasdaq to Cancel or Adjust Clearly Erroneous Trades on its Own Motion:* Presently, only members can seek to have an allegedly erroneous transaction nullified. There have been occasions, however, where Nasdaq system malfunctions have caused erroneous trades. Accordingly, in order to promote fair and orderly markets, the NASD and Nasdaq believe it would be appropriate to provide designated Nasdaq officials the authority to cancel or modify the terms of transactions in the event of a disruption or malfunction in the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq.[4] Under this provision, the NASD and Nasdaq also believe such senior officials should be authorized to cancel or adjust an erroneous transaction on their own motion within thirty minutes of detection of the erroneous transaction, absent extraordinary circumstances, but in no event later than 6:00 p.m. on the next trading day after the date of the trade(s) in dispute. As with any other erroneous transaction determination, members would have the right to appeal such actions to the MORC.

(iv) *Withdrawal of Erroneous Transaction Complaints:* Rule 11890

[3] In essence, the rule grants a free call option when a potential complainant sold stock and a free put option when the potential complainant bought stock.

[4] A list of the Nasdaq officials that have the authority to cancel or modify the terms of a transaction shall be maintained by the Nasdaq Corporate Secretary.

currently permits a member to withdraw an erroneous transaction complaint at any time. Because there are no restrictions on when a complaint can be withdrawn, market participants have in the past withdrawn their complaints when the market moved in their favor subsequent to filing the complaint. Accordingly, in order to facilitate the maintenance of fair and orderly markets and the equitable resolution of erroneous transaction disputes, the NASD and Nasdaq believe that Rule 11890 should be amended to prohibit the withdrawal of a complaint or an appeal of an erroneous transaction determination unless both parties to the trade agree to withdraw the matter.

(v) *Time Parameter to Appeal Erroneous Transaction Determinations:* Presently, members have four ''market'' hours to appeal an erroneous transaction determination. This period of time is too long in that it unduly extends the period of time that both parties to the trade are subject to market risk. Accordingly, the NASD has proposed that, once a member has received verbal notification of an erroneous transaction determination from the staff, it shall have thirty minutes to appeal the determination. The NASD and Nasdaq also propose that Rule 11890 should be amended to clarify that once a written appeal has been received, the counter-party to the trade will be notified of the appeal and both parties will be able to submit any additional supporting written information up until the time the appeal is considered by the Committee. In addition, the NASD and Nasdaq believe that the Rule should be amended to provide that either party to a disputed trade may request the written information provided by the other party during the appeal process.

(vi) *Clarification of the Appeal Process for Erroneous Transaction Determinations:* In order to clarify the current operation of the appeal process for erroneous transaction determinations, Rule 11890(b)(3) should be amended to provide that:

(a) an appeal of an erroneous transaction determination does not operate as a stay of the initial ruling; and

(b) any decisions by the MORC or the staff are rendered without prejudice as to the rights of the parties to seek arbitration of the disputed transactions.

In proposing these rule changes, the NASD and Nasdaq believe that the process for resolving erroneous transaction complaints will become fairer, more efficient, and more timely, thereby promoting the maintenance of fair and orderly markets and exposing the parties to an allegedly erroneous transaction to less market risk. In addition, allowing Nasdaq officials to cancel or adjust erroneous transactions on their own motion in the event a disturbance or malfunction with a Nasdaq system will serve to protect the interests of investors. Accordingly, the NASD and Nasdaq believe that the proposed rule change is consistent with the provisions of Section 15A(b)(6) in that it promotes the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD and Nasdaq do not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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–96–51 and should be submitted by February 19, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2099 Filed 1–28–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2506]

Extension of the Restriction on the Use of United States Passports for Travel to, in or Through Lebanon

On January 26, 1987, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports, with the exception of passports of immediate family members of hostages in Lebanon, were declared invalid for travel to, in or through Lebanon unless specifically validated for such travel. This action was taken because the situation in Lebanon was such that American citizens there could not be considered safe from terrorist acts, and has since been periodically renewed.

Although security conditions in Lebanon continue to improve, the situation there has led me to conclude that Lebanon remains an area ''. . . where there is imminent danger to the public health or the physical safety of United States travelers'' within the meaning of 22 U.S.C. 211a and 22 CFR 51.73(a)(3).

Accordingly, all United States passports shall remain invalid for travel to, in, or through Lebanon unless specifically validated for such travel under the authority of the Secretary of State.

This Public Notice shall be effective upon publication in the Federal Register and shall expire at midnight July 31, 1997, unless extended or sooner revoked by Public Notice. Upon publication, this Public Notice shall supersede Public Notice 2429, published August 22, 1996 (61 FR 43395).

Dated: January 15, 1997.

Warren Christopher,

Secretary of State.

[FR Doc. 97–2182 Filed 1–28–97; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. MC–96–45]

Winter Home Heating Oil Delivery State Flexibility Program; Hours of Service

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of final determination.

SUMMARY: The FHWA is announcing the implementation of a Winter Home Heating Oil Delivery State Flexibility Program for motor carriers making intrastate home heating oil deliveries within a 100 air-mile radius of a central terminal or distribution point. The FHWA has selected the States of Connecticut, New Jersey, New York, and Pennsylvania to participate in the program.

DATES: States are authorized to begin granting exemptions under this program on January 29, 1997. This authorization expires April 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Nathan C. Root, Office of Motor Carrier Research and Standards, (202) 366–8759, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, DOT, 400 Seventh Street, SW., Washington, DC. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Section 346 of the National Highway System Designation Act of 1995 (NHS Act) (Pub. L. 104–59, 109 Stat. 568, 615, November 28, 1995, 49 U.S.C. 31136 note) requires the Secretary of Transportation to develop and implement a Winter Home Heating Oil Delivery State Flexibility Program (Heating Oil Program). Pursuant to the NHS Act, the FHWA published a notice in the Federal Register requesting comments on the development and implementation of the program and State applications to participate in the program on October 2, 1996 (61 FR 5146). The program will permit any period of 7 or 8 consecutive days to end for any driver who has been off-duty for a period of 24 or more consecutive hours for the purposes of determining maximum on-duty time under 49 CFR 395.3(b) for drivers of vehicles making intrastate home heating oil deliveries within 100 air-miles of a central terminal or distribution point of the delivery of such oil. The NHS Act allows the Secretary to approve up to 5 States to participate in the program during the winter heating season beginning November 1, 1996, without jeopardizing Motor Carrier Safety Assistance Program (MCSAP) funding to those States. The State participants were required to meet criteria set forth in the NHS Act. This includes having a substantial number of citizens relying upon home heating oil, indicating the current hours-of-service regulations may endanger the welfare of these citizens by impeding timely deliveries of home heating oil, and ensuring that participating motor carriers maintain a level of safety equal to or greater than that produced by compliance with the current regulations through proper monitoring of their safety performance and reporting their performance to the FHWA.

Under the Heating Oil Program, the States will limit participation to those motor carriers with commercial motor vehicles (CMVs) that make intrastate home heating oil deliveries within a 100 air-mile radius of a central terminal or distribution point. The relief provided by participating States will be effective for an initial 15-day period. Each State will be able to continue in the program unless the FHWA finds that a State's continued participation is inconsistent with the NHS Act, or until April 30, 1997.

Comments on all aspects of the program were welcomed. However, the FHWA also requested comments on a number of specific issues. Namely, the 15-day and 30-day reporting and program extension requirements, the definition of a ''substantial number of citizens relying on home heating oil,'' and the implementation plan requirements. The comment period for the Notice ended November 2, 1996.

Discussion of Comments

The FHWA received sixteen comments to the notice. The American Trucking Association (ATA) and National Tank Truck Carriers, Inc. (NTTC), provided comments. Four comments were received from petroleum industry associations: the Petroleum Marketers Association of America (PMAA), the Empire State Petroleum Association, the Pennsylvania Petroleum Association, and the Oil Heat Task Force (OHTF). The Wisconsin State Patrol and the Commonwealth of Massachusetts also provided comment, as did the Advocates for Highway and Auto Safety (AHAS) and two private companies. Applications for participation were received from four States. All comments to the docket were in favor of the implementation of the Heating Oil Program with the exception of those of AHAS and Wisconsin. Massachusetts indicated that a substantial number of their citizens rely on home heating oil and that they are reviewing the October 2nd notice to determine if it is in the Commonwealth's best interest to participate. To date, no application from Massachusetts has been received by the FHWA.

Reporting and Program Extension Requirements

The NHS Act directs the Secretary to select up to 5 States to participate in the program for an initial period of 15 days during the winter heating season. If the Secretary finds that a State's continued participation in the program has not resulted in a significant adverse impact upon public safety, the NHS Act directs the Secretary to extend the State's participation in the program for periods of up to 30 days. Accordingly, the FHWA indicated that it would require each participating State to submit a preliminary report of its evaluation of carrier performance within 5 days after the initial 15 days. A State's participation in the program could be suspended at any time if: (1) The State had not complied with any criteria established for participation in the program; (2) The motor carriers found eligible by the State were causing a significant adverse impact upon public safety; or (3) The State elected to end its participation in the program on its own initiative.

The FHWA also indicated that it would require each participating State to submit a report of carrier performance within 5 days of the close of each 30-day reporting period. In the October 2nd notice, the FHWA asked for comments on the requirement that extensions be granted to the States after each reporting period, given the fact that program participation may be suspended at any time during the program for individual carriers or for an entire State. The applications of each State that applied for participation included plans for submitting a report at the end of the initial 15-day period, and at the end of each 30-day period for the duration of the program. The ATA and the AHAS also provided discussion on this issue.

The ATA commented that States should periodically report safety performance data to the FHWA and suggested a 60-day reporting interval to reduce the burdens on the States and the carriers participating in the program. The ATA also believed that requiring the FHWA to grant extensions to the

States after each reporting period, thereby enabling the States to continue providing the hours-of-service relief to the carriers, would add no value to the program or to public safety. ''So long as the States have the ability to suspend program involvement of motor carriers that fail to meet the established safety performance levels, which the Notice clearly indicates they will, a 30-day extension requirement is simply unnecessary,'' said the ATA.

The AHAS commented that the NHS Act allows the FHWA to grant extensions for periods less than and up to a maximum of 30 days. The AHAS stated:

> We believe that the statutory provision detailing this program clearly shows that Congress wanted the agency to keep a tight rein on this program and, accordingly, specifically provided for separate evaluation on the merits of each extension of time for state participation in order to maximize the administrative capabilities of the FHWA in ensuring public safety.

The AHAS further opposes the FHWA granting extensions in full 30-day increments. The AHAS views the granting of extensions as the FHWA's primary safeguard for protecting the public during the program. The AHAS was the only commenter to voice the opinion that extensions are necessary and should be required.

The FHWA does not believe it is necessary to require States to report to the FHWA in periods of less than 30 days. The States will be required to continuously monitor and evaluate motor carrier safety performance and have the power to remove program carriers and program drivers at any point. As the ATA pointed out, the States would be required to submit as many as 8 reports to the FHWA for a 6-month project and to *constantly* monitor motor carrier safety performance. Requiring States to report to the FHWA in periods of less than 30 days would be an unnecessary burden on all parties involved and provide no apparent and demonstrable benefit to public safety. The FHWA does recognize that reporting periods of longer than 30 days may not allow sufficient consideration of information for effective oversight in light of the short duration of the covered season.

The FHWA does agree with the AHAS's assertion that whether or not to approve extensions is a significant control the FHWA may use for protecting the public during the program. The definitive safeguard is the FHWA's ability *at any point* to terminate the program in any State. Public safety is primarily protected by each State's monitoring activities and by the authority of each State to remove any carrier or driver from the program *at any point* or to terminate the program State-wide *at any point*.

Considering these issues, the FHWA is imposing limitations on the approval of extensions. The parameters of the program are described below. A report will be due to the FHWA from each State within 5 days following the initial 15 days of the program, and within 5 days of the end of each 30-day reporting period. For the duration of the program, motor carriers in each State will be required to promptly report to the State the details of any accident in which a program driver is involved. If the FHWA has not reviewed the State's report and affirmatively extended the program within 72 hours after the report is due, the State's program is automatically suspended until approval is granted.

The FHWA will also provide continuous program oversight by maintaining close liaison with State personnel evaluating significant information as it becomes available. If at any point the FHWA determines the program guidelines are not adhered to or the flexibility granted by the program results in a significant adverse impact on public safety, the FHWA will terminate the program. The FHWA will make such decisions on a State-by-State basis.

Definition of ''Substantial Number of Citizens''

The NHS Act stipulated that, in order to be eligible to participate in the Heating Oil Program, a State must have a substantial number of citizens who rely on home heating oil for heat during winter months. The FHWA proposed in the October 2nd notice to interpret ''a substantial number of citizens relying on home heating oil'' to mean that at least 20 percent of the households in a State rely on home heating oil. The FHWA specifically welcomed comments upon this definition. The PMAA and the OHTF both responded that the FHWA should consider States with the highest number of citizens relying on heating oil rather than, or in addition to, the percentage. Because the FHWA received only four applications, it was unnecessary for the FHWA to use the highest number of citizens relying on heating oil in addition to the percentage of citizens to evaluate each State's ability to meet this criteria.

Each State that submitted an application, plus the Commonwealth of Massachusetts, met the 20 percent threshold. No other comments or inquiries were received on this definition. Each State that applied to the program submitted sufficient information to establish that a substantial number of their citizens rely on home heating oil for heat during the winter months. The information submitted was based on the data presented in the October 2nd notice, derived from residential heating oil sales data maintained by the Energy Information Administration of the U.S. Department of Commerce, as well as the State's own data concerning residential heating oil use.

Implementation Plan Requirements

The October 2nd notice requested that interested and eligible States submit an application that included an implementation plan describing the conditions of eligibility for a motor carrier to participate. The plan also had to include a discussion of the means that a State would employ to monitor the performance of the participating carriers, mitigate safety risks, and evaluate the merits of the program. The FHWA requested comments on the appropriateness, suitability, or burden of these requirements.

The AHAS expressed concern that the FHWA may be prepared to accept ''almost any information'' regarding safety impacts and that the monitoring approaches were inadequate and inconsistent with requirements for scientific studies. No alternative methods for monitoring or evaluating the safety performance of participating motor carriers were provided in the AHAS comments. The FHWA believes the program oversight and controls described herein are adequate to safeguard the public against potential abuse. Given the nature of the program, the differences in weather patterns and seasonal conditions, the consequent multiplicity of variables, and the number and variety of participating entities, pure scientific protocols are impossible to devise. The FHWA will, however, collect as much relevant information as is reasonably possible and evaluate it in a number of ways to ascertain whether any safety effects of the limited regulatory relief can be identified and attributed.

The possible safety monitoring approaches identified in the October 2nd notice (comparing safety performance levels of motor carriers during the program to performance in previous winter(s), safety performance of other similar industries during the same period, and using a study control group among the participating motor carriers) were described in broad terms to give the States and the public an idea of possible methods that may be utilized by States to monitor and evaluate safety performance. The FHWA intended to

encourage States and the public to propose alternative monitoring methods that would ensure public safety and generate data on the merits of the program. This program will be run by the States, with little or no resources from the FHWA, except for program oversight. Intrastate operations are subject to the FHWA's jurisdiction only insofar as MCSAP funding may be jeopardized if a participating State does not adopt hours-of-service regulations for intrastate operations that are equivalent to or compatible with the Federal regulations. Adoption of a 24-hour re-start would normally constitute an unacceptable variance to the regulations under the current Tolerance Guidelines (49 CFR part 350, App. C). The FHWA has the option of rejecting any application that contains insufficient information or inadequate monitoring and evaluative strategies or otherwise fails to meet the requirements of the NHS Act.

On-Duty Time Regulations Endangering Welfare of Citizens

Section 346(b)(2) of the NHS Act provides that:

> The Secretary may only approve an application of a State under this section if the Secretary finds, at a minimum, that—
>
> * * * * *
>
> (2) current maximum on-duty time regulations may endanger the welfare of these citizens by impeding timely deliveries of home heating oil; . . .

The AHAS commented on this criterion with regard to the FHWA's responsibilities in reviewing State applications:

> Accordingly, the Secretary must make a finding sustained by ample, credible data and other evidence that there are in fact citizens whose safety and health are directly and immediately impacted adversely by service failures in making timely deliveries of home heating oil as a causal result of hours of service constraints in intrastate transportation. Advocates regard this evidentiary standard of imminent threats to citizen safety and health to require far more than simple, generalized affidavits of state officials or of motor carriers. The FHWA in this proposal sets forth no criteria whatever for making such a determination of whether this public health and safety threat due directly and immediately to hours of service constraints in fact exists in any applicant state.

The FHWA does not agree with AHAS's interpretation of the statute. The NHS Act requires that a determination be made that current maximum on-duty time regulations ''*may endanger* the *welfare*'' of citizens by impeding timely deliveries. This is a much less stringent criterion than AHAS's reading of the NHS Act suggests.

Several respondents to the docket mentioned that extended periods of cold temperatures that occur each winter cause an urgent need for home heating oil. In addition, they noted that severe and inclement weather conditions, such as ice or heavy snow falls, impede the timely delivery of home heating oil to consumers. The FHWA believes that the situations described by the applicant States provide sufficient evidence for the FHWA to determine that compliance with the hours of service requirements *may* endanger the welfare of citizens who must wait longer for delivery of their home heating oil as a result.

Commenters also cited emergencies declared in response to these conditions (49 CFR 390.23) as evidence that current maximum on-duty time regulations may endanger the welfare of citizens dependent on home heating oil. An emergency declared in accordance with § 390.23 relieves motor carriers providing emergency relief from compliance with all the Federal Motor Carrier Safety Regulations (49 CFR Parts 390 through 399). It is the FHWA's hope that this program may obviate the need to declare emergencies within participating States during the current winter heating season.

Participating States

The FHWA has reviewed and accepted applications submitted by the States of Connecticut, New Jersey, New York, and Pennsylvania. The FHWA has discussed the applications with each State applicant and slight modifications have been made to what was submitted. The FHWA has found that these States each meet the participation eligibility criteria established by the NHS Act. In separate agreements with the FHWA, each State has agreed to abide by the parameters that follow. New York has elected to pursue more stringent hours of service relief than the statute allows for this program. It has been noted where New York deviates from the parameters followed by the other participating States.

Parameters of the Heating Oil Program

I. Definitions

The following definitions have been established for the purposes of the Heating Oil Program:

Accident. Accident is defined as an occurrence involving a CMV operating on a public road in commerce which results in: (1) A fatality; (2) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (3) One or more motor vehicles incurring disabling damage as a result of the accident, requiring a motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. This term also includes any unintentional discharge of home heating oil that requires the submission of DOT Form F 5800.1 (Rev. 6/89) (see 49 CFR 171.16). The term *accident* does not include an occurrence involving only boarding or alighting from the stationary motor vehicle delivering home heating oil.

Deliveries of home heating oil. Intrastate deliveries of home heating oil to homes within a 100 air-mile radius of a central location or distribution point. Deliveries between distribution points are *not* included in this definition.

Home heating oil. Fuel oil used for heating homes which meets the definition of ''Fuel Oil'' in the Hazardous Materials Table in 49 CFR 172.101, identified as Fuel Oil No. 1, or Fuel Oil No. 2.

The definition of ''accident'' was taken from 49 CFR 390.5, with the addition of any spillage of home heating oil as identified by the Hazardous Materials Regulations. The FHWA believes it would be remiss not to include data on hazardous materials incidents. The FHWA has a responsibility to the safety of the environment as well as to public safety, and a change in the frequency of incidents in the loading and unloading process may also be considered as an indicator of driver fatigue. The definition of ''deliveries of home heating oil'' does not include loading delivery trucks from a source outside the participating State and delivering the oil only to homes within the participating State. Such deliveries are interstate in nature because of their point of origin. The definition of ''home heating oil'' was taken from the Federal Hazardous Materials Regulations promulgated by the Research and Special Programs Administration. The FHWA understands that only Fuel Oil No. 1 and No. 2 are used as home heating oil (6 types of fuel oil are identified in the Hazardous Materials Table, No. 1, 2, 3, 4, 5 and 6).

II. Hours-of-Service Flexibility

Participating States will accept applications from interested and eligible motor carriers. As described below, motor carriers that have been accepted will be notified by their State and will participate in the program until the program terminates or they are removed from the program by the participating State.

Connecticut, New Jersey, and Pennsylvania will permit motor carriers that have been accepted into the program to allow their drivers to re-start calculations for the 60-hour and 70-hour rules after accumulating at least 24 consecutive hours of off-duty time. New York will permit motor carriers that have been accepted into the program to allow their drivers to re-start calculations of the 60-hour and 70-hour rules after accumulating at least 36 consecutive hours of off-duty time. However, total on-duty time must not exceed 75 hours during a 7 consecutive day period (rather than 60 hours), or 80 hours during an 8 consecutive day period (rather than 70 hours) for carriers who operate 7 days a week. If New York determines an ''emergency'' exists, the above conditions will apply except the drivers may re-start calculations after accumulating at least 24 consecutive hours of off-duty time. Flexibility granted by States under this program will not jeopardize MCSAP funding.

Drivers who exceed the 100 air-mile radius of a central terminal or distribution point, operate CMVs for other motor carriers, or operate CMVs for a participating motor carrier in capacities not covered by the Heating Oil Program, may not participate in the program. However, if a participating driver only occasionally operates a CMV for other motor carriers or exceeds the 100 air-mile radius, it is the option of the participating State whether to allow the driver to continue participating in the program. It is the FHWA's concern that it would be difficult to take into account or predict the effect of driving experience accumulated outside the scope of this program when determining the safety performance of participating drivers and motor carriers. Participating drivers must be in full compliance with 49 CFR 395.3(b) before operating outside the constraints of this program in interstate commerce.

III. Motor Carrier Eligibility

To be eligible to participate:

(1) Each motor carrier must certify to the State that it is actively engaged in making intrastate deliveries of home heating oil within a 100 air-mile radius of a central terminal or distribution point.

(2) Each motor carrier must not have received an ''Unsatisfactory'' rating from the FHWA, or a similar safety rating from the State, during the past 5 years.

(3) Each motor carrier must certify that it will provide the State with timely safety data within close proximity to the end of each reporting period. Required safety data includes a roster of drivers operating under the program, time cards for each driver, any accident reports and/or hazardous materials incident reports pertaining to these drivers during the reporting period.

(4) Each motor carrier must certify that it will comply with all applicable regulations relating to the safety of its intrastate operations. If an emergency is declared, in accordance with 49 CFR 390.23, the FHWA requests that each motor carrier continue to abide by the conditions of this program. However, if participating motor carriers avail themselves of the emergency exemption, they must continue to abide by the reporting requirements of this program.

(5) Each motor carrier must provide to the State accident and mileage data for the winter season of each year it has operated since the 1993—1994 winter heating season. This information is required for States to determine whether motor carrier safety performance during the course of this program declines or improves. The FHWA is aware that the severity of weather conditions varies from one year to the next. However, by collecting data for previous winter seasons, accident rates for the upcoming 1996–1997 winter heating season can be compared with recent averages.

IV. Monitoring

Each State will monitor the safety of all drivers participating in the program. Participating motor carriers must report each accident to the State within 2 days of the accident. When reporting an accident, the motor carrier must provide copies of the time cards for the previous 7 days for the driver involved. Within 5 days following any accident, the motor carrier must submit to the State a brief summary of the accident, to be maintained by the State, which includes:

—The date and time of the accident;
—The name and driver license number of the driver;
—The driver's number of hours on-duty on the day of the accident and in the period since his last 24-hour off-duty period;
—The number and extent of any injuries and/or damage to property;
—The number of fatalities; and
—Whether and to what extent any heating oil was spilled.

If data collected by a participating State indicates that the safety performance of any participating motor carrier has declined since commencement of its participation in the program, the State will immediately conduct an investigation. If the State determines that the adverse effect on safety was caused by the flexibility afforded under the program, the State may elect to suspend individual drivers of a motor carrier from participating in the program or the motor carrier as a whole. If a State determines that multiple participating motor carriers have experienced an adverse change in their safety performance as a result of the flexibility afforded by the program, the State may terminate the entire program within its jurisdiction. In all cases, the State will promptly notify the FHWA of any corrective actions taken and the reasons for them.

V. Dates

The Heating Oil Program will begin on January 29, 1997 and end by April 30, 1997, unless otherwise specified by the individual State. Each State will report its preliminary findings to the FHWA within 5 days of the completion of the first 15 days of the program. Each State will be able to continue in the program, unless the FHWA finds that a State's continued participation in the program is inconsistent with the NHS Act, and report program findings to the FHWA within 5 days of each 30-day reporting period. If the FHWA has not reviewed the State's report and affirmatively extended the State's program within 72 hours after the report is due, program approval is automatically suspended in the reporting State until the FHWA review is completed and approval granted.

The program shall terminate for all States by April 30, 1997. Participating States may terminate the program before April 30, 1997, but may not extend the program beyond that date. The FHWA may terminate a State's participation at any point during the program. Each State may terminate a motor carrier's or a driver's participation at any point during the program. Each State may also voluntarily terminate its own participation at any point during the program.

VI. Reports

Each State will provide to the FHWA the results of the first 15 days of the Heating Oil Program within 5 days of the completion of the first 15 days program. The report shall include:

—The number of participating carriers
—The number of participating drivers
—A brief summary of any accident that has occurred, in accordance with Section IV above;
—The number of participating carriers and/or drivers suspended from the program; and
—A preliminary analysis of the safety record of the program to the date of the report, based on the State's experience with similar operations under the current 60-hour and 70-

hour rules (such as natural gas or power company service vehicles).

If the FHWA extends the program beyond the initial 15 days, each State will submit a similar report within 5 days at the end of every 30-day reporting period thereafter. Within 30 days of the conclusion of the program (April 30, 1997), each State will compile and report the results of the program to the FHWA and include an overall evaluation of the program.

VII. Final Evaluation of the Program

The NHS Act requires the FHWA to conduct an evaluation at the conclusion of the program. The principal objective of the evaluation is to provide input to a zero-base review of the need for, and the cost and benefits of, the hours-of-service regulations as they apply to home heating oil delivery operations during the winter months. The NHS Act requires the FHWA to initiate a rulemaking, based in part upon the results of the program, to determine whether to authorize State-granted waivers of the hours-of-service regulations to motor carriers transporting home heating oil during the winter months or to amend the hours-of-service regulations to provide flexibility to motor carriers delivering home heating oil during winter periods of peak demand.

Authority: 49 U.S.C. 31136(e); National Highway System Designation Act, Pub. L. 104–59, § 346, 109 Stat. 568, 615 (1995); 49 CFR 1.48.

Issued on: January 17, 1997.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 97–2089 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–22–P

Maritime Administration

[Docket MSP–006/Docket S–942]

American President Lines; Notice of Application for a Waiver Pursuant to Section 804 of the Merchant Marine Act, 1936, as Amended

American President Lines, Ltd. (APL), by application received November 7, 1996, applied under Section 651, Subtitle B, of the Act for participation in the Maritime Security Program (MSP). In support of its participation in the MSP, APL by letter dated January 17, 1997 has applied for a waiver pursuant to section 804 of the Merchant Marine Act of 1936, as amended (Act).

On January 21, 1997, APL and MARAD entered into MSP Operating Agreements for nine vessels: APL KOREA, APL PHILIPPINES, APL SINGAPORE, APL THAILAND, PRESIDENT ADAMS, PRESIDENT JACKSON, PRESIDENT KENNEDY, PRESIDENT POLK and PRESIDENT TRUMAN. APL, in connection with the MSA, was awarded ''grandfather'' rights under section 804 for its six C–11 vessels: APL KOREA, APL PHILIPPINES, APL SINGAPORE, APL THAILAND, APL JAPAN, and APL CHINA.

APL states that in its capacity both (I) as a contractor under Subtitle A of Title VI of the Act under existing Contract No. MA/MSB 417 and (ii) as an awardee of Operating Agreements and prospective contractor under the new Maritime Security Program established by Subtitle B of Title VI of the Act, APL requests a waiver of the provisions of section 804 to allow APL (or any holding company, subsidiary, affiliate or associate of APL or any transferee of any MSP Operating Agreement from APL to own, operate and/or charter up to 18 foreign-flag vessels in line haul service between the United States and foreign ports in addition to the six such vessels that the Maritime Administration (MARAD) has determined that APL is entitled to own, operate and/or charter pursuant to section 804(f)(2)(A) of the Act. The requested waiver is for the full remaining term of APL's ODS contract and for the full term of APL's MSP Operating Agreements as well as any subsequent renewals of any such Operating Agreement.

APL asserts that grant of the requested waiver is required for several reasons.

1. On the date of enactment of the Maritime Security Act of 1996 (MSA), APL moved cargo on 37 foreign-flag vessels in line haul service between the United States and foreign ports. Only six of these vessels were owned and/or operated by APL, viz., the six C–11 class vessels which are the basis for MARAD's above-noted determination that APL has an entitlement to six vessels under section 804(f)(2)(A). For historical reasons—including APL's pre-existing status as an ODS contractor subject to section 804, under which (prior to the amendments made by the MSA) it was considerably more difficult for a contractor to own and/or operate, as opposed to charter space on, foreign-flag vessels—APL's interest in the other 31 foreign-flag line haul vessels on the date of the MSA's enactment was in the form of space sharing and sailing coordination agreements. Under such agreements, APL chartered and utilized large proportions of the slot capacity of the 31 ships.

APL's position is that it is entitled under section 804(f)(2)(A) to at least 37 foreign-flag line haul vessels, based on the six C–11s plus the 31 vessels subject to space charter agreements. A list of the 37 foreign-flag vessels is provided as follows:

Vessel name	Flag
ALIGATOR BRAVERY	Panama
ALIGATOR COLUMBUS.	Panama
ALIGATOR STRENGTH	Panama
ALIGATOR WISDOM	Panama
OOCL SHANGHAI	Panama
OOCL AMERICA	Liberia
OOCL CALIFORNIA	Liberia
OOCL CHINA	Liberia
OOCL HONG KONG	Liberia
OOCL JAPAN	Liberia
APL CHINA	Marshall Islands
APL JAPAN	Marshall Islands
APL KOREA	Marshall Islands
APL PHILIPPINES	Marshall Islands
APL SINGAPORE	Marshall Islands
APL THAILAND	Marshall Islands
ALIGATOR AMERICA	Japan
ALLIGATOR GLORY	Liberia
ALLIGATOR PRIDE	Liberia
ALLIGATOR VICTORY	Panama
OOCL FAME	Liberia
OOCL FRONTIER	Great Britain
AGLE ANAHUAC	Liberia
TMM ACAPULCO	Germany
TMM CHETUMAL	Greece
TMM MANZANILLO	Greece
TMM SINALOA	Greece
TMM VERACRUZ	Liberia
ALLIGATOR INDEPENDENCE.	Panama
ALIGATOR LIBERTY	Japan
ALIGATOR RELIANCE	Japan
ALLIGATOR TRIUMPH	Liberia
NEDLLOYD DEJIMA	Netherlands
NEDLLOYD DELFT	Netherlands
OOCL FAIR	Liberia
OOCL FIDELITY	Liberia
OOCL FORTUNE	Liberia

However, MARAD determined that, with respect to the 31 vessels subject to space charter arrangements, APL would not be entitled to grandfather rights under section 804(f)(2)(A). APL states that, while it disagrees with this determination, APL is willing to pursue an alternative course—this waiver application—to obtain the authorization for foreign-flag line haul vessels that is essential to APL's success as an ODS and MSP contractor. The requested waiver for 18 vessels is equivalent to half of the 31 vessels subject to space sharing agreements, rounded up to 18 to allow three six-vessel strings in recognition of the operational need to operate line haul vessels in strings providing regular weekly port calls. That number reflects the approximate vessel equivalence of APL's share of the 31 foreign flag line haul vessels on which APL is a charterer.

In addition to the six ships grandfathered under section 804(f)(2) of rights recognized by MARAD based on

the C–11s, the requested 18-vessel waiver would give APL a right to own and/or operate a total of 24 foreign-flag line haul vessels calling on U.S. ports.

2. APL states that the central purpose of the MSA and the MSP is to preserve and advance a U.S.-flag commercial fleet, not only by providing necessary financial assistance for the operation of U.S.-flag vessels, but also by allowing the operators of such vessels the flexibility to structure their overall fleet and services to be responsive and competitive in the world marketplace. APL argues that Congress recognized that, in order to achieve this purpose, ODS and MSP contractors must be free to utilize foreign-flag vessels in close and efficient conjunction with their U.S.-flag services, as evidenced by the dramatic amendments made to section 804 by section 5 of the MSA. APL maintains that Congress also clearly intended that, in this respect among others, the principal operators in the U.S. foreign trades should be placed on a level playing field.

As noted above, for historical reasons that are unrelated to current economic and competitive realities, APL argues it has wound up, under MARAD's interpretation of section 804(f)(2)(A), with much less flexibility to efficiently structure its services than its major U.S. and foreign competitors. According to APL, grant of the requested waiver would rectify this situation, and carry out the intent of Congress in enacting the MSA.

3. APL maintains that, to the extent the section 804 concepts of ''good cause'' and ''special circumstances'' may have any continuing substance following the amendments made to that section by the MSA, they are clearly present here:

a. Grant of the request would be mutually beneficial to APL as an MSP contractor and the U.S. Merchant Marine.

b. The number of vessels for which a waiver is requested is fair, given that (I) it is far fewer than the 31 foreign-flag line haul vessels on which APL chartered substantial space on the date of enactment of the MSA, as discussed above, and (ii) it achieves parity with APL's major MSP competitors.

c. Given the expansive authority to operate foreign-flag line haul vessels that MARAD has recognized for Sea-Land and Maersk, there can be no claim that the requested waiver would injure either of those MSP contractors (or any other MSP contractor) in any way. Moreover, given the limitations imposed on the MSP funding that is essential to vessel operations under the U.S. flag, there is no possibility that U.S.-flag operations could be performed in lieu of the foreign-flag authorities herein sought.

4. Finally, given the importance of the requested waiver to APL as a MSP contractor, and the compelling reasons for grant of a waiver explained above, APL requests that MARAD act promptly on this application.

The application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm or corporation having any interest in the application for waiver pursuant to section 804, and desiring to submit comments concerning APL's request must by 5:00 PM (5 working days after the date of publication) file comments in triplicate to the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. This notice is published as a matter of discretion. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

Dated: January 23, 1997.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 97–2084 Filed 1–28–97; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Domestic Finance; Community Adjustment and Investment Program, Advisory Committee Open Meeting

The Department of the Treasury, pursuant to the North American Free Trade Agreement (''NAFTA'') Implementation Act (Pub. L. No. 103–182), established an advisory committee (the ''Advisory Committee'') for the community adjustment and investment program (the ''Program''). The Program will provide financing to businesses and individuals in communities adversely impacted by NAFTA to create new jobs. The charter of the Advisory Committee has been filed in accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. No. 92–463), with the approval of the Secretary of the Treasury.

The Advisory Committee consists of nine members of the public, appointed by the President, who collectively represent: (1) community groups whose constituencies include low-income families; (2) scientific, professional, business, nonprofit, or public interest organizations or associations, which are neither affiliated with, nor under the direction of, a government; and (3) for-profit business interests.

The objectives of the Advisory Committee are to: (1) provide informed advice to the President regarding the implementation of the Program; and (2) review on a regular basis, the operation of the Program, and provide the President with the conclusions of its review. Pursuant to Executive Order No. 12916, dated May 13, 1994, the President established an interagency committee to implement the Program and to receive, on behalf of the President, advice of the Advisory Committee. The committee is chaired by the Secretary of the Treasury.

A meeting of the Advisory Committee, which will be open to the public, will be held in Albuquerque, New Mexico at the Doubletree Hotel, Ballroom Salon III, 201 Marquette Avenue, N.W., Albuquerque, New Mexico 87104, from 9 a.m. to 4 p.m. on Wednesday, February 12, 1997. The meeting room will accommodate approximately 50 persons and seating is available on a first-come, first-serve basis, unless space has been reserved in advance. Due to limited seating, prospective attendees are encouraged to contact the person listed below prior to February 5, 1997. If you would like to have the Advisory Committee consider a written statement, material must be submitted to the U.S. Community Adjustment and Investment Program, Advisory Committee, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 3040, Washington, DC 20220 no later than February 5, 1997. If you have any questions, please call Dan Decena at (202)622–0637. (Please note that this telephone number is not toll-free.)

Mozelle W. Thompson,

Principal Deputy Assistant Secretary, Government Financial Policy.

[FR Doc. 97–2187 Filed 1–28–97; 8:45 am]

BILLING CODE 4510–25–P

Internal Revenue Service

Proposed Collection; Comment Request for Form 8281

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.

DATES: Written comments should be received on or before March 31, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Return for Publicly Offered Original Issue Discount Instruments.

OMB Number: 1545–0887.

Form Number: Form 8281.

Abstract: Internal Revenue Code section 1275(c)(2) requires the furnishing of certain information to the IRS by issuers of publicly offered debt instruments having original issue discount. Regulations section 1.1275–3 prescribes that Form 8281 shall be used for this purpose. The information on Form 8281 is used to update Publication 1212, List of Original Issue Discount Instruments.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 5 hr., 57 min.

Estimated Total Annual Burden Hours: 2,975.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 22, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–2073 Filed 1–28–97; 8:45 am]

BILLING CODE 4830–01–U

[INTL–485–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–485–89 (TD 8400), Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions) (§§ 1.988–0 through 1.988–5).

DATES: Written comments should be received on or before March 31, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).

OMB Number: 1545–1131.

Regulation Project Number: INTL–485–89.

Abstract: Internal Revenue Code sections 988(c)(1) (D) and (E) allow taxpayers to make elections concerning the taxation of exchange gain or loss on certain foreign currency denominated transactions. In addition, Code sections 988(a)(1)(B) and 988(d) require taxpayers to identify transactions which generate capital gain or loss or which are hedges of other transactions. This regulation provides guidance on making the elections and complying with the identification rules.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 3,333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 22, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–2074 Filed 1–28–97; 8:45 am]

BILLING CODE 4830–01–U

Proposed Collection; Comment Request for Form 2163(c)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2163(c), Employment—Reference Inquiry.

DATES: Written comments should be received on or before March 31, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employment—Reference Inquiry.

OMB Number: 1545–0274.

Form Number: Form 2163(c).

Abstract: Form 2163(c) is used by the Internal Revenue Service to verify past employment history and to question listed and developed references as to the character and integrity of current and potential Internal Revenue Service employees. The information received is incorporated into a report on which a security determination is based.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, non-profit institutions, farms, Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 4,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 21, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–2075 Filed 1–28–97; 8:45 am]

BILLING CODE 4830–01–U

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, 22 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, ''The Glory of Byzantium'' (See list [1]), imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art in New York, New York, from on or about March 3, 1997 to on or about July 6, 1997, is in the national interest. Public Notice of these determinations is ordered to be published in the Federal Register.

Dated: January 23, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–2235 Filed 1–28–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 103–446, gives notice that a meeting of the Advisory Committee on Minority Veterans will be held Thursday, January 30, 1997, in Washington, DC. The purpose of the Advisory Committee on Minority Veterans is to advise the Secretary of Veterans Affairs on the administration of VA benefits and services for minority veterans and to assess the needs of minority veterans and evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

The Committee meeting will be conducted via telephone conference call. Several members of the Committee will convene in Room 700, VA Central Office (VACO) Building, 810 Vermont Avenue, NW, Washington, DC, from 2:00 p.m. to 4:00 p.m. The Committee will review activities and accomplishments of subcommittees since the last meeting in November

[1] A copy of this list may be obtained by contacting Ms. Carol B. Epstein, Assistant General Counsel, at 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547–0001.

1996. The Committee will also finalize plans for subcommittee field work and set the agenda for the May 1997 field meeting to be held at a site to be determined in the Pacific Northwest region. This session will be open to the public. It will be necessary for those wishing to attend to contact Mr. Anthony Hawkins, Department of Veterans Affairs, phone (202) 273–6708, prior to January 28, 1997. No time will be allocated for the purpose of receiving oral presentations from the public, however, the Committee will accept appropriate written comments from interested parties on issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (OOM), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: January 16, 1997.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–2102 Filed 1–28–97; 8:45 am]

BILLING CODE 8320–01–M

federal register

Wednesday
January 29, 1997

Part II

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Fund for Rural American Program; Grant Availability and Request for Proposals; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Request for Proposals (RFP): Fund for Rural America Program

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Announcement of availability of grant funds and request for proposals for the Fund for Rural America Program.

SUMMARY: The Federal Agriculture Improvement and Reform Act of 1996 established an account in the Treasury of the United States to provide funds for rural development programs and a competitive grant program to support research, education, and extension activities.

This notice pertains only to the competitive grant program for research, education, and extension activities. It identifies eligible participants in the program, the program areas to be supported, and the funding levels for each area; provides instructions for preparing and submitting proposals; and describes the selection process and evaluation criteria to be used to make funding decisions. To obtain program application materials, please contact the Proposal Services Unit, Grants Management Branch; Office of Extramural Programs; USDA/CSREES at (202) 401–5048. When calling the Proposal Services Unit, please indicate that you are requesting forms for the Fund Program. These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov which states that you want a copy of the application materials for the Fiscal Year 1997 Fund Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Planning Grant Applications must be received on or before March 24, 1997. Planning Grant proposals received after March 24, 1997, will not be considered for funding.

Standard Project Grant Applications must be received on or before April 28, 1997. Standard project proposals received after April 28, 1997, will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: Dr. Patrick O'Brien, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2240, Washington, D.C. 20250–2240; telephone (202) 401–1761.

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Part I. General Information

A. Legislative Authority

The Fund for Rural America (The Fund), authorized under Section 793 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) (7 U.S.C. 2204(f)), is established as an account in the Treasury of the United States. The Fund will provide $100 million in each of three years for rural development programs and a competitive grant program for research, education, and extension activities. Not less than one-third of the funds will be available for research, education, and extension activities, one-third will be available for the Department's rural development programs, and one-third will be allocated between the rural development and research activities according to the Secretary's discretion.

Grants are to be awarded on the basis of merit, quality, and relevance to advancing the purposes of federally supported agricultural research, extension, and education provided in Section 1402 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101). Section 1402 identifies the following purposes:

''(1) Enhance the competitiveness of the United States agriculture and food industry in an increasingly competitive world environment;

(2) Increase the long-term productivity of the United States agriculture and food industry while maintaining and enhancing the natural resource base on which rural America and the United States agricultural economy depend;

(3) Develop new uses and new products for agricultural commodities, such as alternative fuels, and develop new crops;

(4) Support agricultural research and extension to promote economic opportunity in rural communities and to meet the increasing demand for information and technology transfer throughout the United States agriculture industry;

(5) Improve risk management in the United States agriculture industry;

(6) Improve the safe production and processing of, and adding of value to, United States food and fiber resources using methods that maintain the balance between yield and environmental soundness;

(7) Support higher education in agriculture to give the next generation of Americans the knowledge, technology, and applications necessary to enhance the competitiveness of United States agriculture; and

(8) Maintain an adequate, nutritious, and safe supply of food to meet human nutritional needs and requirements.''

Section 793(c)(2)(A) of the FAIR Act authorizes the Secretary to use the Fund for competitive research, education, and extension grants to:

''(i) Increase international competitiveness, efficiency, and farm profitability;

(ii) Reduce economic and health risks;

(iii) Conserve and enhance natural resources;

(iv) Develop new crops, new crop uses, and new agricultural applications of biotechnology;

(v) Enhance animal agricultural resources;

(vi) Preserve plant and animal germplasm;

(vii) Increase economic opportunities in farming and rural communities; and

(viii) Expand locally-owned, value-added processing.''

B. General Definitions

For the purpose of awarding grants under this program, the following definitions and applicable:

(1) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department to whom the authority involved may be delegated.

(2) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(3) *Authorized organizational representative* means the president or

chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

(4) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) *Cash contributions* means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

(6) *College or university* means an educational institution in any State which admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, is legally authorized within such State to provide a program of education beyond secondary education, provides an educational program for which an associate's degree, a bachelor's degree or any other higher degree is awarded, is a public or other nonprofit institution, and is accredited by a nationally recognized accrediting agency or association.

(7) *Core initiative* means the programs encompassing the one-third of The Fund designated for research, education, and extension activities in the following areas: international competitiveness, profitability, and efficiency; environmental stewardship; and rural community enhancement.

(8) *Department* or *USDA* means the United States Department of Agriculture.

(9) *Grant* means the award by the Secretary of funds to a Federal research agency, a national laboratory, a college or university or a research foundation maintained by a college or university, or a private research organization to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in this guidelines.

(10) *Grantee* means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

(11) *Matching* means that portion of allowable project costs not borne by the Federal Government, including the value of in-kind contributions.

(12) *Peer review panel* means a group of experts qualified by training and experience in particular fields to give expert advice on the merit of grant applications in such fields, who evaluate eligible proposals submitted to this program in their personal area(s) of expertise.

(13) *Private research organization* means any non-governmental corporation, partnership, proprietorship, trust, or other organization with an established and demonstrated capacity to perform research or technology transfer which (1) conducts any systematic study directed toward new or fuller knowledge and understanding of the subject studied, or (2) systematically relates or applies the findings of research or scientific experimentation to the application of new approaches to problem solving, technologies, or management practices; and (3) has facilities, qualified personnel, independent funding, and prior projects and accomplishments in research or technology transfer.

(14) *Project director* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

(15) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (2) above.

(16) *Project* means the particular activity within the scope of the program supported by a grant award.

(17) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(18) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

(19) *Smaller institution* means a college or university or a research foundation maintained by a college or university that ranks in the lower one-third of such institutions on the basis of Federal research funds received (excepting monies received under the Fund).

(20) *The Fund* means the Fund for Rural America.

(21) *Third party in-kind contributions* means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefiting and specifically identifiable to a funded project or program.

C. Eligibility

Proposals may be submitted by Federal research agencies, national laboratories, colleges or universities or research foundations maintained by a college or university, or private research organizations. National laboratories include Federal laboratories that are government-owned contractor-operated or government-owned government-operated. If the applicant is a private organization, documentation must be submitted establishing that the private organization has an established and demonstrated capacity to perform research or technology transfer. A programmatic decision on the eligibility status of the private organization will be made based on the information submitted.

D. Available Funds and Award Limitations

Under this program, subject to the availability of funds, the Secretary may award competitive grants, for periods not to exceed five years, for the support of research, education, and extension projects to further the programs of the USDA. The first allocation to the Fund from the U.S. Treasury is $100,000,000 on January 1, 1997. No less than one-third of the amount must be used for competitively awarded research, education, and extension grants. Funds for the competitive grants program are available to the Department for award during a two-year period. The Department expects to award approximately $33,464,400 as grants to meritorious eligible applicants under this request for proposals (RFP), including all funds designated for the Secretary's Initiative. A subsequent RFP for Fund for Rural America (FRA) Centers will be issued for not more than $7,584,000 of FY 1997 funds.

Funds, not to exceed one percent of total available funds, will be used to support the Planning Grants for FRA Centers. Proposals may be submitted for Center Planning Grants up to $25,000 per proposed FRA Center for a maximum project period of six months; and Standard Project Grants up to $600,000 per project for a maximum project period of four years. Note that CSREES will solicit Center grant applications only from those applicants who are successful in receiving a Center Planning Grant. Thus, applicants intending to submit a Center proposal should register that intention by submitting a Center Planning Grant application.

Not less than 15 percent of the funds awarded under this program for research, education, and extension activities under the Core Initiative and the Secretary's Initiative will be used for grants to colleges, universities, or research foundations maintained by a college or university that rank in the lowest one-third of such entities based on Federal research funds received

(excepting monies received under the Fund).

Funds awarded under this RFP may not be used for the construction of a new building or the acquisition, expansion, remodeling, or alteration of an existing building.

E. Matching Funds Requirement

A grant awarded for applied research that is commodity-specific and that is not of national scope must be matched by the recipient with equal funds from a non-Federal source. The matching requirement may be satisfied through allowable costs incurred by the recipient or subrecipient and through third party in-kind contributions.

There is no matching requirement for other grants awarded under this RFP.

Part II. Program Description

A. Purpose of the Program.

The creation of the Fund coincides with fundamental reforms to Federal farm programs. Commodity program deficiency payments are eliminated and replaced with transition payments that are to decline over seven years. These policy changes are likely to have substantial impacts on production agriculture, most apparently by shifting price and income risk management away from government programs to farmers themselves.

At the same time, rural communities are experiencing the effects of transition due to changes in Federal natural resource policy, demographic shifts and increasing globalization. Farming is no longer the dominant source of economic activity in rural America. Most rural jobs are found in manufacturing, service or government. The natural resource base of rural areas often is valued more for its amenities as a place to retire, recreate and reside than it is for extractive industrial development such as timber harvesting and mining as demonstrated by recent population gains in high amenity communities. Changes in international trade policy may have put pressure on low-skill rural jobs from overseas competitors.

Given the dynamic changes and challenges facing agriculture and rural communities in general, The Fund provides a short-term opportunity (3 years) to invest in unique, innovative, high-impact research, education, and extension programs and projects to aid farmers, ranchers, and rural communities during this time of transition to place themselves in a more competitive position for the future. As a new and distinct element in USDA's portfolio of research, education, and extension programs, The Fund can mobilize the agricultural knowledge system to respond to the emerging problems faced by agricultural producers and rural communities during this time of change.

The Fund provides an opportunity to develop a new program to complement USDA's existing portfolio of fundamental and applied research, extension, and higher education programs. The Fund allows, for the first time, the integration of research, education, and extension activities for joint funding. Successful application and adoption of research findings requires explicit coordination with education and extension activities. The Fund will encourage collaboration among educators, research scientists, and extension personnel to jointly identify and solve problems relevant to rural communities. The aim of The Fund is to advance the findings of research into practical applications to address current and emerging problems and to develop new opportunities for the benefit of rural America and the nation.

B. Approach

Approaches to be Encouraged: The Fund will be available for applied, developmental, and adaptive research; technology transfer; extension and related outreach activities; and education. Projects will be awarded for short- and intermediate-term application of existing investments in research and development (R&D) through integration of research, extension, and education activities. The Fund grants program will emphasize biological, physical, and social sciences to address systems-based problems. This requires involvement of affected parties within the system (such as producers, commodity groups, environmental interests, rural communities, and other program beneficiaries); therefore, The Fund will give priority to projects that are designed and proposed by eligible grant recipients in collaboration with institutions, organizations, and communities of interest. Strong partnerships will be critical to leverage and apply research, education, and extension investments to address user needs and solve community-defined problems.

For the purposes of assessing proposals submitted to The Fund, the following priorities will apply:

A *Systems-based* approach takes a broad rather than reductionist view, and thus describes how a set of elements or components are related and how those relationships are relevant to problematic situations. The Fund strongly encourages research, extension, and education activities that explicitly recognize, account for, and enhance the interactions among agricultural, forestry, or agribusiness activities, natural resource or environmental quality, and economic or community well being.

Inter- or multidiciplinary approaches integrate or combine separate discoveries by scientists in different disciplines that can have their greatest potential value realized when related to one another. For example, findings from genetics, plant physiology, crop breeding, and economics are relevant to exploring alternatives for making crops more disease resistant without sacrificing other valued attributes and characteristics. The Fund strongly encourages proposals that integrate the findings or knowledge of multiple disciplines in order to gain the comprehensive understanding needed to solve complex problems.

Leveraging prior investments in research and technology development (R&D) is essential to maximizing the impact of The Fund. Many federal research grant programs support basic research (the creation of new knowledge) or fundamental technology development (the development of prototypes or broadly applicable technologies). Although the private sector also has a relatively large role in applied research and more specific technology development, there are many research findings and new technologies that remain unexploited as keys to resolving natural resource management and other problems of agricultural, forest, and rural systems and that therefore require public support. The Fund strongly encourages proposals that: (1) take advantage of prior R&D investments in adapting those findings to actual production, processing, marketing, environmental, or community systems, and (2) investigate and propose solutions to overcoming barriers to adoption of new or improved technologies, particularly those technologies with the potential to resolve natural resource and environmental quality problems in agricultural and forest systems.

Innovative collaborations and partnerships are those designed to build sustainable solutions to agricultural and rural problems through community participation. Communities may include geographic locations, as well as broad communities of interest such as commodity groups, consumer and environmental interests, agricultural producers, and other research, education, and extension users and beneficiaries. It is increasingly recognized that long-run solutions to

agricultural and community issues require inclusive approaches encompassing diverse individuals and groups affected by the issue and the potential solutions. The Fund strongly encourages proposals that: (1) use collaborations and partnerships among institutions (including Federal agencies, national laboratories, established research organizations, and colleges and universities including community colleges and tribal colleges, as well as state agencies, associations and other interests) to build and enhance effective linkages with local communities, user groups, and their grass-roots leadership, and (2) bring together diverse organizations and interests to derive innovative approaches to problems and forge partnerships for the future.

C. Focus of the Program

The Fund entails two initiatives: (1) The Fund Care Initiative which addresses and links international competitiveness, profitability, and efficiency; environmental stewardship; and rural community enhancement and, (2) The Secretary's Initiative to Ensure a Safe, Competitive, Nutritional and Accessible Food System.

1. The Fund Core Initiative

Proposals will be solicited at three levels: (1) single issue areas that address barriers to solving systemic problems; (2) projects that include approaches at the intersection of two sets of issues; and (3) projects that address issues that relate all of the issue areas. Standard grant proposals may include multinational collaborations. At the fully integrated level, consortia, centers, and other multi-institutional collaborations will be considered.

The Fund will seek project proposals that will provide solutions to problems and advance new opportunities within three objectives that encompass the eight purposes of the enabling legislation (FAIR Act Section 703(c)(2)(A)), including:

(1) *International competitiveness, profitability, and efficiency.* This set of objectives centers on issues and opportunities arising from the changes in farm and trade legislation leading to globalization of markets in food, feed, and fiber, including exposure to risk, barriers to trade, and new market opportunities. In addition, it will address plant and animal systems and new technologies and management practices, particularly those which improve farm efficiency and profitability. This program incorporates the following purposes included in The Fund provisions of the FAIR Act: (1) increase international competitiveness, efficiency, and farm profitability; (2) reduce economic and health risks; (4) develop new crops, new crop uses, and new agricultural applications of biotechnology; (5) enhance animal agriculture resources; (6) preserve plant and animal germplasm. This set of objectives also may contribute to achieving purposes (7) increase economic opportunities in farming and rural communities, and (8) expand locally-owned, value-added processing, of the enabling legislation.

Examples of potential research, education, and extension activities include, but are not limited to:

—Applied and adaptive research to develop new crops for value-added processing, to meet emerging markets, and increase flexibility and responsiveness to risk.

—Research to improve the science base for and compliance with sanitary and phytosanitary standards for meat and other agricultural and food products in international trade; integration of this with analysis of trade opportunities and barriers.

—Development and testing of new curricula to internationalize academic programs in agriculture, natural resources, and related sciences.

—Extension to improve producers' risk management knowledge, skills, and practices.

(2) *Environmental stewardship.* This set of objectives focuses on stewardship of the natural resource base underlying agriculture and forestry, as well as the amenity-based economic activities of rural communities. Several issues in this area include groundwater contamination; wildlife habitat loss; air and water pollution from agricultural activities, including animal waste; and soil erosion and decline in quality. It addresses the following purposes of the legislation: (3) conserve and enhance natural resources; (4) develop new crops, new crop uses, and new agricultural applications of biotechnology; and (6) preserve plant and animal germplasm.

Examples of potential research, education, and extension activities include, but are not limited to:

—Adoptive research to develop new strategies for animal waste management such as utilizing advances in genetics to directly and indirectly (through feeds) reduce environmental contaminants in animal waste.

—Technology development for mass rearing of biological control agents along with grower education.

—Extension on new water-efficient farming practices.

—Economic analysis of the amenity value of forests, wildlife and the biological landscape.

—Utilizing agroecosystems to line agricultural and natural resource education.

(3) *Rural Community enhancement.* This objective seeks to address the problems of outmigration, persistent poverty, unemployment, and low-skill and low-wage jobs in rural communities. Rural community enhancement objectives also include quality of life issues such as the cost and availability of services in rural areas, particularly those that influence health risks. This objective also could be achieved through the development of new crops, new crop uses and locally-owned, valued-added processing as rural economic development strategies in natural resource and agriculturally-based areas. This objective links farm and forest profitability to innovative practices, and crops and crop uses to community advancement. This issue set can address a broad range of purposes in The Fund including (1) increase international competitiveness, efficiency, and farm profitability; (2) reduce economic and health risks; (4) develop new crops, new crop uses, and new agricultural applications of biotechnology; (7) increase economic opportunities in farming and rural communities; and (8) expand locally-owned, value-added processing.

Examples of potential research, education, and extension activities include, but are not limited to:

—Local leadership development.

—Technology transfer models for linking advances in research to job growth, waste management and related challenges.

—Extension approaches to community strategic planning for jobs, resources, services, and economic stability.

—Risk assessment of vulnerabilities of rural, and isolated elderly and poor.

—Innovations in delivery of education and information in rural areas.

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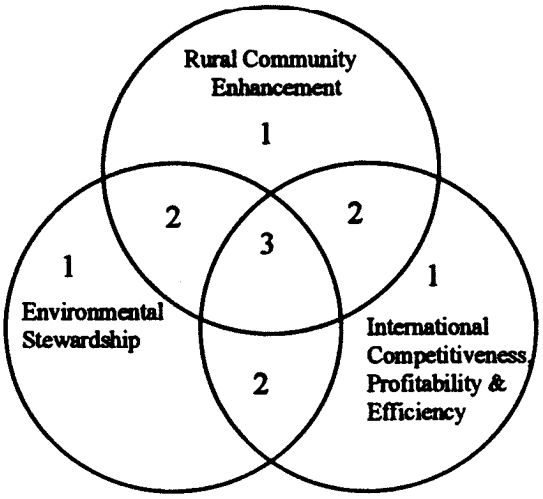

1. Projects or programs which address single issues in order to fill critical gaps in knowledge or practice, apply existing knowledge, and overcome barriers to solving problems in the context of community enhancement, environmental stewardship, and new markets and economic opportunities.

2. Projects, programs, or collaborations which address issues at the intersection of two spheres of problems such as developing new crops which meet new markets and contribute to improved environmental practices.

3. Project, programs, consortia, centers, multi-institutional collaborations which address all facets of a single issue (e.g. animal waste management as it relates to environmental quality, community concerns, sanitary standards and international trade), or multiple issues linked to all three spheres of problems, or broad scanning and application, activities such as technology transfer or development centers.

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Today's most pressing problems and emerging issues contain elements of each of the three constellations of issues to be addressed through The Fund, and are found at the intersections of the three areas. *The essential character of The Fund competitive grants program is defined by emphasis on the intersections of problems.* The greatest challenge to agriculture and rural America is trying to solve problems in the context of related issues. For example, community economic development strategies based on extraction of natural resources come into conflict with environmental conservation. The use of no-till soil conservation methods is suspected to be resulting in vomitoxin in wheat, jeopardizing U.S. wheat exports. Increasing global competitiveness can result in loss of low-skill jobs in rural communities. The Fund competitive grants program will give highest priority to projects which address multiple, contextual issues; it will also support activities to overcome barriers in knowledge or technology which will enable solutions to complex, interrelated issues.

2. The Secretary's Initiative to Ensure a Safe, Competitive, Nutritional and Accessible Food System

Providing food that is nutritious, safe, affordable and accessible is vital to agricultural production, to human health, and to the maintenance of the U.S. economy. Therefore the Secretary of Agriculture has set aside an additional $10 million (approximately $9.4 million net) of the Fund to support research, education, and extension activities that hold exceptional promise to provide needed information and education in the following areas:

1. *Research, technology transfer, and education for small meat and poultry processors to implement HACCP regulations for the control of hazardous pathogens.* In July 1996, the USDA Food Safety and Inspection Service (FSIS) issued final regulations to strengthen food safety controls in meat and poultry processing through a system known as Hazard Analysis and Critical Control Points (HACCP). HACCP requires meat and poultry processors to develop systematic plans for controlling physical, chemical and biological hazards, including microbial hazards in their processing plants. The deadline for compliance for ''small'' processing plants (between 10 to 499 employees) is 1999. The deadline for ''very small'' processing plants (less than 10 employees or with annual sales under $2.5 million) is the year 2000. According to FSIS, about 8,300 small and very small processing plants will be affected. The resources and capabilities necessary for implementation of HACCP are limited by the size of these firms. They will need research-based educational assistance to comply with the regulations in order to continue producing a safe product. Assistance through the Fund will ensure that these firms stay competitive in the meat processing industry and provide farmers

and ranchers with competitive marketing outlets for their livestock.

Examples of potential research, education and extension activities include, but are not limited to:

—Assessment of educational needs of small and very small plants to achieve HACCP implementation.
—Analysis of the hazards unique to small and very small plants including biological, chemical, or physical risks.
—Applied and adaptive research on the control of microbials and related hazards, particularly in small plants.
—Training on monitoring protocols and recordkeeping to trace contamination to its source.
—Development and delivery of guidance and educational materials, methods and programs.

2. *Research, education, and extension to improve the competitive position of small, independent livestock producers in an increasingly concentrated market.* Increasing specialization and rapid growth in the meat packing industry has created a market situation with four large firms slaughtering about 80 percent of the fed cattle in the United States. A similar level of concentration exists in the lamb industry and concentration in the hog industry is increasing. Farmers need access to current market information and the most up-to-date marketing tools to market livestock to their best advantage.

USDA is making changes in its regulatory programs and market price reporting in response to recommendations from the USDA Advisory Committee on Agricultural Concentration. An increased emphasis on review of industry trade practices and competition in the industry is underway. At the same time, the Fund research, education and extension programs will supplement regulatory efforts by providing independent producers with knowledge, skills, and technologies that will enable them to remain profitable and competitive in the livestock market.

Alternative marketing tools and new market outlets are needed to keep small sellers competitive in the livestock industry. Production technologies and management systems appropriate for smaller sellers are needed to identify and enhance the competitive position of small sellers. For example, small sellers may have the ability to meet a growing number of niche markets for specialized meat products. Research, education, and extension is needed to test this potential. Emphasis will be given to the needs of small and moderate-sized livestock producers.

Examples of potential research, education and extension activities include, but are not limited to:

—Research, development and on-farm extension education about low-cost production facilities, such as hoop housing for swine production, combined with management systems and genetics appropriate to these facilities.
—Research and extension on management-intensive grazing systems for beef and dairy production to realize potential for reduced capital and feed costs through greater use of management skills for optimizing labor availability and the natural benefits of grazing pastures.
—Research and extension on integrated crop and livestock systems. Smaller, more diversified farms typically integrate ''economies of scope'' compared to larger, industrialized farms that concentrate on specialization and ''economies of scale.'' Research and extension education to enhance crop and livestock integration in ways that increase efficiencies, reduce costs and prevent environmental pollution can strengthen the competitive position of small producers.
—Economic analysis and market feasibility studies are needed to identify new and expanded market opportunities where small producers would have tools and strategies to meet consumer demand (both domestic and international) for specialized, lean or natural meats and specialized value-added products. Opportunities for cooperative marketing and value-added strategies for meat production and processing could be explored and demonstrated through innovative extension and outreach programs.
—Technology assessment comparing the technological resources of large, specialized producers with the technological needs of small producers to identify and transfer existing technology across all sizes and scales and/or identify the specific research and education needs of each.
—Analysis to evaluate the economic impact of integrator's practices and procedures on contract poultry growers. Greater understanding of the underlying economics in the poultry industry is needed to guide policy development. Research and analysis is needed to examine the growers' investments, length of contracts, exposure to early termination, other risks, operating characteristics (e.g., type of poultry houses, equipment and layout periods), operating costs by type of cost (labor, capital, fuels, utilities, dead bird disposal, etc.), responsibility for costs (grower or integrator), productivity, revenue and contract settlements.
—Development of new research methods and procedures to collect necessary data and measures for reporting of line-of-business profits for meat packers. Detailed financial and statistical data are needed to generate meaningful industry performance indicators, such as profitability, procurement expense, selling expense, research and development costs, and various financial ratios. The collection of appropriate data is needed for economic analysis of industry structure, conduct and performance issues. Cost allocations, revenue allocations, definitions of lines of business, and frequency of reporting are examples of issues needing research.

3. *Research, education and extension to identify and utilize phytonutrients with cancer-prevention potential in the design of functional foods for disease prevention.* Current research on cancer and diet linkages has led to the identification of over 600 plant-derived chemicals (phytochemicals, or phytonutrients) along with non-nutrient plant components with cancer-prevention potential. These include anti-oxidants such as beta carotene and vitamins E and C. Further research is needed to understand the independent and interactive effects of phytonutrients and to identify additional protective components. Genetic engineering techniques make it possible to transfer, enhance or suppress specific genes from one plant species to another for the development of ''functional foods.'' Functional foods refers to any modified food or food ingredient with the potential to provide a health benefit and to prevent against disease. Congress called for greater research efforts to develop new varieties of fruits and vegetables for the prevention of diet-related diseases in the FAIR Act Sec. 1424A, Pilot Research Program to Combine Medical and Agricultural Research.

Following on the research recommendations outlined by the Institute of Medicine of the National Academy of Sciences, examples of potential research, education and extension activities include, but are not limited to:

—Research to create foods that have increased amounts of the beneficial components found in fruits, vegetables and grains.

—Methods to monitor the effectiveness of functional foods on improving health and preventing diseases.
—Research and analysis to support the issuance of regulatory guidelines to ensure the safety and efficacy of functional food products.
—Research on food choice behavior leading to extension and education programs designed to increase the intake of foods rich in phytonutrients.

4. *Research, education and extension to promote increased gleaning and food recovery.* The most commonly referenced information on the loss and waste of food at various stages of the food system is based on 1974 data assembled by the General Accounting Office. This information does not reflect current trends in food production, transport, storage, acquisition or consumption patterns and preferences—all of which have significantly changed over the past two decades.

Examples of research, education and extension activities include, but are not limited to:

—Current information concerning the source(s) of greatest loss in order to facilitate an expansion in gleaning and food recovery activities.
—Research and extension efforts to develop and implement mechanisms such as community-operated canneries or dehydration facilities to extend the ''shelf life'' of recovery food.
—Extension education and outreach to provide food safety training in safe food handling practices for organizations involved in gleaning and food recovery programs.

E. Funding Mechanisms

Two funding mechanisms will be utilized to support projects under this REFP: (1) Standard Program Grants (for The Fund Core Initiative and The Secretary's Initiative), (2) Planning Grants for Fund for Rural America (FRA) Centers (for the Fund Core Initiative only).

Standard Project Grants Opportunities for research, education and extension in the aforementioned areas of the Fund Core Initiative and the Secretary's Initiative have been underscored as a means of providing exceptional promise for solving current and unforeseen problems in rural communities and agriculture. Successful Standard Project Grants will form the basis of The Fund by bringing a broad array of expertise and approaches to individual or collaborative efforts in specified problem areas and/or which relate two or more of the issue areas described in the Fund Core Initiative. Standard Project Grants may involve separate research, education, and extension activities to fill gaps in knowledge or programs which constitute barriers to contextual problem solving. The Fund emphasizes multi-functional, integrated problem solving, however. See ''Preparation of a Proposal'' section for details on Standard Project Grant application requirements.

Planning Grants for a FRA Center CSREES intends to assist eligible applicants as described in Part I.C. of this RFP to establish centers that bring together individuals, institutions, states and/or regions in support of research, education and extension in a collaborative process towards a common goal. An ''FRA Center'' is expected to meet needs in agricultural research, education and extension that cannot be met through funding of separate efforts. It is the intent of CSREES to promote collaboration, open communication, exchange of information and resources, and integration of activities among individuals, institutions, states or regions now working independently into coordinated efforts around common themes that span institutional or geographical boundaries. By supporting Centers, CSREES will bring together a critical mass of individuals and expertise to address problems and issues outlined to be important to rural communities, producers, and the agricultural enterprise. Centers will minimize isolation and over-competitiveness, reduce duplication of effort, enhance multidisciplinary, multifunctional and collaborative efforts, and provide an accessible source of expert information, technology, and education upon which the public can draw.

While FRA Centers should focus on the purposes of the Fund, it is expected that each Center will broadly span functional areas and address problems that bridge research, education and extension. FRA Centers may focus on a defined issue with multiple facets which span the three main goals of the Core Initiative, or may be established to identify opportunities to solve problems through broad strategies such as technology transfer. Funding will be provided to eligible applicants for the management, administration and technical operations of the Center; however, construction, acquisition, expansion, remodeling, or alteration of facilities or buildings and purchase of fixed equipment with Fund grant money is prohibited.

In preparation for a subsequent solicitation of Center applications, CSREES will support a limited number of FRA Center Planning Grants. The purpose of Planning Grants will be to provide up to $25,000 of funds to enable project leaders to bring together the necessary people and technology to plan a Center application. By awarding Center Planning Grants, CSREES will enable a greater number of groups to be at an equal stage of planning when the solicitation for Center grants occurs, allowing for the submission of high quality Center applications. CSREES will solicit Center applications only from those applicants who are successful in receiving a Center Planning Grant. Thus, applicants intending to submit an FRA Center proposal should register that intention by submitting a Center Planning Grant Application. The current RFP Planning Grants will support only the planning stage of a FRA Center. It is expected that Center applications will be solicited approximately 4 to 6 months after Center Planning Grants are awarded. See ''Preparation of a Proposal'' section for Centers Planning Grant application requirements.

Part III. Preparation of a Proposal

A. Program Application Materials

Program application materials will be made available to eligible entities upon request. These materials include information about the purpose of the program, how the program will be conducted, and the required contents of a proposal, as well as the forms needed to prepare and submit grant applications under the program.

To obtain application materials, please contact the Proposal Services Unit, Grants Management Branch; Office of Extramural Programs; USDA/CSREES at (202) 401–5048. When calling the Proposal Services Unit, please indicate that you are requesting forms for the Fund Program. These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov and state that you want a copy of the application materials for the Fiscal Year 1997 Fund for Rural America Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

B. Content of a Proposal

A proposal should contain the following:

1. Cover Page: Complete the ''Application for Funding'', Form CSREES–661, in its entirety.

a. Note that providing a Social Security Number is voluntary, but the number is an integral part of the

CSREES information system and will assist in the processing of the proposal.

b. One copy of the ''Application for Funding'' form must contain the pen-and-ink signatures of the project director(s) and authorized organizational representative for the applicant organization.

c. Note that by signing the ''Application for Funding'' form the applicant is providing the required certifications set forth in 7 CFR Part 3017, as amended by 61 Federal Register 250, January 4, 1996, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in this application package for informational purposes only. It is not necessary to submit the forms to USDA.

2. Table of Contents: For ease in locating information, each proposal must contain a detailed Table of Contents immediately after Form CSREES–661, ''Application for Funding.'' The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

3. Project Summary: The proposal must contain a project summary of 250 words or less on a separate page. This page must include the title of the project and the names of the primary project director(s) and the applicant organization, followed by the summary. The summary should be self-contained, and should describe the overall goals and relevance of the project. The summary should also contain a listing of all organizations involved in the project. The Project Summary should immediately follow the Table of Contents.

4. Project Narrative: All proposals are to be submitted on standard 8½″ x 11″ paper with typing on one side of the page only. In addition, margins must be at least 1″, type must be 12 characters per inch (12 pitch or 10 point) or larger, no more than 6 lines per inch, and there should be no page reductions. If applicable, proposals should include original illustrations (photographs, color prints, etc.) in all copies of the proposal to prevent loss of meaning through poor quality reproduction. Such illustrations are not included in the page limitation for project narratives.

A. Standard Project Narrative

The narrative portion of the Standard Project Proposal is limited to 20 pages of text.

1. *Introduction.* A clear statement of the goal(s) and objective(s) of the project should be included. The problem should be set within the context of work that has come before it and in context of the present-day situation. Summarize the body of knowledge which substantiates the need for the proposed project. Preliminary information pertinent to the proposed work should also be cited.

2. *Rationale and significance.* Substantiate the need for the proposed project. Describe the impact of the project on the end user. Describe the project's specific relationship to the purposes of the Fund, to the purposes of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3107), and to the problem addressed.

3. *Objectives and approach.* Cite and discuss the specific objective(s) to be accomplished under the project. A detailed description of the approach must include:

- Techniques and/or procedures used to carry out the proposed activities and for accomplishing the objectives
- The results expected
- Limitations

4. *Time table.* Tentative schedule for conducting the major steps of the project.

5. *Evaluation.* Provide a plan for assessing and evaluating the accomplishments of the stated objectives during the conduct of the project and describe ways to determine the effectiveness of the end results upon conclusion of the project.

6. *Relationship to partners, communities of interest, and stakeholders.* Describe how the project will involve partners and communities of interest. Describe how and by whom the focus and scope of the project were determined, how partners will be involved during the course of the project, and how end users will be impacted by results. Clearly describe how results and information will be disseminated or transferred to end users. Evidence that arrangements necessary for collaborative partnerships have been discussed with the parties involved and can realistically be expected to come to fruition, or have actually been finalized contingent on an award under this program, must be provided via letters by the parties involved. A letter from a university must be signed by the dean or research director, a representative of the university's central administration, or a higher university official. A letter from a business or industry must be signed by an official who has the authority to commit the resources of the organization. Such letters should be placed immediately following the Project Narrative in the proposal.

7. *Coordination and management plan.* Describe how the project will be coordinated among the various participants and clearly describe the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration.

B. Planning Grants for FRA Centers Narrative

In preparing Center Planning Grants, applicants should include the following information in place of the information identified in Part III.4.A.:

(1) *Center Concept:* Describe the Center to be proposed, how the Center fits within the objectives of the Fund, how the Center bridges research, education and/or extension, how the Center will add value over funding of separate efforts (2 pages maximum).

(2) *Planning Activity:* Describe the activities to be included under the planning portion of the Center activity. Activities could include: meetings of involved parties, forums to gain input from communities of interest, review and assessment of reports of agricultural and rural communities strategic plans and objectives, etc. (2 pages maximum).

(3) *Collaborative Arrangements:* Identify collaborations and provide a full explanation of the nature of the collaborations (1 page maximum).

(4) *Timetable:* Describe how planning activities can be completed in a four- to six-month time period (expected length of time between award of Center Planning Grants and solicitation of Center proposals).

5. Key Personnel: Identify the primary project director and the co-project director(s) and other key personnel required for this project. Include vitae that provide adequate information so that proposal reviewers can make an informed judgment as to their capabilities and experience.

6. Conflict of Interest List: A Conflict of Interest List must be provided for individuals identified as key personnel. Each list should be on a separate page and include alphabetically the full names of the individuals in the following categories: (1) all collaborators on projects within the past five years, including current and planned collaborations; (2) all co-authors on publications within the past five years, including pending publications and submissions; (3) all persons in your field with whom you have had a consulting or financial arrangement within the past five years who would stand to gain by seeing the project funded; and (4) all thesis or postdoctoral advisees/advisors within the past five years.

7. Budget

A. Budget Form: Prepare the budget, Form CSREES–55, in accordance with instructions provided with the form. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project.

The following guidelines should be used in developing your proposal budget(s):

1. *Salaries and Wages.* Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment.

2. *Fringe Benefits.* Funds may be requested for fringe benefit costs if the usual accounting practices of your organization provide that organizational contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project.

3. *Nonexpendable Equipment.* Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost.

In addition, pursuant to Section 716(b) of Pub. L. No. 104–180 (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997), in the case of any equipment or product that may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

4. *Materials and Supplies.* The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs.

5. *Travel.* The type and extent of travel and its relationship to project objectives should be described briefly and justified. If foreign travel is proposed, the country to be visited, the specific purpose of the travel, a brief itinerary, inclusive dates of travel, and estimated cost must be provided for each trip. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR Part 3015.205(b)(4) for further guidance.

6. *Publication Costs/Page Charges.* Anticipated costs of preparing and publishing results of the research being proposed (including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) may be estimated and charged against the grant.

7. *Computer (ADPE) Costs.* Reimbursement for the costs of using specialized facilities (such as a university- or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

8. *All Other Direct Costs.* Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified on a separate sheet of paper attached to Form CSREES–55. This also applies to revised budgets, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, and charges for consulting services. You are encouraged to consult the ''Instructions for Completing Form CSREES–55, Budget,'' of the Application Kit for detailed guidance relating to this budget category.

9. *Indirect Costs.* If requested, the current rate negotiated with the cognizant Federal negotiating agency should be used. Indirect costs may not exceed the negotiated rate. If no rate has been negotiated, a reasonable dollar amount in lieu of indirect costs may be requested, which will be subject to approval by USDA. In that grants supported by The Fund may include numerous activities other than traditional instruction or research, the institution may choose to request rates that are lower than the institution's approved negotiated research or instructional rate. Center Planning Grants may request indirect costs up to a maximum of 8% of Total Federal Funds Awarded for this project.

Applications from colleges and universities that are not submitted through an Office of Sponsored Programs (or equivalent thereto) must provide a statement in the budget narrative verifying that the indirect costs requested are in accordance with institutional policies.

B. Matching Funds (if required)

(1) Proposals must include written verification of commitments of matching support (including both cash and in-kind contributions) from third parties. Written verification means:

(a) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) the dollar amount of the cash donation; and (5) a statement that the donor will pay the cash contribution during the grant period; and

(b) For any third party in-kind contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) the name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) a good faith estimate of the current fair market value of the in-kind contribution; and (5) a statement that the donor will make the contribution during the grant period.

(2) The sources and amount of all matching support from outside the applicant institution should be summarized on a separate page and placed in the proposal immediately following the budget form. All pledge agreements must be placed in the proposal immediately following the summary of matching support.

(3) In order to use a cost as matching support, the cost must be allowable under the program.

c. Budget Narrative: All salaries and wages, nonexpendable equipment, foreign travel, subcontracts, and ''All Other Direct Costs'' for which support is requested must be individually listed (with costs) and justified on a separate sheet of paper and placed immediately behind Form CSREES–55.

8. Current and Pending Support: All proposals must contain Form CSREES–663 listing other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to the possible sponsors will not prejudice proposal review or evaluation by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program.

9. Assurance Statement(s), (Form CSREES–662): A number of situations encountered in the conduct of projects require special assurances, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is expected that some applications submitted in response to these guidelines will involve the following:

1. *Recombinant DNA or RNA Research.* As stated in 7 CFR Part 3015.205(b)(3), all key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised. If your project proposes to use recombinant DNA or RNA techniques, the application must so indicate by checking the ''yes'' box in Block 19 of Form CSREES–661 (''Application for Funding'') and by completing Section A of Form CSREES–662. For applicable proposals recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released.

2. *Animal Care.* Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel identified in a proposal and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 et seq.) and the regulations promulgated thereunder by the Secretary in 9 CFR Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals or activities, you must check the ''yes'' box in Block 20 of Form CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

3. *Protection of Human Subjects.* Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. No. 93–348, as amended, and implementing regulations promulgated by the Department under 7 CFR Part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the ''yes'' box in Block 21 of Form CSREES–661 and complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

10. CRIS Forms AD–416 and AD–417: In order to document projects in the Current Research Information System's (CRIS) data base, CSREES requires the submission of the CRIS Forms AD–416 and AD–417 prior to the release of grant funds. Only one completed copy of each form must be submitted with the original pen-and-ink copy of the proposal. Fields 1, 19, 20, 21, 28, 29, 30 and ''Duration'' should be left blank, as these will be completed by CSREES upon award. CSREES will not release funds for the proposed award until the completed CRIS forms are received; therefore, prompt action on this requirement is essential for the initiation of the project.

11. Compliance with the National Environmental Policy Act (NEPA): As outlined in 7 CFR Part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, ''NEPA Exclusions Form,'' must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and supporting documentation should be included as the last page of the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

Part IV. Submission of a Proposal

A. What to Submit

An original and 15 copies must be submitted. Each copy of each proposal must be stapled in the upper left-hand corner. (DO NOT BIND.) All copies of the proposal must be submitted in one package.

B. Where and When to Submit

Applications for Planning Grants for FRA Centers must be received by close of business on March 24, 1997. Standard Project proposals must be received by close of business on April 28, 1997. Proposals sent by First Class mail must be sent to the following address:

Proposal Services Unit, Grants Management Branch, Office of Extramural Programs, USDA/CSREES, STOP 2245, Washington, DC 20250–2245; Telephone: (202) 401–5048

Note: Hand-delivered proposals or those delivered by overnight express service should be brought to the following address: Proposal Services Unit, Grants Management Branch; Office of Extramural Programs; USDA/CSREES; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, DC 20024. The telephone number is (202) 401–5048.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and this acknowledgment will contain an

identifying proposal number. Once your proposal has been assigned an identification number, please cite that number is future correspondence.

Part V. Selection Process and Evaluation Criteria

A. Selection Process

Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure it meets the requirements as set forth in this RFP. Proposals that meet these requirements will be technically evaluated. Each proposal will be judged on its own merits.

B. Technical Evaluation

The review of applications submitted for funding consideration, will consist of a technical evaluation conducted by CSREES using the competitive peer review process. Standard Project Grant applications will receive a technical evaluation using the following criteria:

1. *Merit*: Scientific, technical, or educational merit: Well defined problem; clearly defined objectives; appropriateness of approach, (including selection of proper approach to address systems, multifaceted, or multidisciplinary problems); demonstrated integration of components (such as research, education and extension components); degree of feasibility; soundness and effectiveness of management plan.

2. *Quality:* Creativity and innovativeness in addressing problem and issues; selection of most appropriate and qualified individuals to address problem; competence and experience of personnel; effective utilization of knowledge base in addressing problem; potential to contribute solutions to stated problem; identified potential for technology transfer and information dissemination.

3. *Relevance:* Proposal advances purposes for Federally supported research, education, and extension of the 1977 National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3107); potential to contribute solutions to priority problems in agriculture; identification and involvement of stakeholders; involvement of communities of interest and stakeholders in the identification of problems set forth in proposal; partnership with those affected by the outcome.

Planning grants for FRA Centers will be judged using the following criteria;

- Merits of the FRA Center concept
- Relevance of the future FRA Center to the purposes of The Fund
- Appropriateness of planning activities in assembling a future FRA Center application
- Competence of identified participants

Because planning grant applications will constitute a preliminary plan for development of a FRA Center, peer review panels will concentrate their evaluation on the merit and relevance of the conceptual framework to achieving the goals of The Fund.

C. Programmatic Relevance Review

The National Agricultural Research, Education and Economics Advisory Board will review collective groups of recommended proposals (based on technical evaluation) to ensure the relevance of the work proposed for funding toward achieving the programmatic goals of the Fund.

Part VI. Supplementary Information

A. Access to Peer Review Information

After final decisions have been announced, CSREES will, upon request, inform the project director of the reasons for its decision on a proposal. Copies of summary reviews, not including the identity of the reviewers, will be made available to respective project directors upon specific request.

B. Grant Awards

1. *General:* Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this request for proposals. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practicable so that project goals may be attained within the funded project period. All funds granted by CSREES under this request for proposals shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, these application guidelines, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (Parts 3015, 3016, and 3019 of 7 CFR).

2. *Organizational Management Information:* Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a grant identified under these application guidelines if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the sponsoring agency as part of the preaward process.

3. *Grant Award Document and Notice of Grant Award:* The grant award document shall include at a minimum the following:

a. Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for proposals;

b. Title of Project;

c. Name(s) and address(es) of project director(s) chosen to direct and control approved activities;

d. Identifying grant number assigned by the Department

e. Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

f. Total amount of Departmental financial assistance approved by the Administrator during the project period;

g. Legal authority(ies) under which the grant is awarded;

h. Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

i. Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

4. *Notice of Grant Award:* The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

C. Use of Funds; Changes

1. *Delegation of Fiscal Responsibility:* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

2. *Changes in Project Plans:*

a. The permissible changes by the grantee, project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the project director(s) are uncertain as to whether a

change complies with this provision, the question must be referred to the CSREES authorized departmental officer (ADO) for a final determination.

b. Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

c. Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the ADO of CSREES prior to effecting such changes.

d. Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Department prior to effecting such transfers.

e. Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approved in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant.

f. Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

D. Other Federal Statutes and Regulations that Apply

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR Part 1.1—USDA implementation of the Freedom of Information Act.

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017, as amended by 61 Federal Register 250, January 4, 1996—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3051—USDA implementation of OMB Circular No. A–133 regarding audits of institutions of higher education and other nonprofit institutions.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

48 CFR Part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulation.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

Done at Washington, D.C., this 24th day of January, 1997.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–2273 Filed 1–28–97; 8:45 am]

BILLING CODE 3410–22–M

federal register

Wednesday
January 29, 1997

Part III

Department of Education

Postsecondary Education Improvement Fund; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.116J]

Fund for the Improvement of Postsecondary Education—Special Focus Competition: Higher Education Collaboration Between the United States and the European Community; Notice Inviting Application for New Awards for Fiscal Year (FY) 1997

Purpose of Program: To provide grants to enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Eligible Applicants: Institutions of higher education or combinations of such institutions and other public and private nonprofit educational institutions and agencies.

Deadline for Transmittal of Applications: May 16, 1997.

Deadline for Intergovernmental Review: July 15, 1997.

Applications Available: January 30, 1997.

Available Funds: $1,150,000.

Estimated Range of Awards: $100,000–$175,000 for three years.

Estimated Average Size of Awards: $160,000 for three years.

Estimated Number of Awards: 5–10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 [except as noted in 34 CFR 630.4(a)(2)], 77, 79, 82, 85, and 86; and (b) the regulations for this program in 34 CFR Part 630.

Priority

Invitational Priority

Under 34 CFR 630.11(b)(1), the Secretary is particularly interested in applications that meet the invitational priority in the next paragraph. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority: Projects that support consortia of institutions of higher education that promote institutional cooperation and student mobility between the United States and the member states of the European Union.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 630.32:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would—

(1) Achieve the purposes of the particular program competition as referenced in 34 CFR 630.11(b)(1);

(2) Address the program priorities for the particular program competition;

(A) Encourage cooperation by consortia of American and European universities in the coordination of curricula, the exchange of students, and the opening of educational opportunities on the two continents; and

(B) Encourage cooperation by consortia of American and European universities in instilling in their respective student bodies greater familiarity with the languages and cultures of the other continent;

(3) Address an important problem or need;

(4) Represent an improvement upon, or important departure from, existing practice;

(5) Involve learner-centered improvements;

(6) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(7) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of availability of other funding sources for the proposed activities.

Methods for Applying Selection Criteria

In accordance with 34 CFR 630.32 the Secretary announces the methods that will be used in applying the selection criteria.

The Secretary gives equal weight to the selection criteria on significance, feasibility, and appropriateness. Within each of these criteria, the Secretary gives equal weight to each of the subcriteria listed under the selection criteria section of this notice. In applying the criteria, the Secretary first analyzes an application in terms of each individual criterion and subcriterion. The Secretary then bases the final judgement of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

FOR APPLICATIONS OR INFORMATION CONTACT: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3100, ROB–3, Washington, D.C. 20202–5175; telephone: (202) 708–5750 between the hours of 8 a.m. and 5 p.m., Eastern Standard Time, Monday through Friday. Individuals may request applications by submitting the name of the competition, their name, and postal mailing address to the e-mail address (FIPSE@ED.GOV). Individuals may obtain the application text from Internet address (http://www.ed.gov/prog-info/FIPSE/). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice

for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1135–1135a–3.

Dated: January 23, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–2195 Filed 1–28–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
January 29, 1997

Part IV

Federal Emergency Management Agency

Hotel and Motel Fire Safety Act; National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: February 28, 1997.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, please see Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the Federal Register on Friday, June 21, 1996, 61 FR 32036–32256.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 61 FR 32032, also on June 21, 1996. If published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. The Hotel and Motel Fire Safety Act of 1990 National Master List is now accessible electronically. The National Master List Web Site is located at:

http://www.usfa/fema.gov/hotel/index.htm

Visitors to this web site will be able to search, view, download and print all or part of the National Master List by State, city, or hotel chain. The site also provides visitors with other information related to the Hotel and Motel Fire Safety Act. Instructions on gaining access to this information are available as the visitor enters the site.

Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices. Each update contains or may contain three categories: ''Additions;'' ''Corrections/changes;'' and ''Deletions.'' For the purposes of the updates, the three categories mean and include the following:

''Additions'' are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

''Corrections/changes'' are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

''Deletions'' are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

Dated: January 23, 1997.

David L. de Courcy,

Acting General Counsel.

The update to the national master list for the month of January 1997 follow:

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST 1/16/97 UPDATE

Index	Property name	PO box/Rt No. and street address	City	State/zip	Phone
Additions					
AZ:					
AZ0264	Homestead Village	18405 N. 27th Ave	Phoenix	AZ 85023	(602) 843–1151
DC:					
DC0063	Embassy Row Hilton	2015 Massachusetts Ave., N.W	Washington	DC 20036	(202) 265–1600
DC0061	Howard Johnson Hotel Suites	1430 Rhode Island Ave., N.W	Washington	DC 20005	(202) 462–7771
DC0062	Wyndham Bristol Hotel	2430 Pennsylvania Ave., NW	Washington	DC 20037	(202) 955–6400
DE:					
DE0038	Best Western Gold Leaf	1400 Highway One	Dewey Beach	DE 19971	(302) 226–1100
MN:					
MN0304	Radisson Inn Saint Paul	411 Minnesota Street	St. Paul	MN 55101	(800) 333–3333
WV:					
WV0247	Expressway Motor Inn	6333 Emerson Ave	Parkersburg	WV 26101	(304) 485–1851
CORRECTIONS/ CHANGES					
AZ:					
AZ0035	Windemere Hotel & Conference Center.	2047 S. State Hwy. 92	Sierra Vista	AZ 85635	(602) 459–5900
MN:					
MN0268	Engesser House	1202 S. Minnesota Ave	St. Peter	MN 56082	(800) 688–2646
OR:					
OR0112	Comfort Inn Lagrande	1711 21st St	Lagrande	OR 97367	(541) 963–3100
OR0180	Lakeview Lodge Motel	301 North 9 Street	Lakeview	OR 97630	(541) 947–2000

THE HOTEL AND MOTEL FIRE SAFETY ACT OF 1990 NATIONAL MASTER LIST 1/16/97 UPDATE—Continued

Index	Property name	PO box/Rt No. and street address	City	State/zip	Phone
OR0056	Parkside Motel	1480 Sherman Ave.	North Bend	OR97459	(541) 756–4124
OR0188	Kah Nee Ta Resort	PO Box K, 100 Main St	Warm Springs	OR 97761	(541) 553–1112
DELETIONS					
WV:					
WV0243	Econo Lodge	3325 US Rt. 60 East	Huntington	WV 25705	(304) 529–1331

[FR Doc. 97–2201 Filed 1–28–97; 8:45 am]

BILLING CODE 6718–08–U

federal register

Wednesday
January 29, 1997

Part V

Department of Energy

10 CFR Part 1008

Privacy Act of 1974; Implementation; Proposed Rule and System of Records; Notice

DEPARTMENT OF ENERGY

10 CFR PART 1008

RIN 1901–AA62

Privacy Act of 1974; Records Maintained on Individuals

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend its Privacy Act regulations by adding a system of records to the list of systems exempted from certain subsections of the Act. Exemption from certain subsections is needed to enable the Office of Inspector General (OIG) to perform its duties and responsibilities.

The new system of records will be entitled ''Allegation-Based Inspections Files of the Office of Inspector General,'' and will allow the Office of Inspector General to perform its functions mandated by statute, regulation or executive order. The system will maintain documents collected in the process of conducting inspections. An Office of Inspector General inspection is an examination of DOE or DOE contractor organizations, programs, projects, functions, or activities. The proposed system of records will cover only the files of inspections predicated on allegations or complaints and which identify subjects and sources of information by name. Inspections performed relate to sensitive allegations of wrongdoing received concerning certain individuals, including agency and DOE contractor employees, or other persons or entities with some relationship to the agency. Allegations include, but are not limited to, abuse of authority; misuse of government time, property, or position; conflicts of interest, or other non-criminal violations of law, rules, or regulations.

DATES: Written comments should be submitted on or before March 31, 1997.

ADDRESS: Written comments should be directed to: GayLa D. Sessoms, Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy, HR–78, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: GayLa D. Sessoms, Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy, HR–78, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–5955; or Jacqueline M. Becker, Office of Inspector General, U.S. Department of Energy, IG–1, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4393; or Abel Lopez, Office of General Counsel, U.S. Department of Energy, GC–80, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–8618.

SUPPLEMENTARY INFORMATION:

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II. Analysis
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I. Background

The Privacy Act of 1974, as amended, at 5 U.S.C. 552a(k) provides that the head of an agency may exempt an agency system of records from certain provisions of the Act. Accordingly, this new system of records is added to the list of systems exempted by the Department of Energy from certain subsections of the Act.

The purpose of this rule is to amend the Department of Energy's Privacy Act regulations to enable the Office of Inspector General to carry out its duties and responsibilities as mandated by the Inspector General Act. The Inspector General is mandated to promote economy, effectiveness, and efficiency within the agency and to prevent and detect fraud, waste and abuse in agency programs and operations.

The Office of Inspections in the Office of Inspector General compiles various files that are collected and maintained to assist in the performance of the functions of the Office of Inspector General. The Office of Inspections performs various inspections and analyses as required by the Office of Inspector General. An inspection by the Office of Inspector General is an examination of a DOE or DOE contractor organization, program, project, function, or activity. The proposed system of records will cover only the files of inspections predicated on allegations or complaints and which identify subjects and sources of information by name. Inspections performed relate to sensitive allegations of wrongdoing received concerning certain individuals, including agency employees, or other persons or entities with some relationship to the agency and DOE contractor. Allegations include, but are not limited to, abuse of authority; misuse of government time, property, or position; conflicts of interest; or other non-criminal violations of law, rules, or regulations.

II. Analysis

The Department of Energy proposes to exempt this system of records from certain provisions of the Privacy Act pursuant to subsections (k)(1) and (k)(2) of the Act. The system of records is exempt from the following subsections:

System Exempted From Certain Provisions of the Act

Under subsections (k)(1) and (k)(2) of the Privacy Act, this system of records is exempt from the following subsections: 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4) (G) and (H), 5 U.S.C. 552a(f).

Exemption (k)(1) provides that the head of an agency may exempt an agency system of records from certain provisions of the Privacy Act if the system of records is subject to section 552(b)(1) of the Freedom of Information Act, 5 U.S.C. 552. That section of the Freedom of Information Act protects from disclosure national security information classified under an Executive Order. The proposed system of records will contain properly classified national security information in the OIG's Allegation-Based Inspections files.

The detailed reasons for exemptions under 5 U.S.C. 552a(k)(1) follow:

(1) 5 U.S.C. 552a(c)(3) requires that, upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. The Department of Energy has programs involving classified material which may be the subject of an Office of Inspections review. The application of these provisions to reviews involving properly classified material could disclose classified information. If this classified material were disclosed, the national security might be compromised.

An example of an issue involving classified security information would be a review of the Department's maintenance or transportation of special nuclear material. Such information could be sought by terrorist groups. Another example would be Departmental work with intelligence information obtained from other Federal agencies.

(2) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to the following: An individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying

an individual who requests access to or amendment of records; and agency procedures relating to access to and amendment of records and the content of information contained in such records. If these provisions were applied to classified material in the Allegation-Based Inspections Files, this could (1) interfere with inspections or inquiries undertaken in connection with national security; (2) disclose the identity of sources kept secret to protect the national security; (3) reveal classified information supplied by these sources to protect the national security; or (4) generally violate the secrecy of the classification.

The Office of Inspections also conducts counterintelligence administrative inquiries and inspections. These reviews are conducted to uncover clandestine relationships, contacts with foreign intelligence services, and other hostile activities. Such actions could be directed against Departmental facilities, property, personnel, programs, and contractors and contractor employees. These hostile activities may be conducted by foreign powers, foreign organizations or their agents. In conducting these reviews, the Office of Inspections collects classified information that if disclosed could compromise Federal counterintelligence activities.

The Office of Inspections may compile information pertaining to foreign energy matters. Disclosure of this information could identify sensitive sources and methods used by the national intelligence community. The Office of Inspections also may compile information regarding classified technology being developed by the Department or other agencies. Disclosure of this information could identify sensitive Departmental projects or operations that could be targets of foreign intelligence service operations.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. The OIG does not create the material it collects and thus has no control over the content of that material.

There are additional reasons why application of this provision could impair inspections and interfere with the statutory responsibilities of the OIG. It is not always possible to detect the relevance or necessity of specific information in the early stages of an inspection or inquiry. This applies when an inspection or inquiry uses properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevancy and necessity of such information can be established. Furthermore, information outside the scope of the OIG's jurisdiction may be helpful in establishing patterns of activities or problems or in developing information that should be referred to other entities. Such information cannot always readily be segregated.

The detailed reasons for the exemptions under 5 U.S.C. 552a (k)(2) follow:

(1) 5 U.S.C. 552a(c)(3) requires that, upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature and purpose of each disclosure of the record, and the name and address of the recipient. To apply this provision would alert those who may be the subjects of an inspection or inquiry pertaining to an allegation or complaint to the existence of the inspection or inquiry, or that they are the subjects of an inspection or inquiry. Release of information to subjects of such an inspection or inquiry could provide the subject with significant information concerning the nature of the inspection or inquiry and could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the inspection or inquiry.

(2) 5 U.S.C. 552a(d), (e)(4)(G) and (H), and (f) relate to the following: An individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to or amendment of records; and agency procedures relating to access to and amendment of records and the content of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: to notify an individual at the individual's request, of the existence of records in an inspection file pertaining to a complaint or allegation about the individual or to grant access to this type of inspection file could (1) interfere with inspections proceedings predicated on a complaint or allegation, (2) constitute an unwarranted invasion of the personal privacy of others, (3) disclose the identity of confidential sources and reveal confidential information supplied by those sources, or (4) disclose inspection techniques and procedures.

In addition, this system is exempt from paragraph (d)(2) of this section, because to require the Office of the Inspector General, to amend information thought to be incorrect, irrelevant or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations attempting to resolve questions of accuracy.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed because:

a. It is not always possible to detect relevance or necessity of specific information in the early stages of an inspection involving a complaint or allegation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected ultimately may be deemed unnecessary. It is only after the information is evaluated or the case is closed that the relevancy and necessity of such information can be established.

c. In any inspection involving a complaint or allegation, the Inspector General may obtain information concerning the violation of laws other than those within the scope of the Inspector General's jurisdiction. In the interest of effective law enforcement, the Inspector General should be able to retain this information to aid in establishing patterns of program violations or criminal activity, and provide leads for those law enforcement agencies charged with enforcing criminal or civil law.

d. In conducting an inspection or inquiry involving a complaint or allegation, information obtained may relate to the main purpose of the inspection or inquiry and to matters under the jurisdiction of another agency. Such information is not normally readily segregable.

III. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354. The Regulatory Flexibility Act requires the preparation of a regulatory flexibility analysis for any proposed rule which is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. The rule will also not have any indirect economic consequences such as changed construction rates.

The Department of Energy certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. No regulatory flexibility analysis has been prepared since there is no significant impact on small entities.

D. Review Under the Paperwork Reduction Act

No new information collection or record keeping requirements are imposed by this proposed rule. As a result, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a new policy action. The proposed rule will not affect States, or the relationship between the Federal Government and the States, in any direct way.

F. Review Under the National Environmental Policy Act

The proposed rulemaking would amend the Department's regulations that implement the Privacy Act at 10 CFR part 1008, ''Records Maintained on Individuals (Privacy Act),'' by adding a new system of records to the list of systems exempted from certain subsections of the Privacy Act. Under the new system of records, the Department would maintain documents collected in inspections conducted by the Office of Inspector General. Implementation of the proposed rule would only affect the manner in which certain files are maintained and made accessible to the public, and would not result in environmental impacts. The Department has therefore determined that the proposed rule is covered under the Categorical Exclusion found at paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, which applies to the amendment or interpretation of existing regulation that does not change the environmental effect of the rule being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

IV. Public Comments

Interested persons are invited to participate by submitting data, views, or comments with respect to the proposed amendments to the Privacy Act regulations of the Department of Energy as set forth in this notice. Those interested in participating should submit three copies of written comments to the individual whose name is listed in the ''ADDRESS'' section of this notice. The regulatory action does not involve any significant issues of fact or law. 43 U.S.C. 7191(c). Therefore, DOE is conducting this proceeding under 5 U.S.C. 553 and has decided that there is no need to schedule a public hearing. All comments received will be available for public inspection in the Department of Energy's Freedom of Information Public Reading Room, 1E–190, the Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. All written comments received by the date listed in the **DATES** section of this notice will be carefully assessed and fully considered before the proposed amendment is published as a final rule. Any information considered to be confidential must be so identified and submitted in writing. Please submit only one copy of such information. The Department of Energy reserves the right to determine the confidential status of information identified as confidential.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the rule should not have substantial impact on the nation's economy or on a large number of individuals or businesses. Therefore, pursuant to the Department of Energy Organization Act, Pub.L. 95–91, the Department of Energy does not plan to hold a public hearing on this proposed rule.

List of Subjects in 10 CFR Part 1008

Privacy.

Issued in Washington, DC on December 31, 1996.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

For the reasons set forth in the preamble, 10 CFR part 1008 is proposed to be amended as set forth below:

PART 1008—RECORDS MAINTAINED ON INDIVIDUALS (PRIVACY ACT)

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 7101, et. seq., Executive Order 12091, (42 FR 46267), 5 U.S.C. 552a.

2. Section 1008.12 is amended by adding paragraphs (b)(2)(ii)(M) and (b)(3)(ii)(O) to read as follows:

§ 1008.12 Exemptions.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(M) Allegation-Based Inspections Files of the Office of Inspector General (DOE–83).

(3) * * *

(ii) * * *

(O) Allegation-Based Inspections Files of the Office of Inspector General (DOE–83).

* * * * *

[FR Doc. 97–2178 Filed 1–28–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Privacy Act of 1974; Establishment of a New System of Records

AGENCY: Department of Energy.

ACTION: Proposed establishment of a system of records.

SUMMARY: The Department of Energy (DOE) proposes to establish a system of records identified as DOE–83 and entitled ''Allegation-Based Inspections Files of the Office of Inspector General.'' The Office of Inspector General's (OIG's) Office of Inspections compiles various files that are collected and maintained to assist in the performance of the functions of the Office of Inspector General (OIG). The Office of Inspections performs various inspections and analyses as required by the OIG. An OIG inspection is an examination of a DOE or DOE contractor organization, program, project, function, or activity.

The proposed system of records will cover only the files of inspections based on allegations or complaints and which identify subjects and sources of information by name. Inspections performed relate to sensitive allegations of wrongdoing received concerning certain individuals, including agency or DOE contractor employees, or other persons or entities with some relationship to the agency. Allegations include, but are not limited to, abuse of authority; misuse of government time, property, or position; conflicts of interest; whistleblower reprisal; or other non-criminal violations of law, rules, or regulations. The proposed system of records will contain work papers, summaries of work papers, memoranda of interviews, interview notes, memoranda to the file, memoranda for the record, information provided by complainants, contractors and other interested parties, and related documentation.

DATES: Comments should be submitted on or before March 31, 1997.

ADDRESS: Written comments should be addressed to GayLa D. Sessoms, Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy, HR–78, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–5955.

FOR FURTHER INFORMATION CONTACT:

Jacqueline M. Becker, Office of Inspector General, U.S. Department of Energy, IG–1, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4393; or

GayLa D. Sessoms, Director, Freedom of Information Act and Privacy Act Division, U.S. Department of Energy, HR–78, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–5955; or

Abel Lopez, Office of General Counsel, U.S. Department of Energy, GC–80, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–8618.

SUPPLEMENTARY INFORMATION: This notice establishes a new system of records entitled ''Allegation-Based Inspections Files of the Office of Inspector General.'' The proposed system of records will cover only the files of inspections based on allegations or complaints and which identify subjects and sources of information by name. The system of records is necessary to perform the functions of the Office of Inspector General. Exemptions to certain provisions of the Privacy Act also are necessary and are being published as a Proposed Rule elsewhere in this issue.

Allegation-Based Inspections Files are maintained to document information concerning allegations or complaints about DOE or DOE contrator programs or operations. The files may contain information about civil or administrative wrongdoing, or about fraud, waste, or mismanagement, or other violations of law or regulation. This information could be the basis for administrative corrective action or referrals to appropriate authorities for civil or criminal investigation or prosecution.

The Allegation-Based Inspections Files contain information that if disclosed would substantially compromise the effectiveness of OIG inspections and inquiries. These files contain information about informants, complainants, contractor personnel, sources of information, witnesses, and inspections personnel. These files also contain the names of persons or agencies who have received certain information contained in these files.

Information in this system of records will be maintained pursuant to certain functions of the Inspector General (IG). Those functions require that the Office of Inspections conduct inspections and analyses of Departmental operations and programs. Exemptions from certain provisions of the Privacy Act are needed to accomplish the inspection function of the Office of Inspector General, to maintain the integrity and confidentiality of personal information, and to prevent disclosure of sensitive or classified information. These exemptions are also needed to prevent subjects of inspections or inquiries from frustrating the inspection or inquiry process and to prevent the disclosure of inspection or inquiry techniques. Finally, these exemptions will enable the IG to fulfill commitments to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering sources or Office of Inspections personnel.

The information that will be exempt includes, but is not limited to, information that identifies program operating procedures, program operation violations, program management violations, and alleged violators. This information will consist of identifying data and information about fraud, waste, or mismanagement. Other exempt data will be documentation, information from informants, complainants, contractor personnel, reports by inspectors, and information that can identify an individual.

When a Privacy Act request for exempt records concerning an individual is received from that individual, that request will be processed under the Freedom of Information Act. This will provide the maximum disclosure of responsive records to the individual.

This system is established pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3. The statute mandates that the Inspector General provide leadership and coordination, and recommend policies for activities designed to promote economy, effectiveness, and efficiency in the administration of DOE programs or operations. The IG is also mandated to conduct activities relating to the prevention or detection of fraud or abuse in these programs or operations.

The maintenance of this system could have a substantial effect on the privacy and other rights of individuals. However, the Department has adopted measures to ensure that maintaining this information will not compromise the privacy and other rights of the affected individuals. The information will be collected only for the stated purpose, access to the information will be restricted, and the information will be maintained in a secured manner.

The text of the system notice is set forth below.

Issued in Washington, DC on December 31, 1996.

Archer L. Durham,

Assistant Secretary for Human Resources and Administration.

DOE–83

SYSTEM NAME:

Allegation-Based Inspections Files of the Office of Inspector General.

SECURITY CLASSIFICATION:

Generally unclassified. Some records may contain classified material.

SYSTEM LOCATION:

Official Allegation-Based Inspections Files are located at:

U.S. Department of Energy, Office of Inspector General, Headquarters, 1000 Independence Avenue, SW, Washington, DC 20585.

U.S. Department of Energy, Office of Inspector General, PO Box 5400, Albuquerque, New Mexico 87115.

U.S. Department of Energy, Office of Inspector General, PO Box 2270, Livermore, California 94550.

U.S. Department of Energy, Office of Inspector General, PO Box 1328, Oak Ridge, Tennessee 37831.

U.S. Department of Energy, Office of Inspector General, PO Box A, Aiken, South Carolina 29808.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the subjects of inspections or inquiries concerning allegations or complaints, individuals who have pertinent knowledge about the inspection or inquiry, individuals authorized to furnish information, confidential informants, or complainants, Office of Inspector General (OIG) inspections personnel, and other individuals involved in these inspections.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inspection files predicated on allegations or complaints and which identify subjects and sources of information by name. Inspections performed relate to sensitive allegations of wrongdoing received concerning certain individuals, including agency employees, or other persons or entities with some relationship to the agency. Allegations include, but are not limited to, abuse of authority; misuse of government time, property, or position; conflicts of interest; whistleblower reprisal; or other non-criminal violations of law, rules, or regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

PURPOSE(S):

Pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, the records in this system are used by the OIG in furtherance of the responsibilities of the Inspector General. These responsibilities include evaluating the effectiveness and efficiency of an operation, determining compliance with laws and regulations, evaluating Departmental program operations and results, preventing and detecting fraud and abuse in such programs and operations, and assuring the investigation of complaints by contractor employees alleging retaliation for making disclosures protected under 10 CFR part 708 and 41 U.S.C. 315, section 6006.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, information contained in the files of the OIG Office of Inspections is collected and maintained in carrying out the duties and responsibilities of the Inspector General to evaluate the effectiveness and efficiency of an operation, determine compliance with laws and regulations, evaluate Departmental program operations and results, and prevent and detect fraud and abuse in such programs and operations. Material compiled is used for prosecutive, civil, or administrative actions.

1. Pursuant to section 552a(b)(7), the Department will provide a record within this system of records for law enforcement purposes at the prior written request of the head (or designee of the head) of a Federal agency or instrumentality. In the event that a record within this system of records, alone or in conjunction with other information, indicates a violation or potential violation of law, regulation, policy or procedure, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the Department, at its initiative, may refer relevant records in the system of records as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order.

2. To disclose information to any source from which additional information is requested, when necessary to obtain information relevant to an IG inspection, the source will be provided such information from the system of records only to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

3. A record from this system of records may be disclosed to a Federal agency, in response to its written request, to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter and the Department deems the disclosure to be compatible with the purpose for which the Department collected the information.

4. For purposes of settlement of claims and the preparation and conduct of litigation, a record in this system of records may be disclosed to: (1) The Department's and its contractors' counsel; (2) other counsel representing the United States Government; (3) individuals or companies represented by Department counsel or counsel to other United States Government agencies; (4) opposing counsel; (5) persons possessing information pertaining to the claims or litigation to the extent necessary to obtain relevant information; and (6) claimants or other parties to the claim or litigation.

5. A record from this system of records may be disclosed in court or administrative proceedings to the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when individuals or entities listed below are parties to, or have an interest in, the litigation or proceedings and the Department determines that such disclosure: (1) Is relevant to, and necessary for, the procceeding; and (2) is compatible with the purpose for which the Department collected the records:

(a) The agency, or any component thereof;

(b) Any employee of the agency in his or her official capacity;

(c) Any employee of the agency in his or her individual capacity where the United States has agreed to represent the employee;

(d) The agency's contractors and contractors' employees where the Department has agreed, or is obligated by statute, to represent such persons; and,

(e) The parties and their representatives in a 10 CFR part 708 and 41 U.S.C. 315, section 6006 proceeding.

6. A record from this system of records may be disclosed to foreign governments or international organizations, in accordance with treaties, international conventions, or executive agreements.

7. A record from this system of records may be disclosed as a routine use to the Office of Management and Budget (OMB) in connection with the

review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

8. A record from this system of records may be disclosed to Department contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties subject to the same limitations applicable to Department officers and employees under the Privacy Act.

9. A record from this system of records may be disclosed to a member of Congress submitting a request involving the individual when the individual has requested assistance from the member with respect to the subject matter of the record, and the member of Congress provides a copy of the individual's request or an other written statement clearly delineating the scope of the individual's request for assistance.

10. A record from this system of records which contains medical and/or psychological information may be disclosed to the physician or mental health professional of any individual submitting a request for access to the record under the Privacy Act of 1974 and the Department's Privacy Act regulations if, in its sole judgment and good faith, the Department believes that disclosure of the medical and/or psychological information directly to the individual who is the subject of the record could have an adverse effect upon that individual, in accordance with the provisions of 5 U.S.C. 552a(f)(3) and applicable Department regulations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, micrographic, and/or electronic media.

RETRIEVABILITY:

By name of individual involved, case number, report title or subject matter.

SAFEGUARDS:

Allegation-Based Inspections Files are maintained within locked containers or areas. Classified information is maintained in locked General Services Administration approved class 6 security containers. Data maintained on personal computers can be accessed only by authorized staff using established procedures.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in DOE Order 1324.2. ''Records Disposition.'' Records within DOE are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate. Automated files are handled and maintained according to approved security processes.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Inspector General for Inspections, U.S. Department of Energy, Room 5B–250, 1000 Independence Avenue, SW, Washington, DC 20585.

NOTIFICATION PROCEDURE:

The Department of Energy has exempted the system from this requirement. See the Exemption section of this notice.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals; individuals and organizations that have pertinent knowledge about a subject individual or corporate entity; those authorized by an individual to furnish information; confidential informants; and Federal Bureau of Investigation (FBI) and other Federal, state, and local entities.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under 5 U.S.C. 552a(k)(1) and (2) of the Privacy Act, this system is exempt from the following subsections:

5 U.S.C. 552a(c)(3)
5 U.S.C. 552a(d)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4) (G) and (H)
5 U.S.C. 552a(f)

Exemption (k)(1) provides that the head of an agency may exempt an agency system of records from certain provisions of the Privacy Act if the system of records is subject to section 552(b)(1) of the Freedom of Information Act, 5 U.S.C. 552. That section of the Freedom of Information Act protects from disclosure properly classified national security information.

The proposed system of records will exempt properly classified national security information in the OIG's Allegation-Based Inspections Files. The detailed reasons for exemptions under 5 U.S.C. 552a(k)(1) follow:

(1) 5 U.S.C. 552a(c)(3) requires that, upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. The Department of Energy has programs involving classified material which may be the subject of Office of Inspections review. The application of this accounting provision to reviews involving properly classified material could reveal classified material. If this information about classified material were disclosed, national security might be compromised.

An example of an issue involving classified material which can affect national security would be a review of the Department's maintenance or transportation of special nuclear material. Such information could be utilized by terrorist groups. Another example would be Departmental work with intelligence information obtained from other Federal agencies.

(2) 5 U.S.C. 552a(d), (e)(4) (G) and (H), and (f) relate to the following: an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to or amendment of records; and agency procedures relating to access to and amendment of records and the content of information contained in such records. If these provisions were applied to classified material in the Allegation-Based Inspections Files, this could (1) interfere with inspections or inquiries undertaken in connection with national security; (2) disclose the identity of sources kept secret to protect national security; (3) reveal classified information kept secret to protect national security supplied by these sources; or (4) generally violate the secrecy of the classification.

For example, the Office of Inspections conducts counterintelligence administrative inquiries and inspections. These reviews are to uncover clandestine relationships, contacts with foreign intelligence services, and other hostile activities. Such actions could be directed against Departmental facilities, property, personnel, programs, and contractors and contractor employees. These hostile activities may be conducted by foreign powers, foreign organizations or their agents. In conducting these reviews, the Office of Inspections collects classified information that if disclosed could compromise Federal counterintelligence activities.

The Office of Inspections may also compile information pertaining to foreign energy matters. Disclosure of this information could identify sensitive sources and methods used by the national intelligence community. The Office of Inspections may compile

information regarding classified technology being developed by the Department or other agencies. Disclosure of this information could identify sensitive Departmental projects or operations that could be targets for foreign intelligence service collection operations.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. The OIG does not create the material it collects and has no control over the content of that material.

There are additional reasons why application of this provision could impair inspections and interfere with the statutory responsibilities of the OIG. It is not always possible to detect the relevance or necessity of specific information in the early stages of an inspection or inquiry. This applies when an inspection or inquiry uses properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevancy and necessity of such information can be established. Furthermore, information outside the scope of the OIG's jurisdiction may be helpful in establishing patterns of activities or problems or in developing information that should be referred to other entities. Such information cannot always readily be segregated.

The detailed reasons for the exemptions under 5 U.S.C. 552a(k)(2) follow:

(1) 5 U.S.C. 552a(c)(3) requires that, upon request, an agency must give an individual named in a record an accounting which reflects the disclosure of the record to other persons or agencies. This accounting must state the date, nature, and purpose of each disclosure of the records and the name and address of the recipient. To apply this provision would alert those who may be the subjects of an inspection or inquiry pertaining to an allegation or complaint to the existence of the inspection or inquiry or that they are the subjects of such an inspection or inquiry. Release of this information could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the inspection or inquiry.

(2) 5 U.S.C. 552a (d), (e)(4) (G) and (H), and (f) relate to the following: an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to or amendment of records; and agency procedures relating to access to and amendment of records and the content of information contained in such records. This system is exempt from the foregoing provisions for the following reasons: to notify an individual, at the individual's request, of the existence of records in an inspection file pertaining to a complaint or allegation about the individual or to grant access to this type of inspection file could (1) interfere with inspections proceedings predicated on a complaint or allegation, (2) constitute an unwarranted invasion of the personal privacy of others, (3) disclose the identity of confidential sources and reveal confidential information supplied by those sources, or (4) disclose inspection techniques and procedures.

In addition, this system is exempt from paragraph (d)(2) of this section, because to require the Office of the Inspector General, to amend information thought to be incorrect, irrelevant or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations attempting to resolve questions of accuracy.

(3) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed because:

a. It is not always possible to detect the relevance or necessity of specific information in the early stages of an inspection involving a complaint or allegation.

b. Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated or the inspection is closed that the relevancy and necessity of such information can be established.

c. In any inspection involving a complaint or allegation, the Inspector General may obtain information concerning the violation of laws other than those within the scope of his jurisdiction. In the interest of effective law enforcement, the Inspector General should be able to retain this information as it may aid in establishing patterns of program violations or criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

d. In conducting an inspection or inquiry involving a complaint or allegation, information obtained may relate to the main purpose of the inspection or inquiry as well as to matters under the jurisdiction of another agency. Such information is not readily segregable.

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Wednesday
January 29, 1997

Part VI

The President

Proclamation 6969—To Modify Application of Duty-Free Treatment of Certain Articles Under the Generalized System of Preferences, and for Other Purposes

Federal Register
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Wednesday, January 29, 1997

Presidential Documents

Title 3—

The President

Proclamation 6969 of January 27, 1997

To Modify Application of Duty-Free Treatment of Certain Articles Under the Generalized System of Preferences, and for Other Purposes

By the President of the United States of America

A Proclamation

1. Pursuant to section 503(c)(1) of the Trade Act of 1974, as amended by Public Law 104-88; 110 Stat. 1755, 1922 (''the 1974 Act''), the President may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 501 of the 1974 Act (19 U.S.C. 2461) with respect to any article. With due regard for the factors set forth in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)), I have determined that it is appropriate to modify the application of duty-free treatment under title V of the 1974 Act for certain articles, including certain goods previously eligible for such treatment that the Customs Service has reclassified.

2. Presidential Proclamation 6961 of November 28, 1996, provided import relief with respect to certain broom corn brooms. For certain subheadings of the Harmonized Tariff Schedule of the United States (HTS) established to carry out this relief, provisions were omitted that would have continued staged reductions of special rates of duty for the goods concerned, previously proclaimed pursuant to section 201(a) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3331(a)). Further, other HTS provisions established by that proclamation contain conflicting dates that complicate their administration. To rectify these omissions and to permit proper administration of the import relief, I have decided that it is necessary and appropriate to continue previously proclaimed duty treatment for the affected goods and to make technical corrections in certain HTS provisions.

3. Section 213 of the Caribbean Basin Economic Recovery Act, as amended (CBERA) (19 U.S.C. 2703), and section 204 of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3203) authorize the President to provide duty-free entry for all eligible articles, and duty reductions for certain other articles, that are the product of any country that has been designated as a beneficiary country under those Acts. To clarify the preferential tariff treatment provided to particular dutiable goods that are the product of beneficiary countries under the CBERA or the ATPA and that are eligible to enter under HTS heading 9802.00.80, which provides for certain goods assembled abroad using components of U.S. origin, I have decided it is appropriate to provide special rates of duty for purposes of the CBERA and of the ATPA in heading 9802.00.80 to apply to such goods.

4. Presidential Proclamation 6948 of October 29, 1996, modified tariff provisions concerning special import quotas for upland cotton. That proclamation also modified certain provisions of the HTS and of prior Presidential proclamations to correct technical errors and to clarify the intent of previously proclaimed modifications. In proclaiming the modifications to the provisions on upland cotton, a conforming change to U.S. note 6 to subchapter III of chapter 99 of the HTS was omitted. Further, the instructions in section A(5)(c) of Annex II to such proclamation concerning modifications to subchapter IV of chapter 99 to the HTS contained an error. To rectify the omission and to correct the error in instructions, I have decided it is necessary and appropriate to modify U.S. note 6 to subchapter III of chapter 99

of the HTS and to amend the instructions in section A(5)(c) of Annex II to Proclamation 6948.

5. Presidential Proclamation 6763 of December 23, 1994, implemented with respect to the United States the trade agreements resulting from the Uruguay Round of multilateral trade negotiations, including Schedule XX—United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994. A conforming change in a subheading in subchapter V of chapter 99 of the HTS was omitted from Proclamation 6763. Further, particular HTS additional U.S. notes implementing tariff-rate quotas (TRQs) for specified agricultural products do not clearly reflect the intended quota periods and the quantities permitted entry during such quota periods and have caused administrative difficulties. In order to make the necessary conforming change and to correct the legal notes controlling such TRQs, I have decided it is necessary and appropriate to modify a subheading in subchapter V of chapter 99 and the legal notes pertaining to such TRQs.

6. Presidential Proclamation 6857 of December 11, 1995, implemented with respect to the United States certain modifications to the HTS, in conformity with the obligations of the United States under the International Convention on the Harmonized Commodity Description and Coding System. The Annex to that proclamation omitted provisions that would have continued previously proclaimed staged reductions of certain rates of duty for the goods concerned, pursuant to section 111(a) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3521(a)). To rectify these omissions, I have decided that it is necessary and appropriate to provide for the continuation of previously proclaimed duty treatment for the affected goods.

7. (a) Section 115 of the URAA (19 U.S.C. 3524) requires the President to (1) obtain advice regarding certain proposed actions; (2) submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate; and (3) consult with those Committees on the proposed action during a subsequent 60-day period to meet the consultation and layover requirements of that section.

(b) Section 604 of the 1974 Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

8. I have decided that it is appropriate to authorize the United States Trade Representative (USTR) to perform the functions specified in section 115 of the URAA and certain functions under section 604 of the 1974 Act.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to section 503 of the 1974 Act, section 213 of the CBERA, section 204 of the ATPA, section 604 of the 1974 Act, and section 301 of title 3, United States Code, do proclaim that:

(1) In order to reflect in the HTS various technical and conforming changes, to correct provisions of Proclamations 6948 and 6961, and to modify the special duty rates subcolumn for heading 9802.00.80, the HTS and Proclamations 6948 and 6961 are each modified as set forth in Annexes I and II to this proclamation.

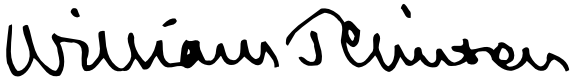
(2) In order to modify the application of duty-free treatment under title V of the 1974 Act for certain articles, the HTS is modified as set forth in Annex III to this proclamation.

(3) The modifications to the HTS made by Annexes I, II, and III to this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates set forth in such Annexes and during the time periods specified therein.

(4) The USTR is authorized to perform the functions vested in the President under section 115 of the URAA. In addition, the USTR is authorized to exercise the authority provided to the President under section 604 of the 1974 Act to embody rectifications, technical or conforming changes, or similar modifications in the HTS.

(5) Any provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

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



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ANNEX I

TECHNICAL AND CONFORMING CHANGES TO THE
HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Section A. Subchapter III of chapter 99 of the HTS is modified on the dates set forth in this section as follows:

(1). Effective on November 29, 1996--

(a). by deleting from the immediately superior text to subheadings 9903.96.01, 9903.96.03 and 9903.96.05, each such text beginning "If entered", the expression "November 29," and by inserting in lieu thereof "November 28,";

(b). by inserting in the Rates of Duty 1-Special subcolumn for subheading 9903.96.01 the duty rate "6.4¢ each (CA)";

(c). by deleting from the article description for subheading 9903.96.03 the expression "general note to" and by inserting in lieu thereof "general note 12 to";

(d). by inserting in the Rates of Duty 1-Special subcolumn for subheading 9903.96.03 the duty rate "3.2¢ each (CA)";

(e). by inserting in alphabetical sequence in the parentheses following the duty rate "Free" in the Rates of Duty 1-Special subcolumn for subheading 9903.96.05 the symbol "CA";

(f). by inserting in the Rates of Duty 1-Special subcolumn for subheading 9903.96.14 the duty rate "6.4% (CA)";

(g). by inserting in the Rates of Duty 1-Special subcolumn for subheading 9903.96.16 the duty rate "3.2% (CA)";

(h). by inserting in the Rates of Duty 1-Special subcolumn for subheadings 9903.96.15, 9903.96.17 and 9903.96.19 the duty rate "See 9906.96.01-9906.96.02 (MX)";

(i). by inserting in alphabetical sequence in the parentheses following the duty rate "Free" in the Rates of Duty 1-Special subcolumn for subheading 9903.96.18 the symbol "CA"; and

(j). by deleting from the article description for subheading 9905.96.03 the expression "9603.10.50, or 9603.10.60" and inserting in lieu thereof "9903.96.01, 9903.96.03, 9903.96.14 or 9903.96.16".

(2). Effective on January 1, 1997--

(a). by deleting from the Rates of Duty 1-Special subcolumn for subheading 9903.96.01 the duty rate "6.4¢ each (CA)" and by inserting in lieu thereof "3.2¢ each (CA)"; and

(b). by deleting from the Rates of Duty 1-Special subcolumn for subheading 9903.96.14 the duty rate "6.4% (CA)" and by inserting in lieu thereof "3.2% (CA)".

(3). Effective on January 1, 1998--

(a). by deleting from the Rates of Duty 1-Special subcolumn for subheading 9903.96.03 the duty rate "3.2¢ each (CA)" and by inserting in alphabetical sequence in the parentheses following the duty rate "Free" in such subcolumn for such subheading the symbol "CA"; and

(b). by deleting from the Rates of Duty 1-Special subcolumn for subheading 9903.96.16 the duty rate "3.2% (CA)" and by inserting in alphabetical sequence in the parentheses following the duty rate "Free" in such subcolumn for such subheading the symbol "CA".

(4). Effective on January 1, 2005, by deleting from the Rates of Duty 1-Special subcolumn for subheading 9603.10.60 the rate of duty of "16% (MX)" and by inserting in alphabetical sequence in the parentheses following the duty rate "Free" in such subcolumn for such subheading the symbol "MX".

(5). Section B(2)(i) of the annex to Proclamation 6961 of November 28, 1996, is modified by deleting the expression "See 9906.96.01-9906.96.02 (MX) (s)" and inserting in lieu thereof "See 9906.96.01-9906.96.02 (MX)".

Section B. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1992, the Rates of Duty 1-Special subcolumn for heading 9802.00.80 in subchapter II of chapter 98 of the HTS is modified by inserting, in the parenthetical expression following the duty rate "A duty upon the full value of the imported article, less the cost or value of such products of the United States (see U.S. note 4 of this subchapter)" the symbols "E, J," immediately after "C,".

ANNEX I (continued)

Section C. Effective on or after October 31, 1996, U.S. note 6 to subchapter III of chapter 99 of the HTS is modified by deleting "subheadings 9903.52.00 through 9903.52.20" and by inserting "subheadings 9903.52.00 through 9903.52.26" in lieu thereof.

Section D. Effective on or after January 1, 1995, the article description for HTS subheading 9905.40.18 is modified by deleting "4012.90.20" and by inserting "4012.90.45" in lieu thereof.

Section E. For subheading 0602.90.90 of the HTS, the Rates of Duty 1-General subcolumn is modified on January 1 of each year in the table below by deleting the existing rate of duty and by inserting in lieu thereof the rate of duty specified in the table below for such year.

HTS Subheading	1997	1998	1999	2000
0602.90.90	6.2%	5.7%	5.2%	4.8%

Section F. Section A(5)(c) of Annex II to Presidential Proclamation 6948 of October 29, 1996, is modified by deleting the following text from such section: ' "Boneless (other than processed), provided for in subheadings 0201.30.80 or 0202.30.80 and the product of the European Community (Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom):" and'.

ANNEX II

MODIFICATIONS TO LEGAL NOTES ESTABLISHING
TARIFF-RATE QUOTAS IN THE TARIFF SCHEDULE

Section A. Additional U.S. note 2 to chapter 12 of the HTS is modified on the dates set forth in this section as follows:

(1). Effective on January 1, 1997, by deleting such additional U.S. note 2 and by inserting the following new additional U.S. note in lieu thereof:

"2. The aggregate quantity of peanuts entered under subheadings 1202.10.40, 1202.20.40, 2008.11.25 and 2008.11.45 during the 12-month period from April 1 in any year through the following March 31, inclusive, shall not exceed the quantities specified herein (articles the product of Mexico shall not be permitted or included under this quantitative limitation and no such articles shall be classifiable therein).

	Quantity (metric tons)	
	Entered in the 12-month period from April 1, 1996, through the following March 31, 1997, inclusive	Entered in the 12-month period from April 1, 1997, through the following March 31, 1998, inclusive
Argentina	29,853	33,365
Other countries or areas	5,043	6,033

For the purposes of this note, imports of peanuts in the shell shall be charged against the quantities in this note on the basis of 75 kilograms for each 100 kilograms of peanuts in the shell.

Imports of peanuts under this note are subject to such regulations as may be issued by the United States Trade Representative or other designated agency."

(2). Effective on January 1, 1998, such additional U.S. note 2 is modified by:

(a). deleting "Entered in the 12-month period from April 1, 1996, through March 31, 1997, inclusive" and inserting "Entered in the 12-month period from April 1, 1997, through March 31, 1998, inclusive" in lieu thereof;

(b). deleting "Entered in the 12-month period from April 1, 1997, through March 31, 1998, inclusive" and inserting "Entered in the 12-month period from April 1, 1998, through March 31, 1999, inclusive" in lieu thereof;

(c). deleting the quantities "29,853" and "33,365" set out opposite "Argentina" and inserting "33,365" and "36,877" in lieu thereof; and

(d). deleting the quantities "5,043" and "6,033" set out opposite "Other countries or areas" and inserting "6,033" and "7,024" in lieu thereof.

(3). Effective on January 1, 1999, such additional U.S. note 2 is modified by:

(a). deleting "Entered in the 12-month period from April 1, 1997, through March 31, 1998, inclusive" and inserting "Entered in the 12-month period from April 1, 1998, through March 31, 1999, inclusive" in lieu thereof;

(b). deleting "Entered in the 12-month period from April 1, 1998, through March 31, 1999, inclusive" and inserting "Entered in the 12-month period from April 1, 1999, through March 31, 2000, inclusive" in lieu thereof;

(c). deleting the quantities "33,365" and "36,877" set out opposite "Argentina" and inserting "36,877" and "40,388" in lieu thereof; and

(d). deleting the quantities "6,033" and "7,024" set out opposite "Other countries or areas" and inserting "7,024" and "8,015" in lieu thereof.

(4). Effective on January 1, 2000, such additional U.S. note 2 is modified by:

(a). deleting "Entered in the 12-month period from April 1, 1998, through March 31, 1999, inclusive" and inserting "Entered in the 12-month period from April 1, 1999, through March 31, 2000, inclusive" in lieu thereof;

(b). deleting "Entered in the 12-month period from April 1, 1999, through March 31, 2000, inclusive" and inserting "Entered in the 12-month period from April 1, 2000, through March 31, 2001, inclusive" in lieu thereof;

(c). deleting the quantity "36,877" and "40,388" set out opposite Argentina and inserting "40,388" and "43,901" in lieu thereof; and

(d). deleting the quantity "7,024" and "8,015" set out opposite Other countries or areas and inserting "8,015" and "9,005" in lieu thereof.

ANNEX II (continued)

A(5). Effective on January 1, 2001, such additional U.S. note 2 is modified by:

(a). deleting "Entered in the 12-month period from April 1, 1998, through March 31, 1999, inclusive" and inserting "Entered in the 12-month period from April 1 in any year through March 31, inclusive" in lieu thereof;

(b). deleting "Entered in the 12-month period from April 1, 1999, through March 31, 2000, inclusive" from such note;

(c). deleting the quantities "40,388" and "43,901" set out opposite "Argentina" and inserting "43,901" in lieu thereof; and

(d). deleting the quantities "8,015" and "9,005" set out opposite "Other countries or areas" and inserting "9,005" in lieu thereof.

Section B. Additional U.S. note 5 to chapter 52 of the HTS is modified on the dates set forth in this section as follows:

(1). Effective on January 1, 1997, such additional U.S. note 5 is modified by deleting the phrase "during the 12-month period beginning September 20 in any year shall not exceed 10,837.45 metric tons" and by inserting "during the 12-month periods from September 20, 1996, through September 19, 1997, inclusive, shall not exceed 10,837.45 metric tons or from September 20, 1997, through September 19, 1998, inclusive, shall not exceed 13,179.85 metric tons" in lieu thereof.

(2). Effective on January 1, 1998, such additional U.S. note 5 is modified by deleting the phrase "during the 12-month periods from September 20, 1996, through September 19, 1997, inclusive, shall not exceed 10,837.45 metric tons or from September 20, 1997, through September 19, 1998, inclusive, shall not exceed 13,179.85 metric tons" and by inserting "during the 12-month periods from September 20, 1997, through September 19, 1998, inclusive, shall not exceed 13,179.85 metric tons or from September 20, 1998, through September 19, 1999, inclusive, shall not exceed 15,522.25 metric tons" in lieu thereof.

(3). Effective on January 1, 1999, such additional U.S. note 5 is modified by deleting the phrase "during the 12-month periods from September 20, 1997, through September 19, 1998, inclusive, shall not exceed 13,179.85 metric tons or from September 20, 1998, through September 19, 1999, inclusive, shall not exceed 15,522.25 metric tons" and inserting "during the 12-month periods from September 20, 1998, through September 19, 1999, inclusive, shall not exceed 15,522.25 metric tons or from September 20, 1999, through September 19, 2000, inclusive, shall not exceed 17,864.65 metric tons" in lieu thereof.

(4). Effective on January 1, 2000, such additional U.S. note 5 is modified by deleting the phrase "during the 12-month periods from September 20, 1998, through September 19, 1999, inclusive, shall not exceed 15,522.25 metric tons or from September 20, 1999, through September 19, 2000, inclusive, shall not exceed 17,864.65 metric tons" and by inserting "during the 12-month periods from September 20, 1999, through September 19, 2000, inclusive, shall not exceed 17,864.65 metric tons or from September 20, 2000, through September 19, 2001, inclusive, shall not exceed 20,207.05 metric tons" in lieu thereof.

(5). Effective on January 1, 2001, such additional U.S. note 5 is modified by deleting the phrase "during the 12-month periods from September 20, 1999, through September 19, 2000, inclusive, shall not exceed 17,864.65 metric tons or from September 20, 2000, through September 19, 2001, inclusive, shall not exceed 20,207.05 metric tons" and by inserting "during the 12-month period from September 20 in any year through September 19, inclusive, shall not exceed 20,207.05 metric tons" in lieu thereof.

Section C. Additional U.S. note 6 to chapter 52 of the HTS is modified on the dates set forth in this section as follows:

(1). Effective on January 1, 1997, such additional U.S. note 6 is modified by deleting the phrase "during the 12-month period beginning August 1 in any year shall not exceed 1,000.0 metric tons" and by inserting "during the 12-month periods from August 1, 1996, through July 31, 1997, inclusive, shall not exceed 1,000.0 metric tons or from August 1, 1997, through July 31, 1998, inclusive, shall not exceed 1,100.0 metric tons" in lieu thereof.

ANNEX II (continued)

C(2). Effective on January 1, 1998, such additional U.S. note 6 is modified by deleting the phrase "during the 12-month periods from August 1, 1996, through July 31, 1997, inclusive, shall not exceed 1,000.0 metric tons or from August 1, 1997, through July 31, 1998, inclusive, shall not exceed 1,100.0 metric tons" and by inserting "during the 12-month periods from August 1, 1997, through July 31, 1998, inclusive, shall not exceed 1,100.0 metric tons or from August 1, 1998, through July 31, 1999, inclusive, shall not exceed 1,200.0 metric tons" in lieu thereof.

(3). Effective on January 1, 1999, such additional U.S. note 6 is modified by deleting the phrase "during the 12-month periods from August 1, 1997, through July 31, 1998, inclusive, shall not exceed 1,100.0 metric tons or from August 1, 1998, through July 31, 1999, inclusive, shall not exceed 1,200.0 metric tons" and by inserting "during the 12-month periods from August 1, 1998, through July 31, 1999, inclusive, shall not exceed 1,200.0 metric tons or from August 1, 1999, through July 31, 2000, inclusive, shall not exceed 1,300.0 metric tons" in lieu thereof.

(4). Effective on January 1, 2000, such additional U.S. note 6 is modified by deleting the phrase "during the 12-month periods from August 1, 1998, through July 31, 1999, inclusive, shall not exceed 1,200.0 metric tons or from August 1, 1999, through July 31, 2000, inclusive, shall not exceed 1,300.0 metric tons" and by inserting "during the 12-month periods from August 1, 1999, through July 31, 2000, inclusive, shall not exceed 1,300.0 metric tons or from August 1, 2000, through July 31, 2001, inclusive, shall not exceed 1,400.0 metric tons" in lieu thereof.

(5). Effective on January 1, 2001, such additional U.S. note 6 is modified by deleting the phrase "during the 12-month periods from August 1, 1999, through July 31, 2000, inclusive, shall not exceed 1,300.0 metric tons or from August 1, 2000, through July 31, 2001, inclusive, shall not exceed 1,400.0 metric tons" and by inserting "during the 12-month period from August 1 in any year through July 31, inclusive, shall not exceed 1,400.0 metric tons" in lieu thereof.

Section D. Additional U.S. note 7 to chapter 52 of the HTS is modified on the dates set forth in this section as follows:

(1). Effective on January 1, 1997, such additional U.S. note 7 is modified by deleting the phrase "during the 12-month period beginning August 1 in any year shall not exceed 6,460.0 metric tons" and by inserting "during the 12-month periods from August 1, 1996, through July 31, 1997, inclusive, shall not exceed 6,460.0 metric tons or from August 1, 1997, through July 31, 1998, inclusive, shall not exceed 7,720.0 metric tons" in lieu thereof.

(2). Effective on January 1, 1998, such additional U.S. note 7 is modified by deleting the phrase "during the 12-month periods from August 1, 1996, through July 31, 1997, inclusive, shall not exceed 6,460.0 metric tons or from August 1, 1997, through July 31, 1998, inclusive, shall not exceed 7,720.0 metric tons" and by inserting "during the 12-month periods from August 1, 1997, through July 31, 1998, inclusive, shall not exceed 7,720.0 metric tons or from August 1, 1998, through July 31, 1999, inclusive, shall not exceed 8,980.0 metric tons" in lieu thereof.

(3). Effective on January 1, 1999, such additional U.S. note 7 is modified by deleting the phrase "during the 12-month periods from August 1, 1997, through July 31, 1998, inclusive, shall not exceed 7,720.0 metric tons or from August 1, 1998, through July 31, 1999, inclusive, shall not exceed 8,980.0 metric tons" and by inserting "during the 12-month periods from August 1, 1998, through July 31, 1999, inclusive, shall not exceed 8,980.0 metric tons or from August 1, 1999, through July 31, 2000, inclusive, shall not exceed 10,240.0 metric tons" in lieu thereof.

ANNEX II (continued)

D(4). Effective on January 1, 2000, such additional U.S. note 7 is modified by deleting the phrase "during the 12-month periods from August 1, 1998, through July 31, 1999, inclusive, shall not exceed 8,980.0 metric tons or from August 1, 1999, through July 31, 2000, inclusive, shall not exceed 10,240.0 metric tons" and by inserting "during the 12-month periods from August 1, 1999, through July 31, 2000, inclusive, shall not exceed 10,240.0 metric tons or from August 1, 2000, through July 31, 2001, inclusive, shall not exceed 11,500.0 metric tons" in lieu thereof.

(5). Effective on January 1, 2001, such additional U.S. note 7 is modified by deleting the phrase "during the 12-month periods from August 1, 1999, through July 31, 2000, inclusive, shall not exceed 10,240.0 metric tons or from August 1, 2000, through July 31, 2001, inclusive, shall not exceed 11,500.0 metric tons" and by inserting "during the 12-month period from August 1 in any year through July 31, inclusive, shall not exceed 11,500.0 metric tons" in lieu thereof.

Section E. Additional U.S. note 8 to chapter 52 of the HTS is modified on the dates set forth in this section as follows:

(1). Effective on January 1, 1997, such additional U.S. note 8 is modified by deleting the phrase "during the 12-month period beginning August 1 in any year shall not exceed 28,420.0 metric tons" and by inserting "during the 12-month periods from August 1, 1996, through July 31, 1997, inclusive, shall not exceed 28,420.0 metric tons or from August 1, 1997, through July 31, 1998, inclusive, shall not exceed 31,340.0 metric tons" in lieu thereof.

(2). Effective on January 1, 1998, such additional U.S. note 8 is modified by deleting the phrase "during the 12-month periods from August 1, 1996, through July 31, 1997, inclusive, shall not exceed 28,420.0 metric tons or from August 1, 1997, through July 31, 1998, inclusive, shall not exceed 31,340.0 metric tons" and by inserting "during the 12-month periods from August 1, 1997, through July 31, 1998, inclusive, shall not exceed 31,340.0 metric tons or from August 1, 1998, through July 31, 1999, inclusive, shall not exceed 34,260.0 metric tons" in lieu thereof.

(3). Effective on January 1, 1999, such additional U.S. note 8 is modified by deleting the phrase "during the 12-month periods from August 1, 1997, through July 31, 1998, inclusive, shall not exceed 31,340.0 metric tons or from August 1, 1998, through July 31, 1999, inclusive, shall not exceed 34,260.0 metric tons" and by inserting "during the 12-month periods from August 1, 1998, through July 31, 1999, inclusive, shall not exceed 34,260.0 metric tons or from August 1, 1999, through July 31, 2000, inclusive, shall not exceed 37,180.0 metric tons" in lieu thereof.

(4). Effective on January 1, 2000, such additional U.S. note 8 is modified by deleting the phrase "during the 12-month periods from August 1, 1998, through July 31, 1999, inclusive, shall not exceed 34,260.0 metric tons or from August 1, 1999, through July 31, 2000, inclusive, shall not exceed 37,180.0 metric tons" and by inserting "during the 12-month periods from August 1, 1999, through July 31, 2000, inclusive, shall not exceed 37,180.0 metric tons or from August 1, 2000, through July 31, 2001, inclusive, shall not exceed 40,100.0 metric tons" in lieu thereof.

(5). Effective on January 1, 2001, such additional U.S. note 8 is modified by deleting the phrase "during the 12-month periods from August 1, 1999, through July 31, 2000, inclusive, shall not exceed 37,180.0 metric tons or from August 1, 2000, through July 31, 2001, inclusive, shall not exceed 40,100.0 metric tons" and by inserting "during the 12-month period from August 1 in any year through July 31, inclusive, shall not exceed 40,100.0 metric tons" in lieu thereof.

ANNEX II (continued)

Section F. Additional U.S. note 9 to chapter 52 of the HTS is modified on the dates set forth in this section as follows:

(1). Effective on January 1, 1997, such additional U.S. note 9 is modified by deleting the phrase "during the 12-month period from September 20 in any year shall not exceed 2,135,427 kilograms" and by inserting "during the 12-month periods from September 20, 1996, through September 19, 1997, inclusive, shall not exceed 2,135,427 kilograms or from September 20, 1997, through September 19, 1998, inclusive, shall not exceed 2,435,427 kilograms" in lieu thereof.

(2). Effective on January 1, 1998, such additional U.S. note 9 is modified by deleting the phrase "during the 12-month periods from September 20, 1996, through September 19, 1997, inclusive, shall not exceed 2,135,427 kilograms or from September 20, 1997, through September 19, 1998, inclusive, shall not exceed 2,435,427 kilograms" and by inserting "during the 12-month periods from September 20, 1997, through September 19, 1998, inclusive, shall not exceed 2,435,427 kilograms or from September 20, 1998, through September 19, 1999, inclusive, shall not exceed 2,735,427 kilograms" in lieu thereof.

(3). Effective on January 1, 1999, such additional U.S. note 9 is modified by deleting the phrase "during the 12-month periods from September 20, 1997, through September 19, 1998, inclusive, shall not exceed 2,435,427 kilograms or from September 20, 1998, through September 19, 1999, inclusive, shall not exceed 2,735,427 kilograms" and by inserting "during the 12-month periods from September 20, 1998, through September 19, 1999, inclusive, shall not exceed 2,735,427 kilograms or from September 20, 1999, through September 19, 2000, inclusive, shall not exceed 3,035,427 kilograms" in lieu thereof.

(4). Effective on January 1, 2000, such additional U.S. note 9 is modified by deleting the phrase "during the 12-month periods from September 20, 1998, through September 19, 1999, inclusive, shall not exceed 2,735,427 kilograms or from September 20, 1999, through September 19, 2000, inclusive, shall not exceed 3,035,427 kilograms" and by inserting "during the 12-month periods from September 20, 1999, through September 19, 2000, inclusive, shall not exceed 3,035,427 kilograms or from September 20, 2000, through September 19, 2001, inclusive, shall not exceed 3,335,427 kilograms" in lieu thereof.

(5). Effective on January 1, 2001, such additional U.S. note 9 is modified by deleting the phrase "during the 12-month periods from September 20, 1999, through September 19, 2000, inclusive, shall not exceed 3,035,427 kilograms or from September 20, 2000, through September 19, 2001, inclusive, shall not exceed 3,335,427 kilograms" and by inserting "during the 12-month period from September 20 in any year through September 19, inclusive, shall not exceed 3,335,427 kilograms" in lieu thereof.

Section G. Additional U.S. note 10 to chapter 52 of the HTS is modified on the dates set forth in this section as follows:

(1). Effective on January 1, 1997, such additional U.S. note 10 is modified by deleting the phrase "during the 12-month period from September 11 in any year shall not exceed 1,300 kilograms" and by inserting "during the 12-month periods from September 11, 1996, through September 10, 1997, inclusive, shall not exceed 1,300 kilograms or from September 11, 1997, through September 10, 1998, inclusive, shall not exceed 1,600 kilograms" in lieu thereof.

(2). Effective on January 1, 1998, such additional U.S. note 10 is modified by deleting the phrase "during the 12-month periods from September 11, 1996, through September 10, 1997, inclusive, shall not exceed 1,300 kilograms or from September 11, 1997, through September 10, 1998, inclusive, shall not exceed 1,600 kilograms" and by inserting "during the 12-month periods from September 11, 1997, through September 10, 1998, inclusive, shall not exceed 1,600 kilograms or from September 11, 1998, through September 10, 1999, inclusive, shall not exceed 1,900 kilograms" in lieu thereof.

ANNEX II (continued)

G(3). Effective on January 1, 1999, such additional U.S. note 10 is modified by deleting the phrase "during the 12-month periods from September 11, 1997, through September 10, 1998, inclusive, shall not exceed 1,600 kilograms or from September 11, 1998, through September 10, 1999, inclusive, shall not exceed 1,900 kilograms" and by inserting "during the 12-month periods from September 11, 1998, through September 10, 1999, inclusive, shall not exceed 1,900 kilograms or from September 11, 1999, through September 10, 2000, inclusive, shall not exceed 2,200 kilograms" in lieu thereof.

(4). Effective on January 1, 2000, such additional U.S. note 10 is modified by deleting the phrase "during the 12-month periods from September 11, 1998, through September 10, 1999, inclusive, shall not exceed 1,900 kilograms or from September 11, 1999, through September 10, 2000, inclusive, shall not exceed 2,200 kilograms" and by inserting "during the 12-month periods from September 11, 1999, through September 10, 2000, inclusive, shall not exceed 2,200 kilograms or from September 11, 2000, through September 10, 2001, inclusive, shall not exceed 2,500 kilograms" in lieu thereof.

(5). Effective on January 1, 2001, such additional U.S. note 10 is modified by deleting the phrase "during the 12-month periods from September 11, 1999, through September 10, 2000, inclusive, shall not exceed 2,200 kilograms or from September 11, 2000, through September 10, 2001, inclusive, shall not exceed 2,500 kilograms" and by inserting "during the 12-month period from September 11 in any year through September 10, inclusive, shall not exceed 2,500 kilograms" in lieu thereof.

ANNEX III

MODIFICATIONS OF TARIFF TREATMENT UNDER
THE GENERALIZED SYSTEM OF PREFERENCES IN THE
HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Section A. Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after the fifteenth day after the date of publication of this proclamation in the *Federal Register*.

(1) General note 4(d) to the Harmonized Tariff Schedule of the United States (HTS) is modified by:

(a) deleting the following HTS subheadings and the country set out opposite such subheadings:

1301.90.40	Brazil	4417.00.60	Brazil
2515.11.00	Brazil	4802.60.10	Brazil
4412.14.25	Brazil	5607.29.00	Brazil
4412.19.10	Brazil	7614.10.50	Brazil
4412.92.10	Brazil	8409.91.30	Brazil
4412.99.15	Brazil	8546.10.00	Brazil

(b) deleting the country set out opposite the following HTS subheadings:

2849.10.00	Brazil	2929.10.15	Brazil
2903.19.10	Brazil	2933.40.30	Brazil
2909.44.00	Brazil	3812.20.10	Brazil
2917.32.00	Brazil	4109.00.70	Brazil
2921.12.00	Brazil	4412.13.25	Brazil

(2) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, delete the symbol "A*" and insert an "A" in lieu thereof.

1301.90.40	4412.92.10	5607.29.00
2515.11.00	4412.99.15	7614.10.50
4412.14.25	4417.00.60	8409.91.30
4412.19.10	4802.60.10	8546.10.00

(3) HTS subheading 6117.80.90 is superseded by the following, with bracketed matter included to assist in the understanding of the proclaimed modification:

	[Other made up clothing...:]			
	[Other accessories:]			
	"Other:			
6117.80.85	Headbands, ponytail holders and similar articles.....	15.2%	Free (A,E*,IL) 1.5% (CA) 5.2% (MX)	90%
6117.80.95	Other.....	15.2%	Free (E*,IL) 1.5% (CA) 5.2% (MX)	90%"

(4) HTS subheading 6217.10.90 is superseded by the following, with bracketed matter included to assist in the understanding of the proclaimed modification:

	[Other made up clothing...:]			
	[Accessories:]			
	"Other:			
6217.10.85	Headbands, ponytail holders and similar articles.....	15.2%	Free (A,E*,IL) 1.5% (CA) 5.2% (MX)	90%
6217.10.95	Other.....	15.2%	Free (E*,IL) 1.5% (CA) 5.2% (MX)	90%"

ANNEX III (continued)

Section B. Goods that were previously classifiable in HTS subheadings 6117.80.90 and 6217.10.90 (as superseded by subdivisions (3) and (4) of section A of this Annex) as headbands, ponytail holders and similar articles shall be eligible, effective with respect to (1) goods entered, or withdrawn from warehouse for consumption, on or after June 13, 1996, and before the effective date of section A of this annex, and (2) for which customs entries were unliquidated or under protest or pending other administrative action pursuant to Customs Service rules or regulations, for the duty-free treatment under the Generalized System of Preferences set forth in the special rates of duty subcolumn for HTS subheading 6117.80.85 or 6217.10.85, as appropriate, which would have applied if such goods were entered on the effective date of section A of this annex, provided that the importer requests such duty-free treatment within 60 days of the date of publication of this proclamation in the ***Federal Register*** and supplies such information as Customs officials may request.

Section C. For the following HTS subheadings, the Rates of Duty 1-General subcolumn is modified on January 1 of each year in the table below by deleting the existing rate of duty and by inserting in lieu thereof the rate of duty specified in the table below for such year.

HTS Subheading	1998	1999	2000	2001	2002	2003	2004
6117.80.85	15.1%	15%	15%	14.9%	14.8%	14.7%	14.6%
6117.80.95	15.1%	15%	15%	14.9%	14.8%	14.7%	14.6%
6217.10.85	15.1%	15%	15%	14.9%	14.8%	14.7%	14.6%
6217.10.95	15.1%	15%	15%	14.9%	14.8%	14.7%	14.6%

Section D. For HTS subheadings 6117.80.85, 6117.80.95, 6217.10.85 and 6217.10.95, the Rates of Duty 1-Special subcolumn is modified on January 1, 1998, by deleting "1.5% (CA)" and by inserting, in alphabetical sequence, the symbol "CA" in the parentheses following "Free" rate of duty in such subcolumn.

Section E. For the following HTS subheadings, the Rates of Duty 1-Special subcolumn is modified on January 1 of each year in the table below by deleting the existing rate of duty preceding the symbol "MX" in parentheses and inserting in lieu thereof the rate of duty specified in the table below for such year.

HTS Subheading	1998	1999
6117.80.85	2.6%	Free
6117.80.95	2.6%	Free
6217.10.85	2.6%	Free
6217.10.95	2.6%	Free

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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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Federal Aviation Administration

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