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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 62, No. 73
Wednesday, April 16, 1997

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

RIN 3206–AH67

Excepted Service—Schedule A Authority for Temporary Organizations

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is amending the Schedule A excepted service appointing authority agencies use to fill positions in temporary organizations. These regulations delete the GS–15 grade level limitation to permit agencies to make such appointments also to Senior Level positions.

EFFECTIVE DATE: May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Sylvia Cole on (202) 606–0830, TDD (202) 606–0023, or FAX (202) 606–2329.

SUPPLEMENTARY INFORMATION: The Schedule A authority for appointing staff in temporary organizations was established in 1979. It permits agencies to fill positions on the staffs of temporary boards and commissions established by law or Executive order for specified periods not to exceed 4 years. The authority also permits appointments in temporary organizations established within existing agencies to perform work outside the agency's continuing responsibilities.

Currently appointments can only be made at GS–15 and below because when the authority was established, there was no need to include positions above that level. The executive assignment system used to cover positions at grades GS–16, 17 and 18, and individuals were appointed at those levels through non-competitive limited executive assignments.

The Federal Employees Pay Comparability Act of 1990 abolished grades GS–16, 17, and 18, and the executive assignment system, and established the Senior Level system. Unlike the executive assignment system, the Senior Level system does not provide for noncompetitive time-limited appointments.

On December 2, 1996, (61 FR 63762), we proposed regulations to remove the GS–15 grade level limitation to permit agencies to make appointments to Senior Level positions. We received one comment from an agency in support of the proposed regulations and are adopting them as final regulations with no change.

Editorial Changes

As part of the final regulations we are also making the following editorial changes: In 5 CFR 213.103(a) we are deleting the sentence that refers to Schedule A, B, and C appointing authorities being published in the Federal Personnel Manual. The Federal Personnel Manual was abolished on December 31, 1994.

We are adding a clarifying sentence to 5 CFR 213.104. This section sets forth special provisions for making temporary, intermittent, or seasonal appointments under Schedules A, B, and C. The existing regulations provide that if the appointments are for 1 year or less, by definition, they are temporary appointments and are subject to certain restrictions. Because of numerous questions from agencies, we are adding a statement to clarify that agencies continue to have the ability to make appointments with time limits of *more than 1 year.* These time-limited appointments are not subject to the restrictions for temporary appointments.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations apply only to appointment procedures used to appoint certain employees in Federal agencies.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 213

Government employees, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 213 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; and 38 U.S.C. 4301 et seq.

§ 213.103 [Amended]

2. In section 213.103, the last sentence of paragraph (a) is removed.

3. In section 213.104, paragraph (a)(1) is revised to read as follows:

§ 213.104 Special provisions for temporary, intermittent, or seasonal appointments in Schedule A, B, or C.

(a) * * *

(1) *Temporary appointments*, unless otherwise specified in a particular Schedule A, B, or C exception, are made for a specified period not to exceed 1 year and are subject to the time limits in paragraph (b) of this section. Time-limited appointments made for more than 1 year are not considered to be temporary appointments, and are not subject to these time limits.

* * * * *

4. In section 213.3199, the first sentence of paragraph (a) and the introductory text in paragraph (b) are revised to read as follows:

§ 213.3199 Temporary organizations.

(a) Positions on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. * * *

(b) Positions on the staffs of temporary organizations within continuing agencies when all of the following conditions are met: * * *

* * * * *

[FR Doc. 97–9847 Filed 4–15–97; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 245, and 248

[INS No. 1688–95]

RIN 1115–AD89

Waiver of the Two-Year Home Country Physical Presence Requirement for Certain Foreign Medical Graduates

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the Immigration and Naturalization Service (Service) regulations relating to waivers of the 2-year home country residence and physical presence requirement (2-year requirement) pursuant to a request by a State Department of Public Health, or its equivalent. These waivers are intended to ease health care shortages by allowing certain foreign medical graduates (FMGs) to work at health care facilities located in geographic areas designated by the Secretary of Health and Human Services (HHS) as having a shortage of health care professionals (HHS-designated shortage areas).

EFFECTIVE DATE: April 16, 1997.

FOR FURTHER INFORMATION CONTACT: Sophia Cox, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: On October 25, 1994, Congress enacted the Immigration and Nationality Technical Corrections Act of 1994 (the 1994 Technical Corrections Act), Pub. L. 103–416, 108 Stat. 4310, 4319–4320. Section 220 of the 1994 Technical Corrections Act amended section 212(e) of the Immigration and Nationality Act (Act) to allow a State Department of Public Health (or its equivalent), in addition to a United States Government agency, to request the United States Information Agency (USIA) to recommend a waiver of the 2-year requirement for a J–1 foreign medical graduate.

Section 220(c) of the 1994 Technical Corrections act provides that the statutory amendments to section 212(e) of the Act enabling a State Department of Public Health to submit waiver requests directly to USIA for FMGs practicing medicine in HHS-designated shortage areas applies to aliens admitted to the United States in J–1 status, or who acquire J–1 status after admission before, on, or after the enactment, and before June 1, 1996. In an interim rule, published in the **Federal Register** on May 18, 1995, at 60 FR 26676, the Service interpreted this provision to mean that any FMG who entered the United States in J–1 status or acquired J–1 status upon arrival to pursue graduate medical education or training before June 1, 1996, is eligible to apply for a waiver based on a request by a State Departments of Public Health, and for subsequent change of nonimmigrant status to H–1B, if eligible.

In addition, section 220 of the 1994 Technical Corrections Act created a new section 214(k) of the Act, setting forth the terms and conditions imposed on State-based waivers. These terms and conditions include, among other things, that the FMG:

(1) Submit to USIA a ''no objection'' statement from the government of his or her home country, if he or she is contractually obligated to return to that country;

(2) Demonstrate an offer of full-time employment at a health care facility located in an HHS-designated shortage area and agree to begin employment within 90 days of receiving the waiver approval;

(3) Agree to practice medicine for that health care facility for at least 3 years; and

(4) Agree to practice medicine only in HHS-designated shortage areas during this 3-year period. The statute limits the number of State-based waivers that can be granted to each State to 20 per fiscal year.

In addition to stipulating the terms and conditions attached to the waiver, section 214(k) of the Act also eased the change of status restrictions under section 248(2) of the Act, to allow an FMG who has been granted a State-based waiver to apply for change of status from J–1 to H–1B, provided the remaining eligibility criteria have been satisfied. By implication, under this statutory provision, the FMG's dependent spouse and children, if otherwise eligible, may apply for change of nonimmigrant status from J–2 to H–4. This provision, however, does not ease the annual numerical limitations imposed on the H–1B specialty occupation worker category under section 214(g)(1)(A) of the Act. Therefore, the Service would be statutorily precluded from according H–1B status to an EMG if the annual numerical limitation imposed on the issuance of H–1B visas under section 214(g)(1)(A) of the Act were reached.

As explained in the preamble to the interim rule, the FMG must fulfill the required 3-year employment contract as an H–1B. This provision is consistent with Congress' intent that the FMG fulfill the 3-year employment contract before applying for change of status to L or another H nonimmigrant classification, for adjustment of status or for an immigrant visa. In addition, this regulatory provision allows the Service to maintain control over the FMG's stay in the United States by ensuring compliance with the conditions imposed on the waiver under section 214(k) of the Act.

An FMG who does not fulfill the terms and conditions of the waiver imposed under section 214(k) of the Act again becomes subject to the 2-year requirement under section 212(e) of the Act. Consequently, the FMG becomes ineligible to apply for an immigrant visa, permanent residence, or for any other change of nonimmigrant status until he or she has resided and been physically present in his or her country of nationality or last residence for an aggregate of 2 years following departure from the United States. The Attorney General may excuse early termination of the FMG's employment due to extenuating circumstances, which may include hardship to the FMG or the closure of the facility. In order to avoid resubjecting himself or herself to the 2-year requirement, the FMG, however, should be prepared to submit an employment contract for the balance of the required 3-year period with another health care facility in an HHS-designated shortage area.

On May 18, 1995, the Service published an interim rule in the **Federal Register** implementing section 220 of the Technical Corrections Act, and requested public comment. *See* 60 FR 26676–26683. The public comment period ended on July 17, 1995. The Service received only two comments in response to the interim rule. In general, one commenter stated the rule is helpful to FMGs, and the other stated that it is contrary to immigration reform efforts.

Discussion of Comments

One commeter supported the waiver policy as promulgated in the Service's interim rule, and noted that the newly created State-based waivers are helpful to FMGs in psychiatric residencies, because they will assist our country in meeting it needs for psychiatrists and other medical specialists in work force shortage areas.

The other commenter disagreed with the Service's interim rule, on the ground that it was contrary to the recommendations of the U.S. Commission on Immigration Reform to curtail the levels of immigration to the United States. The Service lacks discretion in this regard. The purpose of the interim rule was solely to implement section 220 of the Technical

Corrections Act, in a manner consistent with Congressional intent. The rule was based on an express statutory amendment that expanded eligible 212(e) waiver recommending agencies to include State Departments of Public Health, and incorporates statutory terms and conditions to the waiver so as to ensure that the public receives the intended benefit.

Developments Following Publication of the Interim Rule

In the preamble to the interm rule, the Service clarified the terms ''FMG,'' ''State Department of Public Health, or its equivalent,'' and ''HHS-designated shortage area,'' and discussed a broad range of issues. Subsequent to the publication of the interim rule, there were policy developments concerning what constitutes an ''HHS-designated shortage area,'' and what is meant by the term ''contractually obligated,'' for purposes of determining whether a ''no objection'' statement is required. The Service does not believe it is necessary to incorporate these policy developments into the final regulation itself. In addition, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) redesignated section 214(k) of the Act as section 214(l) of the Act, and amended the 1994 Technical Corrections Act to extend the State-based waiver program and impose terms and conditions on FMGs granted waivers of the 2-year requirement based on a request by a U.S. Government agency. The developments that occurred following publication of the Service's interim rule are summarized immediately below.

HHS-Designated Shortage Areas

Section 214(l)(1)(C) of the Act provides that the FMG must agree to practice medicine in accordance with section 214(l)(2) of the Act for at least 3 years ''only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals.'' In the preamble to the interim rule, the Service stated that it is bound by HHS' determination of what constitutes an HHS-designated shortage area.

Subsequent to the publication Service's interim rule, HHS published a notice in the **Federal Register** on September 19, 1995, at 60 FR 48515–48516. This notice stated that both Health Professional Shortage Areas (HPSAs) and Medically Underserved Areas/Medically Underserved Populations (MUAs/MUPs) are geographic areas having a shortage of health care professionals for purposes of State-based waivers of the 2-year requirement. As section 214(l)(1)(C) of the Act assigns authority to HHS to designate health care shortage areas, HPSAs and MUAs/MUPs shall be deemed designated shortage areas for purposes of State-based waivers under section 212(e) of the Act until such a time as HHS further revises or amends the designations.

No Objection Statements

On the issue of ''no objection'' statements, the Service noted that section 214(l)(1)(A) of the Act provides that ''in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of such country [must] furnish [ ] the Director of the United States Information Agency with a statement in writing that it has no objection to the waiver.'' This requirement applies only in the case of State-based waivers under section 212(e) of the Act.

Following the publication of the Service's interim rule, USIA clarified the term ''otherwise contractually obligated'' for purposes of determining when a ''no objection'' statement is required in its final rule implementing section 220 of the Technical Corrections Act. *See* 60 FR 53122–53126 (October 12, 1995). The USIA's final rule provides that the term ''otherwise contractually obligated * * *'' refers only to those FMGs whose medical education or training has been funded by the government of his or her home country. Since the Service may not grant a section 212(e) waiver without the favorable recommendation of the USIA, the Service defers to the USIA with respect to the proper interpretation of the term ''otherwise contractually obligated * * *'' in determining when a ''no objection statement'' is required.

IIRIRA Changes

On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208. Section 622(a) of IIRIRA amended section 220(c) of the 1994 Technical Corrections Act to extend the State-based waiver program until June 1, 2002. Therefore, the regulation will be amended at 8 CFR 212.7(c)(9)(i)(A) to reflect the FMGs who entered the United States in J–1 status or acquired J–1 status upon arrival before June 1, 2002, may apply for a waiver based on a request by a State Department of Public Health. This amendment is made to ensure the regulation reflects the correct expiration date of the State-based waiver program. This change became effective on September 30, 1996, the IIRIRA enactment date. Because section 622(a) of IIRIRA amended section 220(c) of the 1994 Technical Corrections Act, the enabling legislation, there effectively has not been any interruption in the State-based waiver program. *See Trichilo* v. *Secretary of Health and Human Services,* 825 F.2d 702, 705–07 (2d Cir. 1987).

In addition, sections 622 (b) and (c) of IIRIRA amended section 214(k) of the Act to impose new terms and conditions on waivers of the 2-year requirement granted to FMGs based on a request by an interested Federal agency. These statutory changes will be implemented in a separate rulemaking. While sections 622 (b) and (c) of IIRIRA 96 Act amended section 214(k) of the Act, section (a)(3)(A) of the 96 Act subsequently redesignated section 214(k) of the Act as section 214(l) of the Act, which unintentionally resulted in two different sections 214(l) of the Act, as section 625 of the 96 Act also created a section 214(l) of the Act to impose new terms and conditions on F–1 academic students. The Service is seeking a technical correction to resolve this discrepancy.

Effective Date of Final Rule

Since the two technical changes resulting from section 622 of the 96 Act, relating to the extension of the eligibility date from June 1, 1996, to June 1, 2002, and the redesignation of section 214(k) of the Act as section 214(l) of the Act, became effective on September 30, 1996, the Service feels that ''good cause'' exists under 5 U.S.C. 553(d)(3) to have this final rule become effective upon date of publication in the **Federal Register**.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this final rule will not have a significant economic impact on a substantial number of small entities because only 20 waivers are authorized per State annually to FMGs under Pub. L. 103–416.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the

Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This final rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section (6)(a)(3)(A).

Executive Order 12988

This final rule meets the applicable standards set forth in sections (3)(a) and (3)(b)(2) of E.O. 12988.

Executive Order 12612

This regulation will not have a substantial direct effect on the States, on the relationships between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. It merely implements section 220 of Pub. L. 103–416, which grants the States, in limited circumstances, the authority to submit requests for waiver recommendations to the Director of the USIA on behalf of certain foreign medical graduates. Therefore, in accordance with E.O. 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

8 CFR Part 212

Administration practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR parts 212, 245 and 248, which was published at 60 FR 26676–26683 on May 18, 1995, is adopted as a final rule with the following changes:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

§ 212.7 [Amended]

2. Section 212.7 is amended in the fifth sentence of paragraph (c)(9) introductory text, by revising the reference to ''section 214(k) of the Act'' to read: ''section 214(l) of the Act (as redesignated by section 671(a)(3)(A) of Pub. L. 104–208)''.

3. Section 212.7 is amended by revising the reference to ''section 214(k)'' to read: ''section 214(l)'' wherever it appears in the following paragraphs:

a. Paragraph (c)(9)(iv); and

b. Paragraph (c)(9)(vi).

3. Section 212.7 is amended by revising the reference to ''section 214(k)(1)(B)'' to read: ''section 214(l)(1)(B)'' in the first sentence of the unnumbered paragraph immediately after paragraph (c)(9)(iv).

4. Section 212.7 is amended by revising paragraph (c)(9)(i)(A), to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

* * * * *

(c) * * *

(9) * * *

(i) * * *

(A) They were admitted to the United States under section 101(a)(15)(J) of the Act, or acquired J nonimmigrant status before June 1, 2002, to pursue graduate medical education or training in the United States.

* * * * *

Dated: February 26, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–9831 Filed 4–15–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214 and 274a

[INS 1653–94]

RIN 1115–AC72

Foreign Employers Seeking To Employ Temporary Alien Workers in the H, O, and P Nonimmigrant Classifications

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (the Service) regulations by precluding foreign employers from directly filing petitions for O and P nonimmigrant aliens. Prospective foreign employers seeking to file petitions in these two classifications will be required to use the services of an agent in the United States. This rule also amends the H nonimmigrant regulations by requiring foreign employers seeking to petition for H–2B nonimmigrant aliens to use the services of an agent in the United States, removes the current reference to the term ''representative'' from the H–2B regulations, expands the definition of an agent with respect to the H, O, and P nonimmigrant classifications, and codifies existing policy with regard to the filing of nonimmigrant petitions for certain professional athletes. This rule brings the H, O, and P nonimmigrant regulations into conformity with the employer sanctions provisions of section 274A of the Immigration and Nationality Act (''the Act'').

EFFECTIVE DATE: April 16, 1997.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION: The employer sanctions provisions of the Immigration and Nationality Act were created by the Immigration Reform and Control Act of 1986, Public Law 99–603, and are codified in section 274A of the Act, as amended. Among other things, section 274A of the Act contains provisions making it unlawful for a person or entity to hire an alien knowing the alien is not entitled to engage in employment. Section 274A of the Act also requires the employer to examine certain documentation in order to verify an individual's identity and eligibility to work in the United States. Civil and criminal penalties may be imposed upon employers who do not

comply with the employer sanctions provisions of section 274A of the Act.

The Service has historically allowed foreign employers, *i.e.*, those employers not amenable to service of process in the United States, to file petitions for certain nonimmigrant workers. However, in order for the Service to enforce the sanctions provisions of section 274A of the Act in an effective manner, an employer must have a legal presence in the United States for purposes of service of legal process. It has, therefore, been determined that, as in the case of the H nonimmigrant classification, foreign employers should be precluded from directly filing petitions for aliens in the O and P nonimmigrant classifications. Foreign employers will still be able to petition for an O and P nonimmigrant alien but will be required to use a United States agent to file the petition on their behalf. Through their United States agent, foreign employers will be responsible for complying with the provisions of section 274A of the Act. In order to accommodate the needs of those businesses which will use these classifications and, at the same time, effectively enforce the sanctions provisions, the definition of an agent found at 8 CFR 214.2(h)(2)(i)(F), 8 CFR 214.2(o)(2)(iv)(E), and 8 CFR 214.2(p)(2)(iv)(E) has been amended by this rule to include business representatives.

On August 15, 1994, the Service published in the **Federal Register** at 59 FR 41843 a proposed rule with requests for comments. Interested persons were invited to submit written comments on or before October 14, 1994.

Discussion of Comments on the Proposed Rule

The Service received four comments on the proposed rule. Each of the comments contained a discussion of a number of different issues. As a result, the number of issues discussed exceeds the total number of comments received. The commenters offered a number of suggestions and improvements for the final rule, some of which have been adopted. The following discussion addresses the issues raised by the specific issue proposed in the rule, provides the Service's position on the issues, and indicates the revisions adopted in the final rule based on the public's comments.

Proposal Number One—The ''30-Day Rule''

The Service proposed to codify its longstanding policy with respect to sports teams which allows professional athletes traded between teams to play for the new team prior to the filing of the appropriate petition, provided that the new team files a petition with the Service within 30 days of the trade. Since a single athlete can have a significant impact on a team's performance, and recognizing the length of time required to process certain I–129 petitions, the Service adopted a policy allowing players to play for the new team prior to the filing of the petition. Since no negative comments were received with respect to this particular proposal, the proposal will be adopted in the final rule.

One commenter did, however, note that 8 CFR 214.2(h)(6)(vii), which discusses the ''30-day rule,'' contained a typographical error. The error has been corrected in this final rule.

The Service has clarified the rule in two respects. First, the references in the proposed rule to ''U.S.-based'' organizations have been deleted, in order to avoid any confusion regarding whether a team employing a professional athlete pursuant to an H–2B, O–1, or P–1 petition is ''U.S.-based'' or not (for example, a minor league affiliate in the United States of a foreign major league franchise). The final rule applies to any trade of an alien professional athlete in an H–2B, O–1, or P–1 classification. Second, the Service has clarified that an athlete to whom the final rule applies will remain in status, and will be eligible to be employed by the team to which the athlete is traded, after the expiration of 30 days following the trade until the Form I–129 is adjudicated, as long as the new petition is filed within the 30-day time frame provided by the rule.

Proposal Number Two—Foreign Employers Filing O, P, and H–2B Petitions

All four of the commenters opposed the Service's proposal that foreign employers be precluded from filing O and P nonimmigrant petitions directly with the Service. The commenters raised seven separate arguments as to why the Service should not implement this proposal. All four of the commenters, however, suggested that, if the proposal was adopted, the term ''established U.S. agent'' contained in the proposed rule should be modified or altered to allow business entities in the United States which are related to the foreign employer to be classified as an agent and have the ability to file the petition.

After a careful review of the comments received from the public concerning this proposal, the Service will adopt without change the proposal contained in the proposed rule with respect to the filing of O or P petitions by foreign employers. It is the opinion of the Service that the adoption of the proposal does nothing more than reflect the intent of Congress when the employer sanction provisions were enacted. The purpose of this rule is to prevent abuses of section 274A of the Act by ensuring that the Service can enforce the section 274A provisions against foreign employers to the same extent as it currently does against domestic employers.

However, the Service will accept the suggestion of the commenters and modify the regulatory definition of the term ''United States agent'' to accommodate the needs of foreign employers. The final rule clarifies the definition of ''United States agent'' by specifying that general legal agency relationships satisfy this requirement. The proposed rule failed to state clearly that foreign employers are permitted to use an ''agent'' as commonly defined in legal agency terms. The final rule recognizes that the term ''agent'' need not be limited to a person or entity who has entered into a formal agency agreement with the employer. An ''agent'' can be someone authorized to represent and act for another, to transact business for another, or manage another's affairs. A United States agent filing a petition on behalf of a foreign employer must, however, be authorized by the foreign employer to file the petition, and to accept service of process in the United States in any proceeding under section 274A of the Act, on behalf of the foreign employer.

The Service has also clarified the final rule by defining ''foreign employer'' for purposes of the rule as ''any employer who is not amenable to the service of process in the United States.'' This definition is intended to include all employers of H–2B, O, or P aliens who are not amenable to service of process within the United States for any reason.

Discussion of the Specific Comments Raised in Objection to Proposal Number Two

The following discussion addresses each of the seven reasons raised by the commenters as to why the proposal that foreign employers should not be permitted to file an H, O, or P petition directly should not be adopted.

One commenter suggested that if the Service required foreign employers to use an agent in the United States to file an O or P petition, foreign countries would retaliate against U.S. workers abroad in some fashion.

It is the opinion of the Service that the employer sanctions provisions must be enforced with equal effect with respect

to all persons or entities, regardless of whether they are foreign or domestic, which employ aliens in the United States. While it is theoretically possible that certain countries may retaliate against the United States for enforcing these statutory provisions, the Service is required to follow the intent of Congress in enacting section 274A of the Act and safeguard against unauthorized employment in this country.

The Service received comments expressing similar fears at the time it published its interim rule relating to the O and P classifications following enactment of the Immigration Act of 1990 (IMMACT 90). Specifically, the commenters suggested at the time that, as drafted, the Service's regulations would result in retaliatory actions towards U.S. workers abroad. Such fears have proven to be unfounded. In fact, more than 4 years after the effective date of IMMACT 90, the Service is unaware of any instances of retaliatory actions taken by foreign countries against United States entertainers and athletes abroad.

The Service received two comments which stated that requiring a foreign company to create a legal relationship with an agent within the United States will discourage foreign employers from filming and otherwise working in the United States, thereby harming the U.S. economy and jeopardizing American workers' jobs.

The Service believes that, as a practical matter, this rule is not onerous and will not have a negative effect upon such foreign employers or an adverse effect upon the U.S. economy. One of the commenters acknowledged that foreign companies are required to comply with all United States laws, including section 274A of the Act, and, in most cases, already have either a direct presence within the United States or an existing relationship with a United States entity. Far from imposing undue burdens on foreign companies, this regulation is intended only to ensure that employers who are not amenable to the service of process in the United States are held to the same standard of conduct as all other employers with respect to section 274A of the Act, by providing the Service with a mechanism for ensuring adequate service of process on such employers. In this regard, this regulation is similar to the laws of many states which require outside businesses to have a registered agent for service of legal process.

Further, because this rule expands the term ''United States agent'' to include a business representative, the Service believes most foreign employers will be able to continue their activities with very little or no additional burden or inconvenience. Foreign employers will, as a general rule, already have an agency relationship in place in the United States.

One commenter suggested that adoption of this proposal would discourage foreign employers from complying with U.S. immigration laws.

It is the opinion of the Service that the vast majority of individuals are honest and will comply with the law and applicable regulations. Further, as indicated in the discussion of the prior comment, the definition of agent has been modified by this rule and, as a result, compliance with the proposal will not be difficult to achieve.

One commenter stated that the rule should not be adopted since it was never anticipated by Congress that a foreign movie production company merely using United States-based venues to film a movie would be required to complete an employment verification eligibility form (Form I–9) for its O–1 and H–2B nonimmigrant employees. In drafting section 274A of the Act, Congress did not differentiate among employers based upon their country of license or registry. The implementation of this rule does not alter the existing responsibilities of all employers, domestic or foreign, to comply with section 274A of the Act with respect to employment within the United States.

Two commenters suggested that requiring the employer of an O or P nonimmigrant alien to complete a Form I–9 is superfluous since the employer has already received Service approval to work in the United States. The employment verification provisions are statutory and, therefore, the Service lacks the authority to waive this requirement. Moreover, since foreign employers have always been responsible for complying with the employer sanctions provisions of the Act, this rule does not add any additional verification requirements.

One commenter stated that there is no evidence that foreign employers are violating section 274A of the Act or that the Service is unable to take enforcement actions against them. Moreover, the commenter stated, if the foreign employer is still to remain liable for section 274A violations, then the foreign employers should be able to file O and P petitions directly. The Service is required to enact regulations which enable it to execute its various duties and responsibilities. Evidence of abuse is not a prerequisite for promulgating rules. As noted above, this rule is designed to ensure compliance with section 274A of the Act by providing a means of enforcing this section with respect to foreign as well as domestic employers. Direct filing of O and P petitions by foreign employers not amenable to service of process within the United States defeats this purpose, since, in certain cases, the Service may be unable to pursue actions against such employers for violations of section 274A of the Act. Foreign employers who benefit from this privilege must be held fully accountable for complying with our laws by rendering themselves amenable to service of process in enforcement actions. Since all employers, domestic or foreign, who use agents to fulfill their section 274A duties remain liable for violations, this rule will ensure effective enforcement against violating employers.

One commenter suggested that the language of the proposed rule does not solve enforcement problems with respect to section 274A. Specifically, the commenter questioned how the use of an agent could enhance the Service's enforcement if the agent itself has no liability under the Act. The commenter argued that, if the agent has no liability, then that contradicts 8 CFR part 274a unless the agents are not recruiters or referrers for a fee. See section 274A of the Act. Alternatively, if there is no existing liability, the commenter added, then the Service cannot argue that it is being hampered in its ability to enforce the employer sanctions provisions of the Act.

A person or entity acting as an agent may be subject to liability under section 274A for acts or omissions committed in that capacity. The issue, however, is not whether the agent is subject to section 274A of the Act, but whether the foreign employer can be served with process in a section 274A proceeding. As this commenter correctly indicates, foreign employers were, and continue to be, responsible for complying with section 274A of the Act. This rule does not expand or alter the requirements or liability imposed by section 274A of the Act. Foreign employers with a legal presence in the United States are subject to the Service's enforcement powers. Unfortunately, foreign employers not physically present in the United States who use the privilege of directly petitioning for O and P visas may presently be able to avoid Service enforcement of section 274A because of difficulties in serving process on the employer abroad. It is necessary, therefore, to ensure that these foreign employers can be held accountable for complying with section 274A of the Act in the same manner as all other employers. This rule accomplishes that goal by using well-established agency

principles, *i.e.*, requiring the foreign employer to have an agent within the United States able to file the petition, and to accept service of process in any section 274A proceeding, on the employer's behalf.

Employers have always been able to delegate or contract their section 274A responsibilities to an agent, while still remaining fully liable for any violations. This rule does not change that. A foreign employer is free to delegate its section 274A compliance responsibilities to the agent filing the petition on its behalf, to another agent, or to carry out those responsibilities itself. The final rule requires only a limited agency for the purpose of filing the petition, and accepting service of process in section 274A proceedings, on behalf of the foreign employer. For purposes of this regulation, the term ''service of process'' is intended to include any method of commencing enforcement activity of proceedings that involves notice to the employer, including notices of inspection of Forms I–9, subpoenas, Notices of Intent to Fine, or complaints.

Another commenter stated that the sole effect of adopting the proposed rule would be to enhance the Service's ability to enforce employer sanctions provisions against a foreign employer who seeks to employ an O or P nonimmigrant alien. The purpose of the proposal with respect to foreign employers was to require those employers to comply with the same rules and regulations as all employers regardless of the nationality of their employees. Therefore, the commenter's statement is accurate.

Regulatory Flexibility Act

The Commissioner of the immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. The majority of foreign employers who petition for nonimmigrant workers already have established a presence in the United States or use the services of a United States agent. Therefore, the number of small entities affected by this rule would be minimal.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation proposed 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 rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This final rule does not impose any new reporting or recordkeeping requirements. The information collection requirements contained in this rule were previously cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5, Display of control numbers.

List of Subjects

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Organization and functions (Government agencies).

8 CFR Part 274a

Administrative practice and procedures, Aliens, Employment, Organization and functions (Government agencies).

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended by follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by:

a. Revising paragraph (h)(2)(i)(F);
b. Revising paragraph (h)(6)(iii)(B); and by
c. Adding a new paragraph (h)(6)(vii), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(F) *Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, or in place of, the employer as it agent. A petition filed by a United States agent is subject to the following conditions;

(*1*) An agent performing the function of an employer must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(*2*) A person or company in business as an agent may file the H petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishment, venues,

or locations where the services will be performed. In questionable cases, a contract between the employers and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(*3*) A foreign employer who, through a United States agent, files a petition for an H nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

* * * * *

(6) * * *

(iii) * * *

(B) An H–2B petitioner shall be a United States employer, a United States agent, or a foreign employer filing through a United States agent. For purposes of paragraph (h) of this section, a foreign employer is any employer who is not amendable to service of process in the United States. A foreign employer may not directly petition for an H–2B nonimmigrant but must use the services of a United States agent to file a petition for an H–2B nonimmigrant. A United States agent petitioning on behalf of a foreign employer must be authorized to file the petition, and to accept service of process in the United States in proceedings under section 274A of the Act, on behalf of the employer. The petitioning employer shall consider available United States workers for the temporary services or labor, and shall offer terms and conditions of employment which are consistent with the nature of the occupation, activity, and industry in the United States.

* * * * *

(vii) *Traded professional H–2B athletes.* In the case of a professional H–2B athlete who is traded from one organization or another organization, employment authorization for the player will automatically continue for a period of 30 days after the player's acquisition by the new organization, within which time the new organization is expected to file a new Form I–129 for H–2B nonimmigrant classification. If a new Form I–129 is not filed within 30 days, employment authorization will cease. If a new Form I–129 is filed within 30 days, the professional athlete shall be deemed to be in valid H–2B status, and employment shall continue to be authorized, until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

* * * * *

3. Section 214.2 is amended by:

a. Revising paragraph (o)(2)(i);

b. Revising paragraph (o)(2)(iv)(A);

c. Revising paragraph (o)(2)(iv)(E); and by

d. Adding a new paragraph (o)(2)(iv)(G), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(o) * * *

(2) *Filing of petitions*—(i) *General.* Except as provided for in paragraph (o)(2)(iv)(A) of this section, a petitioner seeking to classify an alien as an O–1 or O–2 nonimmigrant shall file a petition on Form I–129, Petition for a Nonimmigrant Worker, with the Service Center which has jurisdiction in the area where the alien will work. The petition may not be filed more than 6 months before the actual need for the alien's services. An O–1 or O–2 petition shall be adjudicated at the appropriate Service Center, even in emergency situations. Only one beneficiary may be included on an O–1 petition. O–2 aliens must be filed for on a separate petition from the O–1 alien. An O–1 or O–2 petition may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent. For purposes of paragraph (o) of this section, a foreign employer is any employer who is not amenable to service of process in the United States. A foreign employer may not directly petition for an O nonimmigrant alien but instead must use the services of a United States agent to file a petition for an O nonimmigrant alien. A United States agent petitioning on behalf of a foreign employer must be authorized to file the petition, and to accept services of process in the United States in proceedings under section 274A of the Act, on behalf of the foreign employer. An O alien may not petition for himself or herself.

* * * * *

(iv) *Other filing situations*—(A) *Services in more than one location.* A petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of work and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located. The address which the petitioner specifies as its location on the petition shall be where the petitioner is located for purposes of this paragraph.

* * * * *

(E) *Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A United States agent may be: The actual employer of the beneficiary, the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by an agent is subject to the following conditions:

(*1*) An agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specifies the wage offered and the other terms and conditions of employment of the beneficiary.

(*2*) A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary, if the supporting documentation includes a complete itinerary of the event or events. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. A contract between the employers and the beneficiary is required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(*3*) A foreign employer who, through a United States agent, files a petition for an O nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

* * * * *

(G) *Traded professional O–1 athletes.* In the case of a professional O–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the new organization is expected to file a new Form I–129. If a new Form I–129 is not filed within 30 days, employment authorization will cease. If a new Form I–129 is filed within 30 days, the professional athlete shall be deemed to be in valid O–1 status, and employment shall continue to be authorized, until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

* * * * *

4. Section 214.2 is amended by:

a. Revising paragraph (p)(2)(i); and by

b. Revising paragraph (p)(2)(iv), to read as follows;

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(p) * * *

(2) *Filing of petitions*—(i) *General.* A P–1 petition for an athlete or entertainment group shall be filed by a United States employer, a United States sponsoring organization, a United States agent, or a foreign employer through a United States agent. For purposes of paragraph (p) of this section, a foreign employer is any employer who is not amenable to service of process in the United States. Foreign employers seeking to employ a P–1 alien may not directly petition for the alien but must use a United States agent. A United States agent petitioning on behalf of a foreign employer must be authorized to file the petition, and to accept service of process in the United States in proceedings under section 274A of the Act, on behalf of the foreign employer. A P–2 petition for an artist or entertainer in a reciprocal exchange program shall be filed by the United States labor organization which negotiated the reciprocal exchange agreement, the sponsoring organization, or a United States employer. A P–3 petition for an artist or entertainer in a culturally unique program shall be filed by the sponsoring organization or a United States employer. Essential support personnel may not be included on the petition filed for the principal alien(s). These aliens require a separate petition. Except as provided for in paragraph (p)(2)(iv)(A) of this section, the petitioner shall file a P petition on Form I–129, Petition for Nonimmigrant Worker, with the Service Center which has jurisdiction in the area where the alien will work. The petition may not be filed more than 6 months before the actual need for the alien's services. A P–1, P–2, or P–3 petition shall be adjudicated at the appropriate Service Center, even in emergency situations.

* * * * *

(iv) *Other filing situations*—(A) *Services in more than one location.* A petition which requires the alien to work in more than one location (*e.g.*, a tour) must include an itinerary with the dates and locations of the performances and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located. The address which the petitioner specifies as its location on the petition shall be where the petitioner is located for purposes of this paragraph.

(B) *Servcies for more than one employer.* If the beneficiary or beneficiaries will work for more than one employer within the same time period, each employer must file a separate petition with the Service Center that has jurisdiction over the area where the alien will perform the services, unless an agent files the petition pursuant to paragraph (p)(2)(iv)(E) of this section.

(C) *Change of employer*—(*1*) *General.* If a P–1, P–2, or P–3 alien in the United States seeks to change employers or sponsors, the new employer or sponsor must file both a petition and a request to extend the alien's stay in the United States. The alien may not commence employment with the new employer or sponsor until the petition and request for extension have been approved.

(*2*) *Traded professional P–1 athletes.* In the case of a professional P–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the new organization is expected to file a new Form I–129 for P–1 nonimmigrant classification. If a new Form I–129 is not filed within 30 days, employment authorization will cease. If a new Form I–129 is filed within 30 days, the professional athlete shall be deemed to be in valid P–1 status, and employment shall continue to be authorized, until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

(D) *Amended petition.* The petitioner shall file an amended petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or the beneficiary's eligibility as specified in the original approved petition. A petitioner may add additional, similar or comparable performance, engagements, or competitions during the validity period of the petition without filing an amended petition.

(E) *Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary; the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by an United States agent is subject to the following conditions:

(*1*) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(*2*) A person or company in business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues, or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(*3*) A foreign employer who, through a United States agent, files a petition for a P nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

(F) *Multiple beneficiaries.* More than one beneficiary may be included in a P petition if they are members of a group seeking classification based on the reputation of the group as an entity, or if they will provide essential support to P–1, P–2, or P–3 beneficiaries performing in the same location and in the same occupation.

(G) *Named beneficiaries.* Petitions for P classification must include the names of beneficiaries and other required information at the time of filing.

(H) *Substitution of beneficiaries.* A petitioner may request substitution of beneficiaries in approved P–1, P–2, and P–3 petitions for groups. To request substitution, the petitioner shall submit a letter requesting such substitution, along with a copy of the petitioner's approval notice, to the consular office at which the alien will apply for a visa or the Port-of-Entry where the alien will apply for admission. Essential support personnel may not be substituted at consular offices or at Ports-of-entry. In order to add additional new essential support personnel, a new I–129 petition must be filed with the appropriate Service Center.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

5. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

6. Section 274a.12 is amended by:

a. Revising paragraph (b)(9);

b. Revising paragraph (b)(13); and by

c. Revising paragraph (b)(14), to read as follows:

§ 174a.12 Clauses of aliens authorized to accept employment.

* * * * *

(b) * * *

(9) A temporary worker or trainee (H–1, H–2A, H–2B, or H–3), pursuant to § 214.2(h) of this chapter. An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional H–2B athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the new organization is expected to file a new Form I–129 to petition for H–2B classification. If a new Form I–129 is not filed within 30 days, employment authorization will cease. If a new Form I–129 is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease;

* * * * *

(13) An alien having extraordinary ability in the sciences, arts, education, business, or athletics (O–1), and an accompanying alien (O–2), pursuant to § 214.2(o) of this chapter. An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional O–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after the acquisition by the new organization, within which time the new organization is expected to file a new Form I–129 petition for O nonimmigrant classification. If a new Form I–129 is not filed within 30 days, employment authorization will cease. If a new Form I–129 is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

(14) An athlete, artist, or entertainer (P–1, P–2, or P–3), pursuant to § 214.2(p) of this chapter. An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional P–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after the acquisition by the new organization, within which time the new organization is expected to file a new Form I–129 for P–1 nonimmigrant classification. If a new Form I–129 is not filed within 30 days, employment authorization will cease. If a new Form I–129 is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease;

* * * * *

Dated: February 13, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–9814 Filed 4–15–97; 8:45 am]

BILLING CODE 4410–10–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–38490; File No. S7–30–95]

RIN 3235–AG66

Order Execution Obligations

AGENCY: Securities and Exchange Commission.

ACTION: Revised compliance dates; exemptive order.

SUMMARY: The Securities and Exchange Commission (''Commission'') is announcing the revised phase-in schedule for compliance with Rules 11Ac1–1(c)(5) (''ECN Amendment'' of the ''Quote Rule'') and 11Ac1–4 (''Limit Order Display Rule'') under the Securities Exchange Act of 1934 (''Exchange Act'') and is providing exemptive relief to accomodate the new schedule. In addition, the Commission is providing exemptive relief from compliance with the 1% requirement of the Quote Rule with respect to non–19c–3 securities.

DATES: *Effective:* April 9, 1997. *Compliance Dates:* The phase-in schedule with respect to 550 additional Nasdaq securities will be as follows: 50 Nasdaq securities on April 21, 1997; 50 Nasdaq securities on April 28, 1997; 50 Nasdaq securities on May 5, 1997; 50 Nasdaq securities on May 12, 1997; 50 Nasdaq securities on May 19, 1997; 50 Nasdaq securities on May 27, 1997; 50 Nasdaq securities on June 2, 1997; 50 Nasdaq securities on June 9, 1997; 50 Nasdaq securities on June 23, 1997; 50 Nasdaq securities on June 30, 1997; and 50 Nasdaq securities on July 7, 1997. Concurrently, the Commission is exempting responsible brokers and dealers, electronic communications networks, exchanges and associations from compliance with the Order Execution Rules, with respect to the Nasdaq securities that are not phased-in under such schedule, until July 28, 1997. In addition, the Commission is exempting substantial market makers and specialists from compliance with the 1% requirement of the Quote Rule with respect to non-Rule 19c–3 securities until July 28, 1997.

FOR FURTHER INFORMATION CONTACT: David Oestreicher, Special Counsel, or Gail Marshall-Smith, Special Counsel, (202) 942–0158, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1996, the Securities and Exchange Commission adopted Rule 11Ac1–4, the Limit Order Display Rule, and amendments to Rule 11Ac1–1, the Quote Rule under the Exchange Act.[1] The Limit Order Display Rule requires over-the-counter (''OTC'') market makers and exchange specialists to publicly display certain customer limit orders. The ECN Amendment of the Quote Rule requires OTC market makers and specialists to publicly disseminate the best prices that they enter into an electronic communications network (''ECN''),[2] or to comply indirectly with the ECN Amendment by using an ECN that furnishes the best market maker and specialist prices therein to the public quotation system (the ''ECN Display Alternative'').[3] In addition, the Quote Rule term ''subject security''[4] was amended, thereby requiring OTC market makers and specialists to publish quotes in any exchange-listed security if their volume in that security exceeds 1% of the aggregate volume during the most recent calendar quarter.[5]

[1] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Adopting Release'').

[2] 17 CFR 240.11Ac1–1(c)(5)(i).

[3] 17 CFR 240.11Ac1–1(c)(5)(ii).

[4] 17 CFR 240.11Ac1–1(a)(25).

[5] 17 CFR 11Ac1–1(c)(1). *See* Securities Exchange Act Release No. 38110 (January 2, 1997), 62 FR 1279 (January 9, 1997) which changed the effective date of the 1% Rule, with respect to the amended

Discussion

The obligations under the Order Execution Rules represent a significant change in the order handling practices of OTC market makers and specialists. The Commission, therefore, has chosen to require compliance with the rules over a phased-in period. On January 20, 1997, the Order Execution Rules became effective and compliance with the rules became mandatory for all exchange-traded securities and 50 Nasdaq securities.[6] Subsequently, the Commission provided exemptive relief from compliance with the Order Execution Rules for the Nasdaq securities not phased-in as of February 14, 1997, until April 14, 1997.[7] To date, compliance is mandatory for all exchange-traded securities and 150 of the most actively traded Nasdaq securities.

The Commission has been closely monitoring the implementation of the rules and has found that the implementation appears to be occurring successfully. The success to date is due, in-part, to affording market participants time to adapt to the new regulatory requirements. Moreover, Nasdaq will continue to have capacity limitations that reduce its ability to handle substantial additional quotation traffic until mid-July. The NASD has, therefore, requested that the rules be phased-in on an extended schedule that strikes a reasonable balance between the desire to enhance the benefits of the Rules for investors and the need to ensure that implementation of the Rules does not compromise the integrity or capacity of automated systems operated by Nasdaq, broker-dealers, ECNs, and vendors.[8] Accordingly, the Commission believes it is appropriate to continue the gradual phase-in of both the Limit Order Display Rule and the ECN Amendment for the next 550 most actively traded Nasdaq securities. However, once the most actively traded Nasdaq securities are phased-in, the Commission expects to phase-in the remaining securities on a more accelerated basis.

The new schedule for the next 550 Nasdaq securities is as follows: 50 Nasdaq securities on April 21, 1997; 50 Nasdaq securities on April 28, 1997; 50 Nasdaq securities on May 5, 1997; 50 Nasdaq securities on May 12, 1997; 50 Nasdaq securities on May 19, 1997; 50 Nasdaq securities on May 27, 1997; 50 Nasdaq securities on June 2, 1997; 50 Nasdaq securities on June 9, 1997; 50 Nasdaq securities on June 23, 1997; 50 Nasdaq securities on June 30, 1997; and 50 Nasdaq securities on July 7, 1997.[9] The Commission will not phase-in securities the week of June 16, 1997 to afford Nasdaq an opportunity to effect system upgrades designed to enhance Nasdaq's quote update response time and the capacity of Nasdaq's last sale broadcast. To accommodate this schedule and pursuant to Rule 11Ac1–1(d)[10] of the Exchange Act, the Commission is exempting responsible brokers and dealers, electronic communications networks, exchanges, and associations, until July 28, 1997 form the requirements of: (1) Rule 11Ac1–1(c)(5)(i), the ECN Amendment, with respect to all Nasdaq securities not phased-in as of July 7, 1997; and (2) from the requirements of Rule 11Ac1–1(c)(1), with respect to non-Rule 19c–3 securities.[11] In addition, pursuant to Rule 11Ac1–4(d)[12] of the Exchange Act, the Commission is exemption responsible brokers and dealers, electronic communications networks, exchanges, and associations, until July 28, 1997 from the requirements of Rule 11Ac1–4, the Limit Order Display Rule, with respect to all Nasdaq securities not phased-in as of July 7, 1997.

The Commission has granted this exemptive relief to continue monitoring the operation of the Order Execution Rules, and will announce a phase-in schedule for the Nasdaq securities not phased-in as of July 7, 1997 at the appropriate time. The Commission finds that the exemptive relief provided herein to responsible brokers and dealers, electronic communications networks, exchanges, and associations is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system. Moreover, granting exemptive relief from the requirements of Rule 11Ac1–1(a)(25) until July 28, 1997, will provide the NASD and the Intermarket Trading System Participants further time to resolve their existing limitations on the automated generation of quotations.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9713 Filed 4–15–97; 8:45 am]

BILLING CODE 8010–01–M

definition of ''subject security'', from January 10, 1997, to April 10, 1997.

[6] *See* Securities Exchange Act Release Nos. 37619A (September 6, 1996), 37972 (November 22, 1996), 38110 (January 2, 1997), 38139 (January 8, 1997), and 38246 (February 5, 1997) outlining previous phase-in schedules for the Order Execution Rules. The Commission notes that a broker-dealer's duty of best execution discussed in the Adopting Release is applicable to all securities and is not based on whether or not the security has been phased-in under the Limit Order Display Rule or the ECN Amendment.

[7] *See* Securities Exchange Act Release No. 38246 (February 5, 1997). Absent the granted exemptive relief, the Limit Order Display Rule would currently apply to 1000 Nasdaq securities with an additional 1500 Nasdaq securities being required on March 28, 1997. Moreover, the ECN Amendment would currently apply to 1000 Nasdaq securities with the remaining Nasdaq securities being required on March 28, 1997.

[8] See letter from J. Patrick Campbell, Executive Vice President, Trading & Market Services, The Nasdaq Stock Market, Inc., to Richard R. Lindsey, Director, Division of Market Regulation, dated April 8, 1997.

[9] Nasdaq will continue to identify the specific securities to be phased-in prior to each phase-in date.

[10] 17 CFR 240.11Ac1–1(d).

[11] See 17 CFR 240.19c–3. Exchange Act Rule 19c–3 prohibits the application of off-board trading restrictions to securities that (1) were not traded on an exchange before April 26, 1979; or (2) were traded on an exchange on April 26, 1979, but ceased to be traded on an exchange for any period of time thereafter. Accordingly, exchange-traded securities not subject to off-board trading restrictions are referred to as Rule 19c–3 securities, and exchange-traded securities subject to off-board trading restrictions are referred to as non-rule 19c–3 securities.

[12] 17 CFR 240.11Ac1–4(d).

[13] 17 CFR 200.30(a)(28) and (61).

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR PART 142

RIN 1076 AD66

Operation of U.S.M.S. ''North Star'' Between Seattle, Washington, and Stations of the Bureau of Indian Affairs and Other Government Agencies, Alaska

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is amending 25 CFR part 142 as mandated by Executive Order 12866 to streamline the regulatory process and enhance the planning and coordination of existing regulations.

EFFECTIVE DATE: These regulations take effect May 16, 1997.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

The U.S.M.S. North Star has been decommissioned. However, the need for a resupply operation in Alaska continues. The Juneau Area Office administers the Alaska Resupply Operation through the Seattle Support Center. All accounts receivable and payable are handled by the Seattle

Support Center that also publishes a tariff of rates and conditions.

Review of Public Comments

The proposed rule was published on June 20, 1996, 61 FR 31470. The one comment received during the comment period ending August 19, 1996, was considered in drafting this final rule.

One commenter requested that Alaska Tribal Governments be included in Section 142.4(a), the entities for whom the Alaska Resupply Operation is operated.

Response: This recommendation has been incorporated in this rule.

Evaluation and Certification

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This rule is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Discontinuance of the resupply operation in Alaska would adversely impact Alaska Native Tribes, Alaska Natives, Indian or Native owned businesses, profit or nonprofit Alaska Native corporations, Native cooperatives or organizations, or such other groups or individuals as may be sponsored by any Native or Indian organization, other Federal agencies and the State of Alaska and its subsidiaries whose beneficiaries are the Alaska Natives or their communities, and Non-Indians and Non-Natives and commercial establishments that economically or materially benefit Alaska Natives or Indians. The Alaska Resupply Operation must make reasonable efforts to restrict competition with private enterprises.

Executive Order 12630

The Department has determined that this rule does not have significant ''takings'' implications. The rule does not pertain to ''taking'' of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

There are no information collection requirements contained in this rule which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Drafting Information: The primary author of this document is Alan E. Mather, Traffic Manager, Seattle Support Center, Juneau Area Office, Bureau of Indian Affairs.

List of Subjects in 25 CFR Part 142

Indians—shipping; Indians—maritime carriers.

For the reasons given in the preamble, Part 142, Chapter I of Title 25 of the Code of Federal Regulations is amended as set forth below:

PART 142—ALASKA RESUPPLY OPERATION

Sec.

Authority: 5 U.S.C. 301; R.S. 463; 25 U.S.C. 2; R.S. 465; 25 U.S.C. 9; 42 Stat. 208; 25 U.S.C. 13; 38 Stat. 586.

§ 142.1 Definitions.

Area Director means the Area Director, Juneau Area Office, Bureau of Indian Affairs.

Bureau means Bureau of Indian Affairs.

Department means Department of the Interior.

Manager means Manager of the Seattle Support Center.

Must is used in place of shall and indicates a mandatory or imperative act or requirement.

Indian means any individual who is a member of an Indian tribe.

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law 103–454, 108 Stat. 4791.

Alaska Native means a member of an Alaska Native village or a Native shareholder in a corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*

§ 142.2 What is the purpose of the Alaska Resupply Operation?

The Alaska Resupply Operation provides consolidated purchasing, freight handling and distribution, and necessary transportation services from Seattle, Washington to and from other points in Alaska or en route in support of the Bureau's mission and responsibilities.

§ 142.3 Who is responsible for the Alaska Resupply Operation?

The Seattle Support Center, under the direction of the Juneau Area Office, is responsible for the operation of the Alaska Resupply Operation, including the management of all facilities and equipment, personnel, and procurement of goods and services.

(a) The Seattle Support Center is responsible for publishing the rates and conditions that must be published in a tariff.

(b) All accounts receivable and accounts payable are handled by the Seattle Support Center.

(c) The Manager must make itineraries for each voyage in conjunction with contracted carriers. Preference is to be given to the work of the Bureau.

(d) The Area Director is authorized to direct the Seattle Support Center to perform special services that may arise and to act in any emergency.

§ 142.4 For whom is the Alaska Resupply Operation operated?

The Manager is authorized to purchase and resell food, fuel, clothing, supplies and materials, and to order,

receive, stage, package, store and transport these goods and materials for:

(a) Alaska Native Tribes, Alaska Natives, Indian or Native owned businesses, profit or nonprofit Alaska Native corporations, Native cooperatives or organizations, or such other groups or individuals as may be sponsored by any Native or Indian organization.

(b) Other Federal agencies and the State of Alaska and its subsidiaries, as long as the ultimate beneficiaries are the Alaska Natives or their communities.

(c) Non-Indians and Non-Natives and commercial establishments that economically or materially benefit Alaska Natives or Indians.

(d) The Manager must make reasonable efforts to restrict competition with private enterprise.

§ 142.5 Who determines the rates and conditions of service of the Alaska Resupply Operation?

The general authority of the Assistant Secretary—Indian Affairs to establish rates and conditions for users of the Alaska Resupply Operation is delegated to the Area Director.

(a) The Manager must develop a tariff that establishes rates and conditions for charging users.

(1) The tariff must be approved by the Area Director.

(2) The tariff must be published on or before March 1 of each year.

(3) The tariff must not be altered, amended, or published more frequently than once each year, except in an extreme emergency.

(4) The tariff must be published, circulated and posted throughout Alaska, particularly in the communities commonly and historically served by the resupply operation.

(b) The tariff must include standard freight categories and rate structures that are recognized within the industry, as well as any appropriate specialized warehouse, handling and storage charges.

(c) The tariff must specify rates for return cargo and cargo hauled between ports.

(1) The rates and conditions for the Bureau, other Federal agencies, the State of Alaska and its subsidiaries must be the same as that for Native entities.

(2) Different rates and conditions may be established for non-Indian and non-Native commercial establishments, if those establishments do not meet the standard in § 142.4(c) and no other service is available to that location.

§ 142.6 How are the rates and conditions for the Alaska Resupply Operation established?

The Manager must develop tariff rates using the best modeling techniques available to ensure the most economical service to the Alaska Natives, Indian or Native owned businesses, profit or nonprofit Alaska Native corporations, Native cooperatives or organizations, or such other groups or individuals as may be sponsored by any Native or Indian organization, without enhancing the Federal treasury.

(a) The Area Director's approval of the tariff constitutes a final action for the Department for the purpose of establishing billing rates.

(b) The Bureau must issue a supplemental bill to cover excess cost in the event that the actual cost of a specific freight substantially exceeds the tariff price.

(c) If the income from the tariff substantially exceeds actual costs, a prorated payment will be issued to the shipper.

§ 142.7 How are transportation and scheduling determined?

(a) The Manager must arrange the most economical and efficient transportation available, taking into consideration lifestyle, timing and other needs of the user. Where practical, shipping must be by consolidated shipment that takes advantage of economies of scale and consider geographic disparity and distribution of sites.

(b) Itineraries and scheduling for all deliveries must be in keeping with the needs of the users to the maximum extent possible. Planned itineraries with dates set as to the earliest and latest anticipated delivery dates must be provided to users prior to final commitment by them to utilize the transportation services. Each shipping season the final departure and arrival schedules must be distributed prior to the commencement of deliveries.

§ 142.8 Is economy of operation a requirement for the Alaska Resupply Operation?

Yes. The Manager must ensure that purchasing, warehousing and transportation services utilize the most economical delivery. This may be accomplished by memoranda of agreement, formal contracts, or cooperative arrangements. Whenever possible joint arrangements for economy will be entered into with other Federal agencies, the State of Alaska, Alaska Native cooperatives or other entities providing services to rural Alaska communities.

§ 142.9 How are orders accepted?

(a) The Manager must make a formal determination to accept an order, for goods or services, and document the approval by issuing a permit or similar instrument.

(b) The Seattle Support Center must prepare proper manifests of the freight accepted at the facility or other designated location. The manifest must follow industry standards to ensure a proper legal contract of carriage is executed, upon which payment can be exacted upon the successful delivery of the goods and services.

§ 142.10 How is freight to be prepared?

All freight must be prepared in accordance with industry standards, unless otherwise specified, for overseas shipment, including any pickup, delivery, staging, sorting, consolidating, packaging, crating, boxing, containerizing, and marking that may be deemed necessary by the Manager.

§ 142.11 How is payment made?

(a) Unless otherwise provided in this part, all regulations implementing the Financial Integrity Act, Anti-Deficiency Act, Prompt Payments Act, Debt Collection Act of 1982, 4 CFR Ch. II—Federal Claims Collection Standards, and other like acts apply to the Alaska Resupply Operation.

(b) Payment for all goods purchased and freight or other services rendered by the Seattle Support Center are due and payable upon final receipt of the goods or services. If payment is not received within the time specified on the billing document, interest and penalty fees at the current treasury rate will be charged, and handling and administrative fees may be applied.

(c) Where fuel and other goods are purchased on behalf of commercial enterprises, payment for those goods must be made within 30 days of delivery to the Seattle Support Center Warehouse. Payment for freight must be made within 30 days from receipt of the goods by the shipper.

§ 142.12 What is the liability of the United States for loss or damage?

(a) The liability of the United States for any loss or damage to, or non-delivery of freight is limited by 46 U.S.C. 746 and the Carriage of Goods by Sea Act (46 U.S.C. 1300 *et seq.*). The terms of such limitation of liability must be contained in any document of title relating to the carriage of goods by sea. This liability may be further restricted in specialized instances as specified in the tariff.

(b) In addition to the standards of conduct and ethics applicable to all government employees, the employees of the Seattle Support Center shall not conduct any business with, engage in trade with, or accept any gifts or items of value from any shipper or permittee.

(c) The Seattle Support Center will continue to function only as long as the need for assistance to Native village economies exits. To that end, a review of the need for the serve must be conducted every five years.

§ 142.13 Information collection.

In accordance with Office of Management and Budget regulations in 5 CFR 1320.4, approval of information collections contained in this regulation is not required.

Dated: April 1, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–9799 Filed 4–15–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 4

Employees' Personal Property Claims

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury is amending its regulations to set forth policies and procedures for reimbursing employees for personal items that are lost, stolen, or damaged during the performance of an employee's official duty.

DATES: This rule is effective as a final rule on April 16, 1997.

FOR FURTHER INFORMATION CONTACT: Dana Thibeau, Office of Accounting and Internal Controls, Room 2301, 1310 G Street, NW., Washington, DC 20220. Telephone Number (202) 622–0811.

SUPPLEMENTARY INFORMATION:

Background

The Department of the Treasury established TD 32–13 and TD P 32–13 to set forth policies and procedures for reimbursing employees for personal items that are lost, stolen, or damaged during the performance of an employee's official duty. Previously, Treasury established the policy and procedures for employee's personal property claims in 31 CFR part 4. The newly established documents supersede part 4.

Administrative Procedure Act

Because this rule relates to agency management and personnel, notice and public procedure and a delayed effective date are not required pursuant to 5 U.S.C. 553(a)(2).

Executive Order 12866, Regulatory Planning and Review

This rule is limited to agency organization, management and personnel matters; therefore, it is not subject to Executive Order 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

List of Subjects in 31 CFR Part 4

Government employees.

Dated: March 19, 1997.

George Muñoz,

Assistant Secretary (Management) and Chief Financial Officer.

For the reasons set forth in the preamble, 31 CFR part 4 is revised to read as follows:

PART 4—EMPLOYEES' PERSONAL PROPERTY CLAIMS

§ 4.1 Procedures.

The procedures for filing a claim with the Treasury Department for personal property that is lost or damaged incident to service are contained in Treasury Directive 32–13, ''Claims for Loss or Damage to Personal Property,'' and Treasury Department Publication 32–13, ''Policies and Procedures For Employees' Claim for Loss or Damage to Personal Property Incident to Service.''

Authority: 31 U.S.C. 3721(j).

[FR Doc. 97–9542 Filed 4–15–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[DoD Reg. 5400.11–R]

DoD Privacy Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Defense Privacy Office is amending Appendix C to 32 CFR Part 310 by adding a new Department of Defense 'Blanket Routine Use'.

EFFECTIVE DATE: April 16, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr., at (703) 607–2943.

SUPPLEMENTARY INFORMATION:

The 'Blanket Routine Use' was previously published on February 13, 1987 at 52 FR 4645, and then amended on May 5, 1987 at 52 FR 16431.

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act, and 44 U.S.C. Chapter 35.

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

PART 310—DOD PRIVACY PROGRAM

1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Appendix C to part 310 is amended by adding paragraph N as follows:

Appendix C to Part 310–DoD Blanket Routine Uses

* * * * *

N. Routine Use–Counterintelligence Purpose

A record from a system of records maintained by this component may be disclosed as a routine use outside the DoD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

Dated: April 10, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 97–9735 Filed 4–15–97; 8:45 am]

BILLING CODE 5000–04–F

POSTAL SERVICE

39 CFR Parts 3 and 4

Amendments to Bylaws of the Board of Governors Concerning Information Furnished to Board—Program Review, and Concerning the Chief Postal Inspector

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: In October, 1996, the Board of Governors adopted two bylaw revisions. One relates to the information to be furnished to the Board concerning program review. This purpose of this revision was to further clarify what information management is to furnish to the Board regarding significant new programs, policies, and other initiatives. The second revision changed a bylaw discussing the Chief Postal Inspector, to conform to recently enacted legislation. Consequently, the Postal Service hereby publishes these two revisions as final rules.

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. Koerber (202) 268–4800.

SUPPLEMENTARY INFORMATION: This document publishes two revisions. One change revises 39 CFR 3.7(d) of the Bylaws of the Board of Governors of the United States Postal Service. The second change revises 39 CFR 4.6 of those bylaws. Both were adopted by the Board in October, 1996.

Revision to Section 3.7(d)

Several goals are embodied in the amendments to section 3.7(d). In reference to paragraph 3.7(d)(1), which addresses ''significant'' information, new language provides that the Board wants to see information regarding any significant new policy adopted (in addition to seeing information about certain new programs and projects).

Second, new language requires that information about significant new programs, policies, projects, etc., shall be given to the Board before ''entering into any agreement in furtherance of such project.''

Third, the definition of ''significant'' was amended to point out that certain increases in expense amounts of the operating budget could qualify as ''significant,'' and hence become reportable projects.

Fourth, new language indicates that the notification requirement of 3.7(d) ''governs applicable projects regardless of the level of expenditure involved.''

Finally, a newly adopted paragraph, subsection 3.7(d)(2), requires that management furnish to the Board information regarding any project whose potential liability, due to termination, breach, or other reason, would equal or exceed the 3.3(e) capital investment project approval threshold (currently $10 million). This information also is to be given to the Board before entering into any agreement in furtherance of such project.

Revision of Section 4.6

The revision to section 4.6 would delete the sentence in the bylaw which states that the Chief Postal Inspector also holds the position of Inspector General, and for purposes of the Inspector General Act, reports to and is under the general supervision of the Postmaster General. This change is consistent with section 662 of the Treasury, Postal Service, and General Government Appropriations Act, 1997, set forth in Public Law 104–208, which creates a separate position of Inspector General within the Postal Service, and makes certain changes regarding the position of Chief Postal Inspector. The bylaw retains the requirements that the Postmaster General consult with the Governors in appointing the Chief Postal Inspector, and must obtain the concurrence of the Governors in order to remove or transfer the Chief Postal Inspector. The bylaw is also revised to reflect the requirement in the Act that the Governors be notified and given the reasons for any removal or transfer of the Chief Postal Inspector.

List of Subjects in 39 CFR Parts 3 and 4

Administrative Practice and procedure, Organization and functions (Government agencies), Postal Service.

Accordingly, § 3.7(d) and § 4.6 of title 39 CFR are amended as follows:

PART 3—BOARD OF GOVERNORS (ARTICLE III)

1. The authority citation for Part 3 continues to read as follows:

Authority: 39 U.S.C. 202, 203, 205, 401(2), (10), 402, 1003, 3013; 5 U.S.C. 552b(g), (j).

2. Section 3.7 is amended by revising paragraph (d) to read as follows:

§ 3.7 Information furnished to Board—program review.

* * * * *

(d) Management shall furnish to the Board:

(1) Information regarding any significant, new program, policy, major modification or initiative; any plan to offer a significant, new or unique product or system implementation; or any significant, new project not related directly to the core business function of the Postal Service. This information shall be provided to the Board in advance of entering into any agreement in furtherance of such project. For the purposes of this paragraph, ''significant'' means a project anticipated to have a notable or conspicuous impact on (i) corporate visibility or (ii) the operating budget (including increases in expense amounts) or the capital investment budget. The notification requirement of this paragraph governs applicable projects regardless of the level of expenditure involved.

(2) Information regarding any project, in advance of entering into any agreement in furtherance of such project, where the potential liability due to termination, breach, or other reason would equal or exceed the amount specified by resolution for approval of capital investment projects pursuant to section 3.3(e) hereof.

PART 4—OFFICERS (ARTICLE IV)

3. The authority citation for Part 4 continues to read as follows:

Authority: 39 U.S.C. 202, 203, 205, 401(2), (10), 402, 1003, 3013.

4. Section 4.6 is revised to read as follows:

§ 4.6 Chief Postal Inspector.

The Postmaster General, in consultation with the Governors, appoints the Chief Postal Inspector, certain of whose powers and duties are delegated to the holder of that office by the Postmaster General, consistent with these bylaws and the Reorganization Act. The Chief Postal Inspector reports to and is under the general supervision of the Postmaster General. The Postmaster General has the power, with the concurrence of the Governors, to remove or transfer the Chief Postal Inspector to another position or location within the Postal Service. In the event of any such removal or transfer, the Postmaster General must promptly notify the Governors and both Houses of the Congress in writing of the reasons for such removal or transfer.

Stanley F. Mires,

Chief Counsel, Legisglative Division.

[FR Doc. 97–9852 Filed 4–15–97; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH106–1a; FRL–5808–5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: On November 12, 1996, USEPA received a State Implementation Plan (SIP) revision request from the Ohio Environmental Protection Agency (Ohio EPA). This revision request was in the form of an amendment to the Ohio Administrative Code (OAC) which added an additional exemption from organic compound emission controls for qualifying new sources. In this action, USEPA is approving the State's SIP revision request through a ''direct final'' rulemaking; the rationale for this approval is set forth below. Elsewhere in this **Federal Register**, USEPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, USEPA will withdraw the direct final rulemaking and address the comments received in a new final rule; otherwise, no further rulemaking will occur on this SIP revision request.

DATES: This action will be effective June 16, 1997 unless substantive adverse comments not previously addressed by the State or USEPA are received by May 16, 1997. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the Ohio submittal are available for public review during normal business hours, between 8:00 a.m. and 4:30 p.m., at the above address.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone: (312) 886–6036.

SUPPLEMENTARY INFORMATION:

I. Background

Rule 3745–21–07 of the Ohio Administrative Code (OAC) specifies organic compound control requirements for existing stationary sources located in twenty-eight Ohio Counties: Butler, Clark, Clermont, Cuyahoga, Darke, Delaware, Fairfield, Franklin, Geauga, Greene, Hamilton, Lake, Licking, Lorain, Lucas, Madison, Medina, Miami, Montgomery, Perry, Pickaway, Portage, Preble, Starke, Summit, Union, Warren and Wood which are referred to as ''Priority I'' counties in Rule 3745–21–06. It should be noted that Rule 3745–21–06 which lists the counties subject to the requirements of Rule 3745–21–07 is not being considered as part of this direct final rule. Rule 3745–21–07 also specifies organic compound control requirements for all new stationary sources regardless of location.

On November 12, 1996, USEPA received a SIP revision request from Ohio EPA in the form of an October 7, 1996 amendment to Rule 3745–21–07—Section(G)(9)(g)—which added an additional exemption from organic compound emission controls for qualifying new sources which met three requirements.

1. The Director of the Ohio EPA determined that ''Best Available Technology'' (BAT) for the emissions unit, as required by Ohio's permit to install rules, is either less stringent than or inconsistent with the requirements of OAC Rule 3745–21–07(G). The term ''BAT'' is defined at Section 3704.01 of the Ohio Regulatory Code (ORC). Since a BAT determination could be less stringent than the USEPA definition of reasonably available control technology (RACT) requirements due to Ohio's definition of BAT, in cases where an emissions limitation is applicable, the BAT determination must reflect the lowest emission limit that the emissions unit is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. In addition, the BAT determination for an emissions unit located within an ozone nonattainment area must comply with Section 193 (General Savings Clause) of the Clean Air Act (Act).

2. The USEPA has provided written approval of the issuance of a permit to install for the emissions unit.

3. The issued permit to install contains terms and conditions specifying the BAT requirements for the emissions unit, and the permit is issued by Ohio EPA in a manner that makes the terms and conditions of the permit federally enforceable.

In addition to adopting Section (G)(9)(g), the October 7, 1996, final rule made a limited number of changes to portions of OAC Rule 3745–21–07 previously adopted and approved by USEPA. USEPA has reviewed these changes and found them to be nonsubstantive.

II. Rulemaking Action

The USEPA approves the incorporation of Section (G)(9)(g) of OAC Rule 3745–21–07 into the Ohio SIP. Because nonsubstantive revisions were also made to Rule 3745–21–07, the USEPA is incorporating all of Rule 3745–21–07 so that the text of the current State rule is identical to the text of the federally approved rule. The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on June 16, 1997 unless, by May 16, 1997, adverse or critical comments are received.

If the USEPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on June 16, 1997.

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

III. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, USEPA

must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, USEPA 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 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under State or local law. No new Federal requirements are imposed. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, USEPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 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.

Dated: April 1, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(114) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(114) On November 12, 1996, the Ohio Environmental Protection Agency submitted a request to incorporate section(G)(9)(g) of Rule 3745–21–07 of the Ohio Administrative Code into the Ohio State Implementation Plan (SIP). Section (G)(9)(g) provides an additional exemption from organic compound emission controls for qualifying new sources. Because, in the process of adopting section(G)(9)(g), minor editorial changes were made to other parts of Rule 3745–21–07, the United States Environmental Protection Agency is incorporating all of Rule 3745–21–07 into the Ohio SIP. This will avoid confusion by making the SIP approved rule identical to the current State rule.

(i) Incorporation by reference.

(A) Rule 3745–21–07 of the Ohio Administrative Code, adopted October 7, 1996, effective October 31, 1996, as certified by Donald R. Schregardus, Director of the Ohio Environmental Protection Agency.

[FR Doc. 97–9752 Filed 4–15–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IN73–1a; FRL–5807–9]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: In this action, USEPA is approving a State Implementation Plan Revision (SIP) request submitted by the Indiana Department of Environmental Management (IDEM) on October 2, 1996, to eliminate references to total suspended particulates (TSP) while maintaining the existing opacity requirements. This SIP revision will also enable the removal of the TSP designation table for Indiana counties from 40 CFR 81.315.

DATES: This action is effective on June 16, 1997, unless USEPA receives adverse or critical comments by May 16, 1997. If the effective date is delayed, timely notification will be published in the **Federal Register**.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ryan Bahr, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4366.

SUPPLEMENTARY INFORMATION:

I. Background

On April 30, 1971, the USEPA promulgated primary and secondary standards for particulate matter (PM) measured as total suspended particulates (TSP) (36 FR 8166). On July 1, 1987 (52 FR 24633), the National Ambient Air Quality Standard (NAAQS)

for PM was revised. With this revision, the USEPA replaced TSP as the indicator for PM with those particulates with aerometric diameters less than 10 micrometers (PM–10).

However, USEPA continued to regulate TSP for two reasons. The first reason is that sections 110(l) and 193 of the Clean Air Act (Act) prohibit relaxation of the SIP. Therefore, opacity limits which reference TSP have remained as part of the SIP. The second reason is that, at that time, the Act's statutory prevention of significant deterioration (PSD) increments were still defined in terms of TSP (52 FR 24683).

Indiana requested on November 16, 1988, (and supplemented on September 10, 1992) to have eight areas which were designated nonattainment for TSP redesignated to attainment. More specifically, Indiana requested that portions of each of the following counties be redesignated attainment for TSP: Clark, Dearborn, DuBois, Lake, Marion, St. Joseph, Vanderburgh, and Vigo. The USEPA proposed to approve this request on February 9, 1993 (58 FR 7762), on the condition that Indiana supplement the submittal with rule modifications ensuring that no relaxations of the opacity limits were going to occur upon redesignation. This request was disapproved April 8, 1993 (58 FR 18161), because Indiana did not submit these supplemental materials.

The TSP designations have remained in the CFR and have been used to determine PSD increments and the applicability of certain sections of the opacity regulations. The PM increments, used for PSD purposes, were replaced with increments based on PM–10 on June 3, 1993 (58 FR 31621). On April 3, 1996, IDEM adopted a rule which retains the opacity requirements of the original rule and eliminates the references to TSP designations. This amendment became effective July 19, 1996, and was submitted to the USEPA as a SIP revision request on October 2, 1996. The USEPA found this submittal to be complete and issued a completeness letter to IDEM on February 27, 1997.

II. Analysis of State Submittal

This SIP revision request originated so that the CFR could be simplified by removing the TSP designations. Toward this end, the SIP revision request submitted October 2, 1996, eliminates references to TSP from 326 Indiana Administrative Code 5–1 (326 IAC 5–1) and retains opacity limits which are identical to those in the current SIP. Indiana's October 2, 1996, submittal revises 326 IAC 5–1 to simply list each of the current TSP nonattainment areas instead of referencing the TSP designations in 40 CFR 81.315; identical limits apply to these areas. The opacity limit which applies to all areas in Indiana not on the ''nonattainment'' list and not having a site or area specific limit is also retained.

The main concern in making this revision is that the areas currently designated attainment, unclassifiable, and nonattainment for TSP retain their respective opacity limitations as written in the current SIP. Section 193 of the Act specifically states that any regulations which were in effect before the 1990 Clean Air Act Amendments can not be modified ''in any manner unless the modification insures equivalent or greater emissions reductions of such air pollutants.'' Since identical opacity limits are retained for the respective areas, this requirement is satisfied. Modeling was not required for this submittal because the requirements are as strict as those in the current SIP.

One other concern is that any existing baseline dates and areas for determining the consumption of PSD increment remain intact. Any PM increment consumed since the original baseline date established for TSP will continue to be accounted for. This rulemaking in no way changes the existing framework of the PSD regulations. For more information on these regulations, refer to the final rule for PM PSD published June 3, 1993 (58 FR 31621).

III. Final Rulemaking Action

USEPA is approving the SIP revision request submitted by the State of Indiana on October 2, 1996. This action revises the SIP opacity regulation codified at 326 IAC 5–1: Opacity Limitations, Section 1: Applicability of Rule and Section 2: Visible emission limitations. This action also amends 40 CFR 81.315 by removing the table entitled ''Indiana-TSP''. The USEPA has completed an analysis of this SIP revision request based on a review of the materials presented, and has determined it to be approvable.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on June 16, 1997 unless, by May 16, 1997, adverse or critical comments are received.

If the USEPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on June 16, 1997.

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

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA 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, USEPA 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 (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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions

concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, USEPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 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, Incorporation by reference, Intergovernmental relations, National parks, Particulate matter, Reporting and recordkeeping requirements, Wilderness areas.

Dated: March 28, 1997.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(119) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(119) Approval—On October 2, 1996, the State of Indiana submitted a State Implementation Plan revision request to eliminate references to total suspended particulates (TSP) while maintaining the existing opacity requirements. The SIP revision became effective July 19, 1996. The SIP revision request satisfies all applicable requirements of the Clean Air Act.

(i) Incorporation by reference. 326 Indiana Administrative Code 5–1: Opacity Limitations, Section 1: Applicability of Rule, Section 2: Visible emission limitations. Adopted by the Indiana Air Pollution Control Board April 3, 1996. Filed with the Secretary of State June 19, 1996. Published at the Indiana Register, Volume 19, Number 11, August 1, 1996 (19 IR 3049). Effective July 19, 1996.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart C—[Amended]

2. Section 81.315 is amended by removing the table entitled ''Indiana-TSP''.

[FR Doc. 97–9794 Filed 4–15–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[001–7201a; A–1–FRL–5808–7]

Ambient Air Quality Surveillance; Connecticut/Maine/Massachusetts/ New Hampshire/Rhode Island/ Vermont; Modification of the Ozone Monitoring Season

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This final rule contains revisions to 40 CFR part 58, Appendix D, the Ozone Monitoring Season By State Table in Section 2.5. EPA's approval of these revisions will change the ozone monitoring season for Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont to April 1–September 30.

DATES: This action will become effective June 16, 1997, unless EPA receives adverse or critical comments by May 16, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Don Porteous, Acting Director, Office of Environmental Measurement & Evaluation, U.S. Environmental Protection Agency, Region I, 60 Westview Street, Lexington, MA 02173. Copies of the documents and data relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Environmental Measurement & Evaluation Division, U.S. Environmental Protection Agency, Region I, 60 Westview Street, Lexington, MA.

FOR FURTHER INFORMATION CONTACT: Mary Jane Cuzzupe, U.S. Environmental Protection Agency, Region I, Office of Environmental Measurement & Evaluation, Ecosystem Assessment, 60 Westview Street, Lexington, MA 02173. Telephone (617) 860–4383.

SUPPLEMENTARY INFORMATION:

I. Background

During 1993 and 1994, three New England states submitted proposals to EPA Region 1 to shorten their ozone seasons. In order to maintain a consistent ozone season throughout the Region, EPA Region 1 made the decision to process all of the requests together as one package. All of the states were notified of this decision. On February 7, 1995 (after numerous discussions with the states, and not wanting to delay processing these requests), EPA Region 1 sent formal requests to NH, VT and RI asking them if they were interested in submitting proposals to shorten their ozone seasons. As a result, the states submitted their proposals to the Region.

All six New England States have now submitted proposals to EPA Region 1 to shorten their ozone seasons. The current ozone season for EPA Region 1 is April 1—October 31. The dates of the state's request and their proposals are summarized below:

State	Date of letter	Proposal
CT	9/1/93	Apr.–Sept.
ME	11/10/93	May–Sept.
MA	6/28/94	May–Sept.
VT	2/15/95	May–Sept.
RI	2/28/95	Apr.–Sept.
NH	6/14/95	May–Sept.

II. Review

The current ozone monitoring season for all of the New England states is April 1—October 31, and is specified in 40 CFR Part 58, appendix D. In order to determine whether or not the ozone seasons could be modified for the New England states, the ozone monitoring data for all six states was reviewed in accordance with the *Guideline on Modification to Monitoring Seasons for Ozone*, Technical Support Division, Office of Air Quality Planning and Standards, March 1990. The guidance document states that ''the potential for ozone exceedances can be determined using a variety of procedures. The first and most reliable is the use of historical ozone monitoring data. A review of historical ozone data for this purpose must be based on 5 years of most recent data, in order to ensure that both favorable and unfavorable meteorological conditions are represented.''

The most recent six years of ambient ozone monitoring data (1990–1995) for all of the New England states were reviewed (AIRS AMP350 Raw Data Listing and AIRS AMP355 Standards Reports). The review of the data demonstrates:

(a) That there were no exceedances of the ozone National Ambient Air Quality Standard (NAAQS) in October; and

(b) That no concentrations above 0.100 ppm were recorded in October.

Therefore the test of five years of data without any concentrations above the recommended value of 0.100 ppm has been satisfied. The primary data is available for public review as part of the administrative record at the Office of Environmental Measurement and Evaluation, U.S. EPA—Region I (See the **ADDRESSES** section above for the exact location).

Unfortunately this is not the case for the month of April. There were two exceedances of the NAAQS, as well as several values reported above the recommended 0.100 ppm value for each of the Region I states except for Vermont. The only two years in which no values greater than 0.100 ppm were reported in any of the Region I states were 1992 and 1993.

Although the data for Vermont does satisfy the criteria for April, the guidance states that the ''ozone season designations should not result in a patchwork quilt on either a State or national basis.'' As a result, EPA Region 1 decided to maintain one common ozone season for all six New England states and modify the season consistently. The modification will change the ozone season from April 1–October 31 to April 1–September 30. This action will be beneficial for the states as they will be able to save monitoring resources by not being required to measure ozone in the month of October.

It is important to note that shortening the ozone season will affect the calculation of expected exceedances (40 CFR part 50, appendix H) for all of New England. If there are any missing days of data within the new ozone season, a higher calculated number of expected exceedances will be produced in future retrievals of the ambient air quality monitoring data as compared to the number of expected exceedances that would have been calculated within the old ozone season. The following example serves to clarify this point. There are 183 days in the new ozone season and 214 days in the old ozone season. If there were 10 missing days of data, the multiplication factor for determining the number of expected exceedances would be calculated as follows: 10/183 = 0.054 in the new ozone season or 10/214 = 0.046 in the old ozone season. Although unlikely, the small increase in the number of expected exceedances in the new ozone season could have a significant impact on when marginal non-attainment areas can be designated as attainment areas.

III. Final Action

After reviewing the most recent six years of ozone monitoring data for CT, ME, MA, VT, RI and NH, EPA Region 1 concluded that the ozone data meets the guidelines recommended for shortening the ozone season from April 1—September 30. Based on the above conclusion, EPA is revising CT, ME, MA, VT, RI and NH's ozone monitoring season in 40 CFR part 58, appendix D, Section 2.5 to April 1—September 30 of each year for all monitor types in AIRS.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the changes to the ozone monitoring seasons for the six New England states should adverse or critical comments be filed. This action will be effective June 16, 1997 unless adverse or critical comments are received by May 16, 1997.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on June 16, 1997.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this rule is not a ''significant regulatory action'' under the terms of E.O. 12866 and is therefore not subject to OMB review.

B. Regulatory Flexiblity Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action does not create any new requirements. Therefore, I certify that it does not have a significant impact on small entities.

C. Unfunded Mandates

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

requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approved action 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.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 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).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 58

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

Dated: March 24, 1997.

John P. DeVillars,

Regional Administrator, Region I.

Part 58 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), 7613, 7619.

2. Part 58, Appendix D, section 2.5, the table is amended by revising the entries for Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont to read as follows:

Appendix D—Network Design for State and Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS) and Photochemical Assessment Monitoring Station (PAMS)

* * * * *

2.5 Ozone (O_3) Design Criteria for SLAMS

* * * * *

OZONE MONITORING SEASON BY STATE

State	Begin month	End month
* * * * * * *		
Connecticut	April	September.
* * * * * * *		
Maine	April	September.
* * * * * * *		
Massachusetts	April	September.
* * * * * * *		
New Hampshire	April	September.
* * * * * * *		
Rhode Island	April	September.
* * * * * * *		
Vermont	April	September.
* * * * * * *		

* * * * *

[FR Doc. 97–9864 Filed 4–15–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–5809–5]

Clean Air Act Promulgation of Extension of Attainment Date for the Portland, Maine Moderate Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is extending the attainment date for the Portland, Maine moderate ozone nonattainment area from November 15, 1996 to November 15, 1997. This extension is based in part on monitored air quality readings for the national ambient air quality standard (NAAQS) for ozone during 1996. Accordingly, EPA is updating the table in 40 CFR part 81 concerning attainment dates for the State of Maine.

DATES: This extension becomes effective June 2, 1997 unless before May 16, 1997 adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA 02203; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA 02203, (617) 565–3578.

SUPPLEMENTARY INFORMATION:

Request for Attainment Date Extension for the Portland Area

On November 1, 1996, the State of Maine requested a one-year attainment date extension for the Portland moderate ozone nonattainment area. This area, which consists of York, Cumberland and Sagadahoc counties, is currently designated a moderate ozone nonattainment area. The statutory ozone attainment date, as prescribed by section 181(a) of the Clean Air Act as amended in 1990 (''the Act''), was November 15, 1996.

CAA Requirements and EPA Actions Concerning Designation and Classification

Section 107(d)(4) of the Act required the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQS) have been set. Section 181(a)(1) required that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality.

In a series of **Federal Register** documents, EPA completed this process by designating and classifying all areas of the country for ozone. See, *e.g.*, 56 FR 58694 (Nov. 6, 1991); 57 FR 56762 (Nov. 30, 1992); 59 FR 18967 (April 21, 1994).

Areas designated nonattainment for ozone are required to meet attainment dates specified under the Act. The Portland ozone nonattainment area was designated nonattainment and classified moderate for ozone pursuant to 56 FR 58694 (Nov. 6, 1991). By this classification, its attainment date became November 15, 1996. A discussion of the attainment dates is found in 57 FR 13498 (April 16, 1992) (the General Preamble).

CAA Requirements and EPA Actions Concerning Meeting the Attainment Date

Section 181(b)(2)(A) requires the Administrator, within six months of the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. For ozone, EPA determines attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date. See General Preamble, 57 FR 13506. In the case of ozone moderate nonattainment areas, the three-year period is 1994–1996. CAA section 181(b)(2)(A) further states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upwards.

However, CAA section 181(a)(5) provides an exemption from these bump up requirements. Under this exemption, EPA may grant up to two one-year extensions of the attainment date under specified conditions:

> Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the ''Extension Year'') the date specified in table 1 of paragraph (1) of this subsection if—
>
> (A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and
>
> (B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.
>
> No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

EPA interprets this provision to authorize the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension, (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with, and (3) the area has no more than one measured exceedance of the NAAQS during the year that includes the attainment date (or the subsequent year, if a second one-year extension is requested).

EPA has determined that the requirements for a one-year extension of the attainment date have been fulfilled as follows:

> (1) Maine has formally submitted the attainment date extension request.
>
> (2) Maine is currently implementing the EPA-approved SIP.
>
> (3) Maine has certified that the area has monitored no exceedances during 1996.

Therefore, EPA approves Maine's attainment date extension request for the Portland ozone nonattainment area. As a result, the chart in 40 CFR 81.320 entitled ''Maine—Ozone'' is being modified to reflect EPA's approval of Maine's attainment date extension request for the Portland area. Further details are available in the Technical Support Document for this action.

EPA Action

EPA is approving the attainment date extension for the Portland moderate ozone nonattainment area from November 15, 1996 to November 15, 1997 without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register**

publication, EPA is proposing to approve this part 81 action should adverse or critical comments be filed. This action will be effective June 2, 1997 unless, by May 16, 1997, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on June 2, 1997.

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.

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation.

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Extension of an area's attainment date under the CAA does not impose any new requirements on small entities. Extension of an attainment date is an action that affects a geographical area and does not impose any regulatory requirements on sources. EPA certifies that the approval of the attainment date extension will not affect a substantial number of small entities.

C. Unfunded Mandates

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 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 imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) of the Regulatory Flexibility Act as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 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 to grant Maine an extension to attain the ozone NAAQS in the Portland ozone nonattainment area as defined in 40 CFR 81.320 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 3, 1997.

John DeVillars,

Regional Administrator, Region I.

Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.320 the ozone table is amended by revising the entry for Portland area to read as follows:

§ 81.320 Maine.

* * * * *

MAINE—OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* * * *	*	*	*	
Portland Area:				
Cumberland County		Nonattainment		Moderate.[2]
Sagadahoc County		Nonattainment		Moderate.[2]

MAINE—OZONE—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
York County		Nonattainment		Moderate.[2]
* * * *	*	*	*	

[1] This date is November 15, 1990, unless otherwise noted.
[2] Attainment date extended to November 15, 1997.

* * * * *

[FR Doc. 97–9862 Filed 4–15–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300473; FRL–5600–2]

RIN 2070–AB78

Clopyralid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the herbicide clopyralid (3,6-dichloro-2-pyridine-carboxylic acid) in or on the raw agricultural commodities corn, field, fodder; corn, field, forage; corn, field, grain; and corn, field, milling fractions. It also removes time-limited tolerances for residues of clopyralid on the same commodities that expired on December 31, 1996. DowElanco requested these tolerances under the Federal Food, Drug and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of l996 (Pub. L. 104–170).

DATES: This regulation becomes effective April 16, 1997. Written objections must be received on or before June 16, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300473; PP 8F3622, 0H 5597], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically to the OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300473; PP 8F3622, 0H5597]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On April 25, l994 EPA established time-limited tolerances under sections 408 and 409 of the Federal Food Drug, and Cosmetic Act (FFDCA), 2l U.S.C. 346a(d) and 348, for residues of clopyralid on corn, field, fodder; corn, field, forage; corn, field, grain; and corn, field, milling fractions (59 FR 19639)(FRL–4775–4). These tolerances expired on December 31, l996. DowElanco, on September 27, l996, requested that the time-limited tolerances for residues of the herbicide clopyralid in the field corn commodities under the regulations mentioned above be made permanent tolerances based on residue data that they had submitted as required to change the tolerances from time-limited to permanent tolerances. DowElanco also submitted a summary of its petition as required under the Federal Food, Drug and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of l996 (Pub. L. 104–170).

A notice announcing the filing of DowElanco's petition was published in the **Federal Register**, (61 FR 65221–65223, December 11, l996)(FRL–5574–4). The proposed analytical method for determining residues is gas chromatography with electrolytic conductivity detection. The method for enforcement is available from the FDA; it is pending publication in the Pesticide Analytical Manual II.

The basis for the conditional time-limited tolerances that expired December 31, l996 was given in the **Federal Register** notice of Final Rule (59 FR 19339). The required residue chemistry data have been received, reviewed and found adequate by EPA to support the proposed tolerances. Based on the review of the residue chemistry data, EPA finds the tolerances established by this Final Rule adequately supported.

There were no comments received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were found acceptable by EPA in support of these tolerances.

I. Toxicological Profile

1. A rat oral lethal dose (LD_{50}) of 4,300 milligrams/kilogram (mg/kg) of body weight.

2. A 13–week mouse feeding study with a no-observed-effect level (NOEL) of 750 mg/kg/day.

3. Two 180–day dog feeding studies with NOEL > 50 mg/kg/day.

4. A rabbit teratology study with a developmental and a maternal NOEL > 250 mg/kg/day, highest dose tested (HDT).

5. A rat teratology study with a developmental NOEL of > 250 mg/kg/

day (HDT) and a maternal toxicity NOEL of 75 mg/kg/day.

6. A two-generation rat reproduction study with a reproductive NOEL of > 1,500 mg/kg/day and a systemic NOEL of 500 mg/kg/day.

7. A 1–year dog feeding study with a NOEL of 100 mg/kg/day.

8. A 2–year rat chronic feeding/oncogenicity study with a NOEL of 50 mg/kg/day with no oncogenic potential observed under the conditions of the study at doses up to and including 150 mg/kg/day (HDT). A significant decrease in mean body weights of females occurred at 150 mg/kg/day.

9. A repeat 2–year rat chronic feeding/oncogenicity study with a systemic NOEL of 15 mg/kg/day and with no oncogenic potential observed under conditions of the study up to 1,500 mg/kg/day (HDT). Hyperplasia and thickening of the limiting ridge of the stomach occurred at 150 mg/kg/day.

10. Three 2–year mouse oncogenicity studies with no oncogenic potential observed under the conditions of the study up to and including 2,000 mg/kg/day (HDT) and a systemic NOEL of 500 mg/kg/day.

11. A dominant lethal assay, negative.

12. *In vivo* rat cytogenic study, negative.

13. *In vitro* Salmonella and Saccharomyces assay, negative.

14. An *in vivo* mouse host-mediated assay, negative.

15. An unscheduled DNA synthesis assay in rats, negative.

16. In an animal metabolism study At doses of 5 mg/kg (oral), radiolabeled clopyralid was excreted within 24 hours in all dosed rats. Fecal elimination was minor. Detectable levels of residual radio-activity were observed in the carcass and stomach at 72 hours post-dose. Analysis of urine and fecal extracts showed no apparent metabolism of clopyralid.

II. Aggregate Exposures

1. *From food and feed uses.* The primary source for human exposure to clopyralid will be from ingestion of both raw and processed agricultural commodities as proposed in the December 11, 1996 Notice for Filing cited above. Based on exposure from existing permanent tolerances listed in 40 CFR 180.431(a) of the Code of Federal Regulations and the subject proposed tolerances in field corn raw agricultural commodities, the Theoretical Maximum Residue Contributions (TMRC) for the U.S. (48 States) adult population is 0.008214 mg/kg body weight/day; for non-nursing infants, 0.015400; for children 1 to 6 years old, 0.018454. These estimates are based on the assumption that 100% of the field corn commodities are derived from field corn cultured with the aid of the herbicide clopyralid.

2. *From potable water.* In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency looks at include drinking water (whether from groundwater or surface water), and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

There is presently no EPA Lifetime Health Advisory level for clopyralid and its degradates as drinking water contaminates. EPA does not have drinking water monitoring data available to perform a quantitative drinking water risk assessment. Available environmental fate data, conservative screening tools, GENEEC and Leaching Index have been used to estimate environmental concentrations of clopyralid in surface water and the leaching potential of clopyralid. The results of these screens indicate that clopyralid is moderately persistent, highly mobile in a soil and water environment, and may impact ground water and surface water.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for consumption of contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause clopyralid to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with clopyralid in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary uses.* There is only one non-dietary use registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended. The use is for residential weed control in turf.

i. *Short-term or intermediate-term.* A part of the hazard assessment process, the Agency reviews the available toxicological database to determine the endpoints of concern. For clopyralid, the Agency does not have a concern for a short-term or intermediate-term residential risk assessment because the available data does not indicate any evidence of significant toxicity by the dermal and inhalation routes. Therefore, a short-term or intermediate-term residential risk assessment was not required.

ii. *Chronic.* As part of the hazard assessment process an endpoint of concern was determined for the chronic occupational or residential assessment. However, during the exposure assessment process, the exposures that would result from the use of clopyralid were determined to be of an intermittent nature. The frequency and duration of these exposures do not exhibit a chronic exposure pattern. The exposure does not occur often enough to be considered a chronic exposure; i.e, a continuous exposure that occurs for at least several months. Therefore, it was not deemed appropriate to aggregate exposure from the residential use with exposure from food and drinking water.

iii. *Acute.* As part of the hazard assessment process, the Agency reviews the available toxicological database to determine the endpoints of concern. For clopyralid, the Agency does not have a concern for an acute dietary assessment because the available data do not indicate any evidence of significant toxicity from a 1 day or single event exposure by the oral route. Therefore, an acute dietary risk assessment was not required.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk

assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether clopralid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, clopyralid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that clopyralid has a common mechanism of toxicity with other substances.

III. Determination of Safety for U.S. Population and Non-nursing Infants

A. The U.S. Population

Based on a NOEL of 50.80 mg/kg bwt/day from a 2–year, rat feeding study with a decreased mean body weight gain effect, and using an uncertainty factor of 100 to account for the interspecies extrapolation and intraspecies variability, the Agency has determined a Reference Dose (RfD) of 0.5 mg/kg bwt/day for this assessment of chronic risk. As indicated above, there is no endpoint of concern identified with acute and short- or intermediate-term exposures. Based on the available toxicity data and the available exposure data identified above, the proposed and existing tolerances will utilize 2% of the RfD for the U.S. population. As indicated above, whatever bounding figure EPA chooses for drinking water exposure, the exposure estimate for clopyralid would not exceed the RfD.

B. Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. EPA believes that reliable data support using the standard margin of exposure (usually 100x for combined inter- and intra-species variability)) and not the additional tenfold margin of exposure when EPA has a complete database under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin of exposure.

Based on current data requirements, the data base relative to pre- and post-natal toxicity is complete. Risk to infants and children was determined by use of two developmental toxicity studies and a two-generation reproduction study. Both developmental studies had developmental NOELs of > 250 mg/kg/day, the highest dose tested. These studies also demonstrated that there was no developmental (prenatal) toxicity, at dosages at or below dosages that resulted in maternal toxicity. The maternal NOEL was > 250 mg/kg/day in the rabbit study and 75 mg/kg/day in the rat study. The developmental NOELs are fivefold higher in both the rat and rabbit than the NOEL used for establishing the RfD. Based on current data requirements, the data base relative to pre- and post-natal toxicity is complete. There were no treatment-related effects on any reproductive parameter in the adults or their offspring. The NOEL for reproductive effects was 1,500 mg/kg bwt/day, and there was no effect on reproductive parameters at > 1,500 mg/kg/day nor was there an adverse effect on the morphology, growth or viability of the offspring. The NOEL of the study was 30 times greater than the NOEL of 50.0 mg/kg/day used for establishing the RfD. These data taken together suggest minimal concern for developmental or reproductive toxicity and do not indicate any increased pre- or post-natal sensitivity. Therefore, EPA concludes that an additional uncertainty factor is not necessary to protect the safety of infants and children and that the RfD at 0.5 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

The percent of the RfD that will be utilized by the aggregate exposure from all tolerances to clopyralid will range from 3% for non-nursing infants, up to 3.6% for children (1 to 6 years of age). Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure. As indicated above, whatever bounding figure EPA chooses for drinking water exposure, the exposure estimate for clopyralid would not exceed the RfD. Non-dietary exposures were discussed above under ''Non-Dietary Exposure.''

IV. Other Considerations

1. *Endocrine effects.* There was no reported endocrine effect in any of the toxicological studies reviewed in the toxicological profile of this final rule.

2. *Metabolism in plants and animals.* The metabolism of clopyralid in plants and animals is adequately understood for the purposes of these tolerances. There are no metabolites of toxicological significance in plants. The residue of concern in plants and animals is the parent compound, clopyralid. In animal metabolism studies with C14 labeled clopyralid, the residues found were clopyralid and its glycine conjugate.

3. *Analytical method.* There is a practical analytical method for detecting and measuring levels of clopyralid in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The analytical method for determining residues is gas chromatography with electrolytic conductivity detection, described in a method submitted by DowElanco.

The quantitative limit of the method is 0.05 micrograms/gram in field corn fodder and forage and grain. EPA has provided information on this method to FDA. Because of the long lead time from establishing these tolerances to publication, the enforcement

methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number; Rm. 1130A, CM #2, l921 Jefferson Davis Highway, Arlington, VA 22202, (703)–305–5937.

4. *International tolerances.* There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for clopyralid.

V. Summary of Findings

The analysis for clopyralid using tolerance level residues shows that the proposed use in the culture of field corn will not cause exposure to exceed the levels at which the Agency believes there is an appreciable risk. All population subgroups examined by EPA are exposed to clopyralid residues at levels below 100 percent of the RfD for chronic effects.

Based on the information cited above, the Agency has determined that the establishment of these tolerances will be safe therefore, the tolerances are established as set forth below.

In addition to the tolerances being amended, since for purposes of establishing tolerances FQPA has eliminated all distinctions between raw and processed food, EPA is combining the tolerances that now appear in §§ 185.1100 and 186.1100 with the tolerances in § 180.431 and is eliminating §§ 185.1100 and 186.1100.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (1)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by June 16, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Docket

EPA has established a record for this rulemaking under docket number [OPP–300473] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

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

VIII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), this action is not a ''significant regulatory action'' and since this action does not impose any information collection requirements subject to approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, l993, special considerations as required by Executive Order 12898 (59 FR 7629, February 16, l994).

Because tolerances established on the basis of a petition under section 408(d) of FFDCA do not require issuance of a proposed rule, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), do not apply. Prior to the recent amendment of the FFDCA, EPA had treated such rulemakings as subject to the RFA; however, the amendments to the FFDCA clarify that no proposal is required for such rulemakings and hence that the RFA is inapplicable. Nonetheless, the Agency has previously assessed whether establishing tolerances or exemptions from tolerance, raising tolerance levels, or expanding exemptions adversely impact small entities and concluded, as a generic matter, that there is no adverse impact. (46 FR 24950) (May 4, l981).

Pursuant to 5 U.S.C. 801(a)(1)(A), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is

not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

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

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: April 4, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

b. Section 180.431 is amended as follows:

i. In paragraph (a) by revising the introductory text, and adding new entries to the table.

ii. In paragraph (b) by removing the text, and adding a paragraph heading.

iii. In paragraph (c) by the redesignating the text as paragraph (b), by adding a new paragraph heading, and by reserving it.

iv. By adding paragraph (d) with a paragraph heading only and reserving it.

§ 180.431 Clopyralid; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the following commodities:

Commodity	Parts per million
* * * *	*
Corn, field, fodder	10.0
Corn, field, forage	3.0
Corn, field, grain	1.0
Corn, field, milling fractions	1.5
* * * *	*

(b) *Section 18 emergency exemptions.* * * *

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.1100 [Removed]

b. By removing § 185.1100 *Clopyralid*.

PART 186—[AMENDED]

3. In part 186:

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

Authority: 21 U.S.C. 342, 348 and 701.

§ 186.1100 [Removed]

b. By removing § 186.1100 *Clopyralid*.

[FR Doc. 97–9372 Filed 4–15–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 96–20]

Port Restrictions and Requirements in the United States/Japan Trade

AGENCY: Federal Maritime Commission.

ACTION: Amendment to final rule.

SUMMARY: The Federal Maritime Commission is amending the final rule in this proceeding to provide that fees shall not be assessed on vessels for which fees have been assessed within the preceding seven days, or in the case of vessels calling at ports in Hawaii, within the preceding forty days.

DATES: *Effective Date:* April 14, 1997.

ADDRESSES: Requests for publicly available information or additional filings should be addressed to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: On March 4, 1997, the Commission published a final rule in this proceeding assessing per-voyage fees, effective April 14, on Japanese liner carriers in response to restrictive and unfavorable requirements for the use of Japanese ports (62 FR 9696). On April 4, 1997, Nippon Yusen Kaisha (NYK), one of the three Japanese carriers subject to the imposition of fees, submitted a ''Request for Clarification'' of the final rule to the Commission's General Counsel. In its request, NYK urges that the Commission make certain modifications to the final rule with regard to the assessment of fees. The request will therefore be treated as a petition for amendment of the Final Rule.

NYK's request centers on the application of the final rule as written to two particular NYK trans-Pacific service strings. The final rule, 46 CFR 586.2, states:

> (c) Assessment of fees. A fee of one hundred thousand dollars is assessed each time a designated vessel is entered in any port of the United States from any foreign port or place.

NYK operates a weekly service with the rotation: Japan/Taiwan/Hong Kong/Los Angeles/Portland/Vancouver/Seattle/Japan. Under the final rule, vessels in this string would be subject to a $100,000 fee first when they enter Los Angeles from Hong Kong, then another fee when they arrive at Seattle from Vancouver. NYK suggests that this sort of ''double assessment'' was not envisaged by the Commission when it promulgated the rule. It also states that such double assessments could lead NYK to drop a U.S. port from its rotation.

NYK also offers bi-monthly sailings to Honolulu in the following pattern: Far East/Honolulu/Central America/Honolulu/Far East. Under the rule, NYK would be subject to fees on both the eastbound and the westbound legs of this voyage. NYK indicates that this could cause it to drop one Hawaiian port call from its rotation. NYK points out that the Commission, in levying the fee, adopted an approach designed to ''eliminate the concern that the fee could lead to lines dropping or consolidating port calls in the U.S.'' NYK suggests an amendment to the rule that would be in keeping with this intent, addressing the issues raised by the two above-described service strings. NYK proposed adding the following to paragraph (c):

> provided that no fee is assessed against a designated vessel (1) if that vessel has previously been assessed a fee under this rule within the past ten days, or (2) for a vessel calling in the state of Hawaii, has previously been assessed a fee under this rule within the past forty-five days.

The proposed amendment is in keeping with the Commission's sensitivity to avoiding unnecessary adverse effects to U.S. ports and shippers. The proposed amendment would prevent NYK from being subjected to two fee assessments for one set of west coast port calls based on its unique service structure, heading off the

possibility of an unintended impact on service for the U.S. Pacific northwest. It would also take into account Hawaii's unique position and reliance on maritime commerce, ensuring that ports and commerce in that state are not disadvantaged by the rule. The proposed exceptions are narrowly crafted, and do not undermine the larger objectives of the rule, that is, addressing the restrictive and unfavorable conditions facing U.S. commerce and U.S. companies in Japan's ports which result from the laws and policies of the Government of Japan. It does not appear that service strings or vessel calls other than those listed above would be affected by this proposed language.

We would also note that, except with regard to the two NYK services noted above, further analysis by the Commission since the issuance of the final rule supports and reconfirms our earlier finding that carriers are unlikely to drop port calls or divert services in response to the Commission's fee. Moreover, it has been widely reported in the press that the Japanese carriers have informed their customers that their current services will continue without interruption. Therefore, we would reaffirm that the likelihood of any undue harm to U.S. ports and shippers from the Commission's action appears exceptionally low.

List of Subjects in 46 CFR Part 586

Cargo vessels, Exports, Foreign relations, Imports, Maritime carriers, Penalties, Rates and fares, Tariffs.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), as amended, Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR part 585, part 586 of Title 46 of the Code of Federal Regulations is amended as follows:

PART 586—[AMENDED]

1. The authority citation for Part 586 continues to read as follows:

Authority: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876(5) through (12); 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2. In § 586.2, paragraph (c) is revised to read as follows:

§ 586.2 Conditions unfavorable to shipping in the United States/Japan trade.

* * * * *

(c) Assessment of fees. A fee of one hundred thousand dollars is assessed each time a designated vessel is entered in any port of the United States from any foreign port or place; provided, however, that no fee is assessed against a designated vessel if:

(1) That vessel has previously been assessed a fee under this section within the past seven days, or

(2) For a vessel calling in the state of Hawaii, that vessel has previously been assessed a fee under this section within the past forty days.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–9811 Filed 4–14–97; 1:15 pm]

BILLING CODE 6730–01–W

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 96–20]

Port Restrictions and Requirements in the United States/Japan Trade

AGENCY: Federal Maritime Commission.

ACTION: Final rule; delay of effective date, requirement for reporting, and request for comments.

SUMMARY: The Federal Maritime Commission is delaying the effective date of its final rule assessing fees on liner vessels operated by Japanese carriers, in light of recent commitments made by the Government of Japan addressing restrictive and unfavorable conditions for the use of Japanese ports.

DATES: Effective April 13, 1997, delay until September 4, 1997, the effective date of the rules published March 4, 1997 (62 FR 9696), as amended by the Commission April 11, 1997 in a rule to be published April 16, l997. Status reports and comments are due July 1, 1997, and August 5, 1997.

ADDRESSES: Filings and requests for publicly available information should be addressed to:

Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573 (202)523–5725.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202)523–5740.

SUPPLEMENTARY INFORMATION: On March 4, 1997, the Commission published a final rule pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), to assess per-voyage fees on Japanese liner carriers, effective April 14, 1997, in response to restrictive and unfavorable requirements for the use of Japanese ports. An amendment to the final rule was issued by the Commission on April 11, 1997, providing that fees would not be assessed twice in a seven day period (or, for port calls in Hawaii, in a 40 day period). In light of commitments made by the Government of Japan in recent bilateral talks with the United States Government addressing the unfavorable conditions identified in the final rule, the Commission has decided to suspend the effective date of the rule.

The Commission issued its final rule after a comprehensive inquiry into restrictions and requirements facing U.S. carriers and U.S. commerce in Japanese ports. The fees were deemed necessary in light of the Commission's identification of a number of conditions unfavorable to shipping warranting action under section 19:

- Shipping lines in the Japan-U.S. trades are not allowed to make operational changes, major or minor, without the permission of the Japan Harbor Transportation Association (''JHTA''), an association of Japanese waterfront employers operating with the permission of, and under the regulatory authority and ministerial guidance of, the Japan Ministry of Transport (''MOT'').
- JHTA has absolute and unappealable discretion to withhold permission for proposed operational changes by refusing to accept such proposals for ''prior consultation,'' a mandatory process of negotiations and pre-approvals involving carriers, JHTA, and waterfront unions.
- There are no written criteria for JHTA's decisions whether to permit or disallow carrier requests for operational changes, nor are there written explanations given for the decisions.
- JHTA uses and has threatened to use its prior consultation authority to punish and disrupt the business operations of its detractors.
- JHTA uses its authority over carrier operations through prior consultation as leverage to extract fees and impose operational restrictions, such as Sunday work limits.
- JHTA uses its prior consultation authority to allocate work among its member companies, by barring carriers and consortia from freely choosing operators and by compelling shipping

lines to hire additional, unneeded stevedore companies or contractors.

- MOT administers a licensing standard which blocks new entrants from the stevedoring industry in Japan, protecting JHTA's dominant position, and ensuring that the stevedoring market remains entirely Japanese.
- Because of the restrictive licensing requirement, U.S. carriers cannot perform stevedoring or terminal operating services for themselves or third parties in Japan, as Japanese carriers do in the United States.

In the rule, the Commission observed that these conditions were matters of longstanding concern to the United States Government, and that repeated diplomatic efforts to resolve them had been unsuccessful. Since the rule was issued, the United States Government has undertaken a number of discussions, diplomatic approaches, and consultations to persuade the Government of Japan to remedy the conditions identified in the rule. The most recent and most intensive of these efforts was a series of consultations, commencing April 2, 1997, and concluding Friday, April 11, 1997. At that time, the two sides signed a Memorandum of Consultation containing a series of statements and agreements concerning Japanese port practices, licensing, and prior consultation.

With regard to licensing, the Japanese side confirmed that license applications meeting the standards stipulated in the Port Transportation Business Law will be approved by MOT within approximately four months of receipt when such applications meet the following criteria:

1. They are submitted by foreign carriers and their subsidiaries;

2. They are for General Port Transportation Business Licenses as set forth in Article 3, Section 1 of the Port Transportation Business Law and/or Port Stevedoring Business Licenses as set forth in Section 2 of the same article; and

3. They are for operations to be conducted for the applicant's (or the applicant's parent's) own account and/or for its consortia partners and third parties at berths leased in a containership port by the applicant (or the applicant's parent).

The Japanese side stated that MOT is knowledgeable regarding the operations of U.S. carriers and their consortia partners in Japan's ports and that, based on this knowledge, completed applications by these companies for operations at berths leased by the applicant (or the applicant's parent) would be in compliance with the law and, accordingly, will be approved.

With regard to prior consultation, the Japanese Government explained that, under the leadership of MOT, concerned parties have endorsed an agreement that provides a framework for reforming the prior consultation system by July 31, 1997. MOT stated that it will continue to use its ''maximum effort,'' and clarified a number of other points, including: prior consultation will not be used to allocate work among operators; all carriers have freedom to contract with any operator; all requests for prior consultation will be considered; the so-called ''pre-pre-prior consultation'' will not be required. The U.S. side stressed four important goals to be achieved by July 31, 1997, relating to the elimination of minor matter consultations, the process of major matter consultations, the definition of ''major'' and ''minor'' matters, and the implementation of a transparent appeals process under MOT direction.

As was agreed in the talks, at the conclusion of the consultations a letter was sent by the head of the U.S. delegation, Maritime Administrator A.J. Herberger, to FMC Chairman Harold J. Creel, Jr., stating that the discussions were conducted in good faith and represent a reasonable basis for the Commission not to impose the proposed sanctions on April 14, 1997.

In the wake of the signing of the Memorandum of Consultation, comments were submitted by the U.S. carriers, American President Lines, Ltd. and Sea-Land Service, Inc., and a response was filed by Japanese carriers Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., and Nippon Yusen Kaisha.

The U.S. carriers call MOT's commitments on licensing ''meaningful'' and ''excellent progress.'' With regard to the approach on prior consultation, the U.S. carriers state that, since the process has been dominated by JHTA, they see ''obvious risks.'' However, they state that MOT has shown new leadership in convening this process and has undertaken to use its best efforts to reach a conclusion satisfactory to all parties. Expressing the belief that MOT guidance is significant and holds promise for reform in the near term, the U.S. carriers state that it would be appropriate to give this process time to work without the distraction of imposed sanctions.

The Commission agrees. The Government of Japan's commitments on licensing are highly laudable, and, once implemented, will go far toward providing the type of reciprocal treatment in Japan that Japanese carriers enjoy in this country. The approach agreed on will benefit not just the carriers involved, but also all oceanborne trade and commerce between the U.S. and Japan.

The Commission remains concerned about the prior consultation system, and the attendant market power enjoyed by JHTA. However, in light of the fact that the approach described in the Memorandum of Consultation has been agreed to by the parties, we find that it would be appropriate to allow that process an opportunity to achieve results without the imposition of sanctions. MOT's recently demonstrated commitment to action and oversight in this area has renewed our optimism that the necessary reforms will be implemented in a timely manner.

The U.S. carriers recommend deferring the effectiveness of the final rule until August 30, 1997. The Japanese carriers, however, suggest that the effectiveness of the final rule be suspended indefinitely. The Commission has elected to adopt the U.S. carriers' suggestion and defer the rule's effectiveness until a date certain. The Commission appreciates the commendable efforts made thus far by the Government of Japan, both in making the above-described commitments and clarifications in the consultations, and also in convening and leading the ongoing discussions in Japan. The Commission has accordingly determined that the imposition of fees is not warranted at this time. Moreover, the Commission has the highest respect for, and confidence in, MOT officials. However, the basis of the Commission's rule is the unfavorable conditions which exist in Japanese ports. Until such conditions are substantially remedied, in a concrete and identifiable way, the Commission cannot permanently suspend or withdraw the rule. Therefore, the effectiveness of the rule is suspended until September 4, 1997.[1] The Commission has elected to require the carriers to file status reports describing developments relevant to this proceeding.[2] If warranted, the

[1] The date suggested by the U.S. carriers would meet our objectives of affording the parties an opportunity to conclude the consultative process and submit reports, and giving the Commission the opportunity to further evaluate the results. However, the proposed date falls during a holiday weekend.

[2] Section 19(6) of the Merchant Marine Act, 1920, 46 U.S.C. app. § 876(6), states:

(a) the Commission may, by order, require any person * * * to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate; (b) the Commission may require a report or answers to questions to be made under oath;

* * * * *

Commission will reassess the suspension of the rule based on the information submitted.

Therefore, it is ordered That the effective date of the rules published March 4, 1997 (62 FR 9696), as amended by the Commission April 11, 1997 (in a rule to be published April 16, 1997), amending Part 586 of Title 46 of the Code of Federal Regulations, is hereby suspended until September 4, 1997.

It is further ordered, That the following parties are ordered to file reports with the Commission on July 1, 1997, and August 5, 1997: American President Lines, Ltd.; Sea-Land Service, Inc.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; and Nippon Yusen Kaisha. These reports should describe, in detail:

- the status of the consultative process to reform the prior consultation system;
- any planned or implemented changes to the prior consultation system, and the observed or expected effects of these changes;
- the role of the Government of Japan in any future prior consultation system or related review or appeals process;
- the extent to which carriers in Japan have freedom to contract with any port transportation business operator;
- the status of any efforts by U.S. carriers to secure licenses to operate port transportation businesses or to establish such businesses;
- any other information relevant to this proceeding that parties wish to bring to the attention of the Commission.

It is further ordered, That any other persons with information relevant to this proceeding may submit comments for the Commission's consideration, due on July 1, 1997, and August 5, 1997.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–9903 Filed 4–14–97; 1:15 pm]

BILLING CODE 6730–01–W

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–241; RM–8928]

Radio Broadcasting Services; Minden and Natchitoches, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ninety-Five Point Seven, Inc., licensee of Station KASO(FM), Channel 239A, Minden, Louisiana, and Bundrick Communications, Inc., licensee of Station KZBL(FM), Channel 240A, Natchitoches, Louisiana, substitutes Channel 239C2 for Channel 239A at Minden and modifies the license of Station KASO(FM) to specify the higher powered channel. To accommodate the upgrade at Minden, the Commission also substitutes Channel 264A for Channel 240A at Natchitoches, and modifies the license of Station KZBL(FM) to specify the alternate Class A channel. *See* 61 FR 65508, December 13, 1996, and Supplemental Information, *infra.* With this action, this proceeding is terminated.

EFFECTIVE DATE: May 27, 1997.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–241, adopted April 2, 1997, and released April 11, 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, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

All channels can be allotted to the above-noted communities in compliance with the Commission's minimum distance separation requirements. Channel 239C2 can be allotted to Minden with a site restriction of 9.2 kilometers (5.7 miles) northwest. The coordinates for Channel 239C2 are 32–39–06 NL and 93–22–15 WL. Channel 264A can be allotted to Natchitoches at the transmitter site specified in Station KZBL(FM)'s license. The coordinates for Channel 264A at Natchitoches are 31–48–18 NL and 93–01–29 WL.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 239A and adding Channel 239C2 at Minden; and by removing Channel 240A and adding Channel 264A at Natchitoches.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–9826 Filed 4–15–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–224, RM–8906]

Radio Broadcasting Services; Clear Lake, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Lac Qui Parle Broadcasting Company, Inc., allots Channel 296C3 at Clear Lake, South Dakota, as the community's first local aural transmission service. *See* 61 FR 60067, November 26, 1996. Channel 296C3 can be allotted to Clear Lake in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 kilometers (1.6 miles) southwest to avoid a short-spacing to the licensed site of Station KMGK(FM), Channel 296A, Glenwood, Minnesota. The coordinates for Channel 296C3 at Clear Lake are North Latitude 44–44–21 and West Longitude 96–42–38. With this action, this proceeding is terminated.

DATES: Effective May 27, 1997. The window period for filing applications for Channel 296C3 at Clear Lake, South Dakota, will open on May 27, 1997, and close on June 27, 1997.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–224, adopted April 2, 1997, and released April 11, 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 contractors, International Transcription

(d) a person who fails to file * * * information required to be filed under this paragraph shall be liable to the United States Government for a civil penalty of not more than $5000 for each day that the information is not provided.

Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Clear Lake, Channel 296C3.

Federal Communications Commission.

John A. Karousos,

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

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 92–235, DA 97–592]

Efficiency of Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for clarification.

SUMMARY: On February 14, 1997, Motorola filed a petition seeking clarification of the Commission's decision in the *Memorandum Opinion and Order* in PR Docket 92–235, FCC 96–492 (released Dec. 30, 1996) (*Reframing MO&O*). Specifically, Motorola notes that the *Reframing MO&O* allows frequency coordinators to recommend frequencies inconsistent with the adopted band plan, provided that such a system will not cause harmful interference to any existing system. This action seeks public comment on Motorola's petition.

DATES: Comments are due May 2, 1997; reply comments are due May 12, 1997.

ADDRESSES: All comments should be filed with the Office of Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, DC 20554. A copy of each filing should be sent to International Transcription Service, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800 and Ira Keltz, Federal Communications Commission, Wireless Telecommunications Bureau, Private Wireless Division, 2025 M Street, N.W., Room 8119, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Ira Keltz of the Wireless Telecommunications Bureau at (202) 418–0616 or via E-Mail to mayday@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice released April 10, 1997.

1. On February 14, 1997, Motorola filed a petition seeking clarification of the Commission's decision in the *Memorandum Opinion and Order* in PR Docket 92–235, FCC 96–492 (released Dec. 30, 1996) (*Reframing MO&O*) (62 FR 2027, January 15, 1997). Specifically, Motorola notes that the *Reframing MO&O* allows frequency coordinators to recommend frequencies inconsistent with the adopted band plan, provided that such a system will not cause harmful interference to any existing system. For example, a frequency coordinator could recommend approval of applications for 5 kHz channels within a user's existing 25 kHz assignment, even though such applications would be inconsistent with the channel plan adopted in this proceeding (which calls for 6.25/7.5 kHz channel spacing). This policy was designed to increase the efficient use of the spectrum.[1]

2. Although supportive of this policy, Motorola notes that implementing this flexibility for ''any technology'' may be constrained by other Commission regulations. For example, Motorola observes that a user who seeks to double the capacity of its system by implementing two 12.5 kHz channels within its existing 25 kHz assignment would have to use the channel centers that are 6.25 kHz removed from its existing channel center. This type of operation, however, is prohibited because these channels are restricted to emissions of 6.0 kHz or less. Motorola asks that the Commission clarify its policy to allow the described operation, thereby achieving a consistent policy of technological neutrality and encouraging migration from existing equipment to more efficient technologies.

[1] Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services and Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket Nos. 92–235 and 92–257, *Memorandum Opinion and Order,* 11 FCC Rcd 17676 (1996) at para. 11.

3. The full text of the petition, comments, and reply comments are available for inspection and duplication during regular business hours in the Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, N.W., Room 8010, Washington, D.C. 20554. Copies may also be obtained from International Transcription Service, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–9797 Filed 4–15–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961226370–7074–02; I.D. 111896A]

RIN 0648–AI15

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the Southern Atlantic States; Amendment 2

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). Amendment 2 adds brown and pink shrimp to the FMP's fishery management unit, defines overfishing for brown and pink shrimp, defines optimum yield (OY) for brown and pink shrimp, requires the use of certified bycatch reduction devices (BRDs) in all penaeid shrimp trawls in the exclusive economic zone (EEZ) in the South Atlantic, and establishes a framework procedure for adding to the list of certified BRDs or modifying their specifications. The intended effects are to minimize the bycatch of finfish in shrimp trawling operations in the South Atlantic and to implement consistent, and therefore more enforceable, Federal and state management measures requiring the use of BRDs for reducing finfish bycatch in the penaeid shrimp fishery.

EFFECTIVE DATE: April 21, 1997.

ADDRESSES: Requests for copies of Amendment 2, which includes a regulatory impact review (RIR) and a final supplemental environmental impact statement (FSEIS), and the *Bycatch Reduction Device Testing Protocol Manual* may be obtained from the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 803–571–4366; Fax: 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–570–5305.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background on the shrimp fishery off the southern Atlantic states and the rationale for the management measures in Amendment 2 were contained in the preamble to the proposed rule (62 FR 720, January 6, 1997) and are not repeated here.

The availability of Amendment 2 for public comment was announced in the **Federal Register** on November 25, 1996 (61 FR 59856), and comments were invited through January 24, 1997. Public comments were invited on the proposed rule through February 20, 1997, and on the FSEIS through January 21, 1997. After consideration of the comments on the amendment and the proposed rule, NMFS approved Amendment 2 on February 24, 1997.

Comments were received from two fisheries associations, two commercial fishermen, two personnel from the Georgia Marine Extension Service, the Environmental Protection Agency (EPA), and the Southwest Florida Regional Planning Council. The EPA concluded that it has no objection to the implementation of the amendment. The Regional Planning Council concluded that Amendment 2 was regionally significant and consistent with adopted goals, objectives, and policies of its Strategic Regional Policy Plan.

Comments and Responses

Comment: Two fisheries associations, two commercial fishermen, and two personnel from the Georgia Marine Extension Service questioned the need to reduce bycatch mortality on Spanish mackerel and weakfish. They stated that the catch of weakfish and Spanish mackerel amounts to less than 1 percent of the total bycatch. Further, they suggest that weakfish found off Georgia and Florida may belong to a different stock than those found farther north and claim that appropriate management measures have been implemented in the northern area to safeguard weakfish. They add that Spanish mackerel currently are not overfished.

Response: Weakfish (*Cynoscion regalis*) is considered a single stock along the Atlantic coast, ranging from Maine to Florida. Weakfish populations are overfished—total landings have declined yearly, from 35,667 mt in 1980 to 3,573 mt in 1994, before increasing slightly in 1995 to 3,933 mt. In 1995, only 5 percent of the population achieved spawning age, far short of the 20 percent or greater needed to sustain and rebuild the stock. There has been a severe reduction in the number of age classes (age-4 or older) in the population since 1989. Recruitment studies indicate that juvenile recruitment was extremely low in 1993 and 1994, although recruitment appeared to improve in 1995. Even though juvenile weakfish abundance was very low in 1994, the 1994 weakfish stock assessment estimated that 21.7 million age-0 and 2.4 million age-1 weakfish were killed in the South Atlantic shrimp trawl fishery. The estimate of average annual deaths of juvenile weakfish caused by the shrimp trawl fishery since 1979 is 37.3 million age-0 and 4.3 million age-1 weakfish. The Council, Atlantic States Marine Fisheries Commission, and NMFS believe that the weakfish stock is severely depressed and that the bycatch mortality caused by the South Atlantic shrimp trawl fishery is substantial and must be reduced to sustain and rebuild the weakfish resource.

The 1996 report of the Mackerel Stock Assessment Panel (SAP) noted for South Atlantic Spanish mackerel that including bycatch mortality data in the assessment would have lowered the median spawning potential ratio (SPR) from 29 to 24 percent, and the median estimate of acceptable biological catch would have been lowered from 6.0 to 2.6 million lb (2,722 to 1,179 mt). Although the SAP concluded that the Atlantic group of Spanish mackerel is not overfished based on its findings and on its current recommended overfishing SPR level (i.e., SPR of 20 percent), it is clear that, should bycatch mortality continue, the SPR would continue to decrease, which would result in the stock becoming overfished. The Council added Spanish mackerel to its bycatch reduction effort to prevent the resource from becoming overfished.

National Standard 1 requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the U.S. fishing industry. National Standard 9 requires that conservation and management measures, to the extent practicable, minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. Given the relatively few ways available to reduce bycatch mortality (e.g., area and/or seasonal closures), the Council and NMFS believe that the use of BRDs will have the least onerous impact upon shrimp fishermen while achieving the goals of Amendment 3 to the Interstate Fishery Management Plan for Atlantic Weakfish regarding restoration of the weakfish resource and the management objectives of the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic regarding preventing overfishing of Spanish mackerel.

Comment: The above commenters stated that the use of turtle excluder devices (TEDs) has reduced finfish bycatch substantially and that fishermen should be granted a credit for the use of TEDs.

Response: The decline in abundance of weakfish and the estimates of weakfish bycatch mortality were obtained with TED-equipped nets. Similarly, the bycatch mortality of Spanish mackerel has occurred, and is occurring, with TED-equipped shrimp trawls. It is clear that excessive bycatch mortality of weakfish and Spanish mackerel has occurred, and is occurring, with TED-equipped shrimp trawls. The Council recognized that inconsistent Federal and state bycatch regulations would result in unenforceable state regulations and preclude effective reduction of bycatch of weakfish and Spanish mackerel throughout the range of the species. Amendment 2 was developed to complement the required use of BRDs in state waters. The amendment allows the use of three state-certified BRDs in Federal waters to minimize the impact on fishermen. Also, the amendment establishes a procedure to certify new, more efficient BRDs, and encourages their development.

Comment: The commenters claimed that the use of BRDs will result in excessive shrimp loss, perhaps as high as 38 percent.

Response: Eighty-two prototype BRDs were field-tested. Only 24 of these advanced to proof-of-concept testing. Only 3 of the 24 have met the criteria of reducing bycatch by at least 50 percent with less than 3 percent shrimp loss. The shrimp loss rate was derived from data collected by observers on commercial shrimp trawlers making simultaneous tows of trawls with and without BRDs. Some trawlers undoubtedly will experience higher loss

rates if they fail to use the BRDs correctly, while others, depending upon fishing conditions, may experience lower rates of loss. Research is ongoing to identify factors affecting shrimp loss, so that information can be provided to fishermen on ways to better control this loss. In addition, Amendment 2 establishes a procedure to certify more efficient BRDs when they become available. The Council and NMFS believe that the certified BRDs are the best available gear to reduce finfish bycatch while minimizing the loss of shrimp.

Comment: One fisheries association disagrees with the conclusion of the Council that Amendment 2 will not have a significant effect on small businesses.

Response: The southern Atlantic states require state-certified BRDs to be used in state waters while shrimp trawling. Amendment 2 will extend that requirement to Federal waters. Three certified BRDs may be used in both state and Federal waters. Since the vast majority of shrimp trawling operations occur in both state and Federal waters during the same trip, there will be no additional burden on fishermen that fish in Federal waters, because they can use the same BRDs that are required now for state waters. Amendment 2 complements state BRD regulations and enhances enforceability of state regulations by requiring similar BRDs for use in Federal waters.

Approximately 30 million pounds (heads on) of shrimp are harvested annually in the South Atlantic area, with an ex-vessel value of some $60 million. The use of certified BRDs in all designated shrimp trawls in both state and Federal waters of the South Atlantic area would likely result in an annual 3 percent reduction in shrimp catch, which would amount to 0.9 million pounds. It is estimated that shrimp loss from the use of a certified BRD in a shrimp trawl averages 3 percent by weight per trawl tow; however, the shrimp that are not retained in each trawl tow are still available for harvest by succeeding tows. In the worst case scenario, with no recapture of the shrimp comprising the 3 percent loss per trawl tow, the reduction in annual gross revenues to the fishing industry in the South Atlantic area would be between $1.86 and $2.36 million. The Council's best estimate of the maximum annual loss of gross revenues from the application of BRDs in Federal as well as state waters is $1.8 million. This revenue loss represents a small percentage reduction in gross revenues for the industry. Since shrimp trawlers in the South Atlantic area take most of their catch from state waters (60 to 80 percent), the adverse economic impacts of this rule, requiring BRDs only for shrimp trawls in the EEZ, will represent only a portion of the above estimates of fishery-wide impacts.

Comment: The fisheries association mentioned in the previous comment also stated that the biological impact on shrimp stocks caused by releasing high percentages of fish species that are shrimp predators has not been assessed or evaluated. It recommended that more information be obtained before Amendment 2 is approved by the Secretary of Commerce.

Response: There is virtually no information available concerning the interactions between predatory fish and shrimp populations in the South Atlantic. However, it is well documented that commercial landings of shrimp, which vary considerably on an annual basis, have remained stable in the South Atlantic for approximately 70 years. Also, the decline in weakfish, as shown by commercial landings, has been approximately 90 percent from 1980 to 1995; yet, South Atlantic shrimp landings in 1980 (29.l million lb (13,200 mt)) were slightly higher than those experienced in 1993 (28.3 million lb (8,301 mt)) when weakfish commercial landings were at an all-time low. It follows that, if abundance of weakfish controlled the abundance of shrimp, shrimp landings should have increased dramatically from 1980 through 1995. This did not happen; rather, shrimp landings exhibited the same pattern that has been observed since the 1920s. The lack of any increase in shrimp landings despite a 90-percent decline in commercial landings of weakfish, which indicates a similar decline in weakfish abundance, suggests that weakfish have little effect upon shrimp abundance. Thus, the concern of the fisheries association that an increase in weakfish abundance could lead to a significant decline in shrimp landings does not appear warranted. Similarly, the abundance of Spanish mackerel has varied considerably in the past 20 years with no apparent effect on shrimp abundance.

Changes from the Proposed Rule

The title of Appendix D, which contains the specifications for certified BRDs, is revised to be more generic, rather than applicable only to the shrimp fishery off the southern Atlantic states. BRDs certified for use in the Gulf of Mexico may be added to Appendix D in the future.

The construction and installation requirements for the Fisheye BRD (Appendix D to part 622, paragraph C.2.) are clarified. The fisheye is required to be located at the top center of the trawl and no farther forward of the codend drawstring than 70 percent of the distance between the codend drawstring and the forward edge of the codend. NMFS is not aware of any current fisheye BRDs that do not meet these criteria.

BRD Testing Protocol

The Council has proposed and NMFS has approved a testing protocol for the certification of BRDs. That protocol is published as an appendix to this final rule. (The appendix will not appear in the Code of Federal Regulations.) Potential testers of BRDs should obtain the *Bycatch Reduction Device Testing Protocol Manual,* which contains the testing protocol and additional guidance on the testing of BRDs. The manual is available from the Council (see **ADDRESSES**).

Classification

The Regional Administrator, Southeast Region, NMFS, with the concurrence of the Assistant Administrator for Fisheries, NOAA, determined that Amendment 2 is necessary for the conservation and management of the shrimp fishery off the southern Atlantic states and that it is consistent with the Magnuson-Stevens Act and other applicable law.

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

The Council prepared an FSEIS for this amendment. A notice of availability of the FSEIS for public comments through January 21, 1997, was published on December 20, 1996 (61 FR 67330).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (62 FR 720, January 6, 1997) and are not repeated here. One comment was received regarding this certification. It is addressed above under ''Comments and Responses.''

Currently, Florida, Georgia, North Carolina, and South Carolina, to reduce the bycatch of weakfish, require the use by penaeid shrimp trawlers in their waters of one of the certified BRDs required by this rule for use in the EEZ. The states' BRD requirements are in response to state obligations under the Atlantic States Marine Fisheries

Commission's Interstate Fishery Management Plan for Atlantic Weakfish (ISFMP) to reduce shrimp fishery bycatch mortality of juvenile weakfish sufficient to allow recovery of this overfished resource.

Most of the shrimp trawling in the South Atlantic occurs in state waters. It is unlikely that a shrimp trawling trip in the South Atlantic would be conducted solely in the EEZ. Standard practice for shrimp fishermen has been to leave the BRD in the trawl net when leaving state waters to pursue shrimp in the EEZ even though there were no Federal requirements for BRDs. Removal of a BRD from a trawl would require considerable time and effort and disrupt efficient shrimping operations. This rule is not expected to have any effects on this practice. For these reasons, the requirement for use of a BRD in the EEZ should pose little, if any, additional compliance burdens on fishermen because their nets are already equipped with BRDs that this rule approves for use in Federal waters. The costs associated with shrimp loss caused by BRDs are discussed above under ''Comments and Responses'' and are not expected to be significant.

In support of the ISFMP and as a complement to state BRD measures, this rule will enhance the states' ability to enforce their BRD requirements and will provide direct and biologically important benefits from reducing bycatch mortality of weakfish in the EEZ. The finfish conservation objectives of Amendment 2 and this rule were discussed in the preamble of the proposed rule and are not elaborated upon here. NMFS is concerned that if the rule does not become effective without delay, major quantities of juvenile weakfish taken as bycatch in the shrimp trawl fishery will have significant adverse effects on weakfish populations and fisheries even outside of the South Atlantic Bight area. The South Atlantic states have made major advances in their own requirements for BRDs to reduce weakfish bycatch, but without similar restrictions in Federal waters as soon as possible, the effectiveness of state BRD enforcement efforts will be seriously jeopardized.

For the reasons above, the Assistant Administrator for Fisheries, NOAA, finds that, pursuant to 5 U.S.C. 553(d)(3), good cause exists to waive the general requirement of the Administrative Procedure Act to delay for 30 days the effective date of this rule. Instead, NMFS will delay the effectiveness of this rule for 3 days after its publication in the **Federal Register**, during which time NMFS intends to notify all state fishery management agencies as well as affected fishermen of the BRD-related requirements of this rule.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 10, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.2, definitions for ''BRD'', ''Headrope length'', ''Penaeid shrimp trawler'', and ''Try net'' are added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

BRD means bycatch reduction device.

* * * * *

Headrope length means the distance, measured along the forwardmost webbing of a trawl net, between the points at which the upper lip (top edge) of the mouth of the net are attached to sleds, doors, or other devices that spread the net.

* * * * *

Penaeid shrimp trawler means any vessel that is equipped with one or more trawl nets whose on-board or landed catch of brown, pink, or white shrimp (penaeid shrimp) is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

* * * * *

Try net, also called test net, means a net pulled for brief periods by a shrimp trawler to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, seagrasses).

* * * * *

3. In § 622.41, paragraph (g) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(g) *Shrimp in the South Atlantic*—(1) *BRD requirement.* On a penaeid shrimp trawler in the South Atlantic EEZ, each trawl net that is rigged for fishing and has a mesh size less than 2.50 inches (6.35 cm), as measured between the centers of opposite knots when pulled taut, and each try net that is rigged for fishing and has a headrope length longer than 16.0 ft (4.9 m), must have a certified BRD installed. A trawl net, or try net, is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to a sled, door, or other device that spreads the net, or to a tow rope, cable, pole, or extension, either on board or attached to a shrimp trawler.

(2) *Certified BRDs.* The following BRDs are certified for use by penaeid shrimp trawlers in the South Atlantic EEZ. Specifications of these certified BRDs are contained in Appendix D of this part.

(i) Extended funnel.

(ii) Expanded mesh.

(iii) Fisheye.

4. In § 622.48, paragraph (h) is added to read as follows:

§ 622.48 Adjustment of management measures.

* * * * *

(h) *South Atlantic shrimp.* Certified BRDs and BRD specifications.

5. Appendix D is added to part 622 to read as follows:

Appendix D to Part 622—Specifications for Certified BRDs

A. *Extended Funnel.*

1. *Description.* The extended funnel BRD consists of an extension with large-mesh webbing in the center (the large-mesh escape section) and small-mesh webbing on each end held open by a semi-rigid hoop. A funnel of small-mesh webbing is placed inside the extension to form a passage for shrimp to the codend. It also creates an area of reduced water flow to allow for fish escapement through the large mesh. One side of the funnel is extended vertically to form a lead panel and area of reduced water flow. There are two sizes of extended funnel BRDs, a standard size and an inshore size for small trawls.

2. *Minimum Construction and Installation Requirements for Standard Size.*

(a) *Extension Material.* The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅝ inch (4.13 cm), No. 30 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section.* The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) in length by 95 inches (241.3 cm) in circumference. The leading edge is attached to the 6½-mesh extension section and the rear edge is

attached to the 23-mesh extension section.

(c) *Funnel.* The funnel is constructed of 1½ inch (3.81 cm), stretched mesh, No. 30 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 34 to 36 inches (86.4 to 91.4 cm) long and the opposite side of the funnel extends an additional 22 to 24 inches (55.9 to 61.0 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop.* A 30-inch (76.2-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a ⅜-inch (9.53-mm) micropress sleeve, is installed five meshes behind the trailing edge of the large-mesh escape section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation.* The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.2.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

3. *Minimum Construction and Installation Requirements for Inshore Size.*

(a) *Extension Material.* The small-mesh sections used on both sides of the large-mesh escape section are constructed of 1⅜ inch (3.5 cm), No. 18 stretched mesh, nylon webbing. The front section is 120 meshes around by 6½ meshes deep. The back section is 120 meshes around by 23 meshes deep.

(b) *Large-Mesh Escape Section.* The large-mesh escape section is constructed of 8 to 10 inch (20.3 to 25.4 cm), stretched mesh, webbing. This section is cut on the bar to form a section that is 15 inches (38.1 cm) by 75 inches (190.5 cm) in circumference. The leading edge is attached to the 6½-mesh extension section and the rear edge is attached to the 23-mesh extension section.

(c) *Funnel.* The funnel is constructed of 1⅜ inch (3.5 cm), stretched mesh, No. 18 depth-stretched and heat-set polyethylene webbing. The circumference of the leading edge is 120 meshes and the back edge is 78 meshes. The short side of the funnel is 30 to 32 inches (76.2 to 81.3 cm) long and the opposite side of the funnel extends an additional 20 to 22 inches (50.8 to 55.9 cm). The circumference of the leading edge of the funnel is attached to the forward small-mesh section three meshes forward of the large-mesh escape section and is evenly sewn, mesh for mesh, to the small-mesh section. The after edge of the funnel is attached to the after small-mesh section at its top and bottom eight meshes back from the large-mesh escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop.* A 24-inch (61.0-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a ⅜-inch (9.53-mm) micropress sleeve, is installed five meshes behind the trailing edge of the large mesh section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation.* The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.3.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

B. *Expanded Mesh.* The expanded mesh BRD is constructed and installed exactly the same as the standard size extended funnel BRD, except that one side of the funnel is not extended to form a lead panel.

C. *Fisheye.*

1. *Description.* The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel rod of at least ¼ inch diameter, which is inserted into the codend to form an escape opening. Fisheyes of several different shapes and sizes have been tested in different positions in the codend.

2. *Minimum Construction and Installation Requirements.* The fisheye has a minimum opening dimension of 5 inches (12.7 cm) and a minimum total opening area of 36 square inches (91.4 square cm). The fisheye must be installed at the top center of the codend of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no further forward than 11 ft (3.4 m) from the codend drawstring (tie-off rings) or 70 percent of the distance between the codend drawstring and the forward edge of the codend, excluding any extension, whichever is the shorter distance.

The Testing Protocol for BRD Certification is published as an appendix to this document.

Appendix—Testing Protocol for BRD Certification

Note: This appendix will not appear in the Code of Federal Regulations.

Introduction

The development of a bycatch reduction device (BRD) testing protocol is mandated in Amendment 2 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region. A ''BRD'' is defined as any device, trawl modification, or a combination of devices (e.g., BRD/TED combination) which reduces finfish bycatch when compared to an unmodified ''standard'' trawl. This BRD testing protocol was developed based on the deliberations of the South Atlantic Fishery Management Council's Ad Hoc BRD Advisory Panel and Scientific and Statistical Committee. This protocol specifies minimum data requirements, outlines a basic experimental design, and specifies a statistical technique for testing and analyzing new or modified BRDs.

This protocol is to be used by the states and researchers testing the effectiveness of any new or modified BRD in reducing bycatch of target species as specified by the South Atlantic Fishery Management Council (Council). The target species currently specified by the Council are Spanish mackerel and weakfish.

This testing protocol is designed for researchers conducting discrete testing programs (i.e., testing one BRD design to determine reduction performance so that it can be certified for use in the South Atlantic EEZ). The protocol is also designed to minimize the cost of testing while ensuring adequate sampling is completed to evaluate if the new gear achieves the desired

reduction of target species. The Council is requiring that new bycatch reduction devices reduce bycatch by 40 percent in number, of both target species, Spanish mackerel and weakfish. This protocol establishes a basic experimental design that a researcher must follow to increase the likelihood of certification of a new or modified BRD. The analysis of the data under this testing protocol will be based on a modified paired t-test (see Statistical Procedures for Analyzing BRD Evaluation Data, below). A 95-percent confidence interval should be calculated for the reduction estimate. The experimental design is therefore based on using paired comparisons of the BRD and control gear operating in commercial conditions. Tow times, time of day, and fishing techniques should simulate commercial fishing conditions. Consistent tow times are required in a given series of tows that constitute a test for an individual BRD. However, a window around a specific tow time is allowed (plus or minus 10 percent of tow time). Researchers must pre-tune the trawl gear to identify and eliminate bias between nets (e.g., make tows before placing experimental gear in the net to determine and compensate for bias, if necessary). A minimum sample size of 30 successful tows is required. However, additional tows may be needed to attain an adequate sample for statistical testing.

The total catch, total finfish catch, and total shrimp catch must be recorded. This will provide shrimpers with information on shrimp retention and whether the tow is acceptable for analysis. All target species (currently Spanish mackerel and weakfish, others to be addressed through the framework procedure) will be counted, weighed as a species lot, and individuals will be measured. This complete work-up of these species will provide absolute numbers to determine percent reduction and age-class composition.

During testing, the trawls, rigging, BRD, and TED types must be standardized. The BRD must be rotated between outside nets on opposite sides to reduce net bias and increase the probability of collecting a valid sample. Specifying these basic parameters in the experimental design for testing new or modified BRDs should reduce statistical problems by standardizing data. If the gear is modified during the testing, it constitutes the beginning of a new test.

In order to reduce error, testing should be accomplished with at least the minimum number of tows of a net with an experimental BRD and certified TED compared to a net with only the same type of TED. Testing should also be done in an area where, and at a time when, shrimp are commercially harvested and the catch of target species is likely. Researchers should refer to information presented in the *Bycatch Reduction Device Testing Protocol Manual* for guidance on the occurrence and the bycatch of weakfish and Spanish mackerel. If catches of shrimp do not approximate commercial harvest levels or target species are not abundant, additional tows may be necessary.

Amendment 2 established responsibility of the researchers testing BRDs to also develop information on shrimp retention attributable to the new gear. The intent of this requirement is to ensure that fishermen who consider using any new BRDs will know what level of shrimp retention has been observed during testing of a particular device. The fisherman has the opportunity to weigh the benefits of using a gear with a specified shrimp retention against the new gear's ability to reduce large quantities of other unwanted bycatch. This protocol will ensure that new gear achieves desired bycatch reduction while minimizing time needed to test and certify a bycatch reduction device for use in the South Atlantic EEZ. This protocol was developed specifically for collection of the target species (at this time Spanish mackerel and weakfish) to determine the effectiveness of a new or modified BRD in achieving the targeted reduction as specified by the Council (40 percent in number of weakfish and 40 percent in number of Spanish mackerel).

BRD Certification and Development of This Testing Protocol

The Council is providing a timely and effective certification process that will be in place in conjunction with Shrimp Amendment 2, that affords industry the chance to use conservation engineering in the development of new or modified BRDs. The Regional Administrator, Southeast Region, NMFS (RA), is responsible for review and certification of BRDs for use in the South Atlantic EEZ.

A BRD will be certified through public notice in the **Federal Register** if the RA determines that it meets the certification criteria and testing protocol specified by the Council. This process will lead to faster processing of BRD certification applications. Pursuant to Amendment 2, a state fishery management agency, a university, and other scientific investigators can work with shrimp fishermen and others in developing and testing BRDs for certification. BRDs reviewed and recommended by state agencies and that meet the criteria and testing protocol specified in Amendment 2 may be used throughout the South Atlantic EEZ when certified by NMFS.

The RA will consider the following factors when certifying BRDs for use in the South Atlantic EEZ. These factors include bycatch reduction performance, as well as adherence to the BRD testing protocol. The RA will certify new BRDs for use throughout the South Atlantic EEZ if the BRD reduces the bycatch component of fishing mortality for Spanish mackerel and weakfish by 50 percent or demonstrates a 40-percent reduction in number of each of these species, and the researcher has complied with testing parameters of the Council's BRD testing protocol.

Basic Provisions of the BRD Testing Protocol Specified in Shrimp Amendment 2

All tests must be conducted in accordance with state or Federal laws. An applicant planning to use shrimp trawls for testing that do not have legally approved and fully operational TEDs installed, regardless of where the testing is to take place, must obtain a special permit from NMFS, as authorized under the sea turtle conservation regulations.

The certification tests will follow a standardized testing protocol where paired identical trawls are towed by a trawler in areas expected to contain concentrations of shrimp and the target species or species groups. One of the identical trawls will contain the test BRD, while the other is the control. The experimental gear must be rotated daily, at a minimum, to ensure that any positioning bias is eliminated. Identical TEDs are required in each of the trawls unless other arrangements have been made through the RA. Consistent tow times are required in a given series of tows that constitute a test for an individual BRD. However, a nominal overage/underage window around a specific tow time is allowed (plus or minus 10 percent of tow time). The contents of each trawl will be separated and sorted following each paired tow. Shrimp, total finfish, and total catch will be weighed. A basket (70–80 lb) (31.8–36.3 kg) subsample will be weighed and sorted to obtain a percentage of finfish in the subsample. The percentage of finfish in the subsample will be used to estimate the total finfish in the catch. All target finfish species (currently Spanish mackerel and weakfish) will be weighed as a species lot, and individuals counted and length measured. Information on other important species is required (total weight and total numbers of individual species in subsample to estimate total weight and total numbers in catch). Important species for which information is required are seatrouts (weakfish, spotted, and silver), Spanish mackerel, king mackerel, cobia, gag, seabasses (black, bank, and rock), spot, croaker, red drum, black drum, pompano, kingfishes (southern and northern), flounders (southern and summer), bluefish, scup, juvenile sharks, sturgeon, shad, and sea turtles (take only measurements that can be taken without harming turtles). All certification tests must be conducted with a state or NMFS approved observer on the trawler. These observers can be from NMFS, state fishery management agencies, universities, or private industry. It is the responsibility of the applicant, or his agent, conducting the certification tests to ensure that a qualified observer is on board during the tests. Compensation, if necessary, will be paid by the applicant, or his agent.

Summary of BRD Testing Experimental Design and Basic Data Requirements

- The tests should use paired comparisons where one net is equipped with the new BRD design and the second net is a control net.
- Bycatch reduction will be computed using a ratio method (catch per unit effort (CPUE) or numbers).
- The burden of proof is on the industry to verify that a new BRD achieves the minimum required reduction rate.
- Both nets are to pull identical certified TEDs during the sampling.
- Experimental gear should be rotated daily between outboard/outside nets, at a minimum.
- The total catch, total finfish, total shrimp, and total target species weight must be recorded. A basket (70–80 lb) (31.8–36.3 kg) subsample will be weighed and sorted to obtain a percentage of finfish in the

subsample. The percentage of finfish in the subsample will be used to estimate the total finfish in the catch.

- Target species (weakfish and Spanish mackerel) must be weighed as a species lot, and each individual counted and length measured. For large catches, a subsample of selected individuals for each age-class shall be measured.
- Information must be obtained on other important species (collect total weight and total numbers of individual species in subsample to estimate total weight and total numbers in catch). (Species list: Seatrouts (weakfish, spotted, and silver), Spanish mackerel, king mackerel, cobia, gag, seabasses (black, bank, and rock), spot, croaker, red drum, black drum, pompano, kingfishes (southern and northern), flounders (southern and summer), bluefish, scup, juvenile sharks, sturgeon, shad, and sea turtles (take only measurements that can be taken without harming turtles).)
- A modified paired t-test is the statistical technique to be used for analyzing the data.
- A minimum of 30 successful tows are required to test a new or modified gear.
- A minimum catch (fish per tow) of five weakfish and/or one Spanish mackerel is required to qualify as a successful tow.
- Tow times, time of day, catch rates, and fishing techniques should be comparable to commercial operations.
- Consistent tow times are required in a given series of tows that constitute a test for an individual BRD. A nominal time window (plus or minus 10 percent of tow time) around a specific tow time is allowed.
- Basic operational cost differences should be recorded.
- Shrimp retention must be recorded.

Statistical Procedures for Analyzing BRD Evaluation Data

All experimental tows must be conducted strictly under the guidelines specified under the BRD testing protocol. To reduce problems caused by no or low catches, a tow must contain a minimum catch of five weakfish and/or one Spanish mackerel in at least one net for inclusion in the analysis. Once conducted, the tow (and the corresponding data) become the permanent part of the record and cannot be discarded. Only the successful tows (meeting the minimum catch and other requirements) will count toward the minimum required, however all tows will be used in the analysis.

Statistical Approach

You should start with the assumption that the BRD to be tested does not achieve the minimum required reduction rate, say R_o. This assumption will be accepted if the data provide sufficient evidence to do so. Hence, the hypotheses to be tested are as follows:

H_o: BRD does not achieve the minimum required reduction rate,

$$R = \frac{\mu_c - \mu_b}{\mu_c} \le R_o, \text{ i.e. } (1 - R_o)\mu c - \mu_b \le 0.$$

Ha : BRD does achieve the minimum required reduction rate,

$$R = \frac{\mu_c - \mu_b}{\mu_c} > R_o, \text{ i.e. } (1 - R_o)\mu c - \mu_b > 0.$$

Here R denotes the actual reduction rate (unknown), R_o denotes the minimum required reduction rate, μ_c denotes the actual mean CPUE with the control, and μ_b denotes the actual mean CPUE with the BRD.

With any hypothesis testing, there are two risks involved, known as type I error (rejecting the true H_o) and type II error (accepting a false H_o). The probabilities of committing these errors are denoted by alpha and beta, respectively, and those are inversely related to each other. As alpha increases, beta decreases, and vice versa. The above test will be conducted with an alpha to be specified by the RA. The above hypotheses should be tested using a ''modified'' paired t-test.

The CPUE values for the control and BRD nets for each successful tow should be computed first and these will be used in the following computations. The test statistic to be used is given by:

$$t = \frac{(1 - Ro)x - y}{s_{d0}/\sqrt{n}},$$

Where:

x is the observed mean CPUE for the control,
y is the observed mean CPUE for the BRD,
s_{d0} is the standard deviation of d_i= (1—R_o)xi—yi values,
n is the number of successful tows used in the analysis, and i= 1,2, . . ., n.

The H_o will be rejected if $t > -t_{alpha,\ n-1,}$ where $t_{alpha,\ n-1}$ denotes the (1—alpha) 100^{th} percentile score in the t distribution with (n—1) degrees of freedom.

The computation of beta (for various assumed reduction rates, $R_1 < R_0$) is somewhat involved and requires the knowledge of unknown parameters (or at least good estimates) of μ_c and $alpha^2_{d0.}$ Note that $alpha^2_{d0}$ is dependent on the R_o specified (under H_0) and equals:

$(1—R_o)^2\ alpha^2_{xi} + alpha^2_{yi}—2(1—R_o)p \bullet alpha_{xi} \bullet alpha_{yi}$, where p is the population correlation coefficient between x_i and y_i values.

The computation of beta in advance (in the absence of any preliminary data, i.e., without good parameter estimates) is almost impossible. More work in this direction is still needed. However, it is clear that beta could be reduced by increasing alpha or n or both.

A (1—alpha) 100-percent two-sided confidence interval on R consists of all values of R_o for which

Ho: R = R_o (versus H∂R ≠R_o) cannot be rejected at the level of significance of alpha. One-sided confidence intervals on R could also be computed appropriately.

[FR Doc. 97–9816 Filed 4–15–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 041097E]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock Sole/Flathead Sole/''Other Flatfish'' Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by

vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the second seasonal apportionment of the 1997 Pacific halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), April 12, 1997, until 1200 hrs, A.l.t., July 1, 1997.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (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 second seasonal apportionment of the 1997 halibut bycatch allowance specified for the BSAI trawl rock sole/flathead sole/''other flatfish'' fishery category, which is defined at § 679.21(e)(3)(iv)(B)(*2*), was established by the Final 1997 Harvest Specifications of Groundfish for the BSAI (62 FR 7168, February 18, 1997) as 130 mt.

In accordance with § 679.21(e)(7)(iv), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 1997 halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery in the BSAI has been caught. Consequently, NMFS is closing directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the BSAI for the remainder of the season.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

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

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

Dated: April 11, 1997.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–9853 Filed 4–11–97; 4:34 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 73
Wednesday, April 16, 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

Rural Utilities Service

7 CFR Part 1730

RIN 0572—AA74

Electric System Operations and Maintenance

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS), successor to the Rural Electrification Administration (REA), proposes to amend its regulations by adding a new part concerning electric system operations and maintenance. These new regulations would codify and clarify RUS policy relating to the operations and maintenance of electric systems by RUS electric borrowers. Also included is RUS policy relating to the review and evaluation of borrowers' electric systems and facilities operations and maintenance practices. These policies are presently contained in RUS/REA Bulletin 161–5, which will be rescinded when the final rule becomes effective. This proposed action is intended to clarify the policies, procedures, and requirements, facilitate understanding and compliance, and improve program effectiveness with respect to electric system operations and maintenance.

DATES: Written comments must be received by RUS, or bear a postmark or equivalent, no later than June 16, 1997.

ADDRESSES: Submit written comments to George J. Bagnall, Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1569, 1400 Independence Ave, SW., Washington, DC 20250–1569. RUS requires a signed original and 3 copies of all comments (§ 1700.30(e)). Comments will be made available for public inspection at room 4034 South Building between 8:30 a.m. and 5 p.m. on official work days (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Mr. Fred J. Gatchell, Deputy Director, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1569, 1400 Independence Ave, SW., Washington, DC 20250–1569, telephone (202) 720–1398.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. *et seq.*), and therefore, the Regulatory Flexibility Act does not apply to this proposed rule.

Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burdens contained in this rule were approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572–0025.

National Environmental Policy Act Certification

The Administrator has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402, telephone (202) 512–1800.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS loans and loan guarantees from coverage under this order.

National Performance Review

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards in Section 3 of the Executive Order.

Background

RUS has promulgated policies and procedures regarding the review and evaluation of the operations and maintenance practices of RUS financed electric systems. These policies and procedures are presently contained in RUS/REA Bulletin 161–5, Electric System Review and Evaluation. The mortgage and loan contract between RUS and electric borrowers set certain standards for the operation and maintenance of each borrower's electric system. The purpose of this proposed rule is to implement the operations and maintenance provisions of the mortgage and loan contract between RUS and electric borrowers and to consolidate and clarify RUS policies and procedures with respect to electric system operations and maintenance. Most of the provisions of this proposed rule represent policies and requirements that have been in effect for some time, whereas other provisions are an explicit statement of policies and procedures that formerly were implicit. One new provision will expand the requirement for electric system review and evaluation to include power supply borrowers in addition to the distribution borrowers presently covered by Bulletin 161–5. Proper operation and maintenance practices are equally significant for power supply borrowers, so RUS believes that power supply borrowers' operation and maintenance practices should be covered under the review and evaluation requirements of this rule. RUS Form 300, Review Rating Summary, has also been updated and

revised based on RUS' experience using this form.

List of Subjects in 7 CFR Part 1730

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

In view of the above, RUS proposes to amend 7 CFR chapter XVII by adding part 1730 to read as follows:

PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

Subpart A—General

Subpart B—Operations and Maintenance Requirements

Appendix A to Subpart B of Part 1730—Review Rating Summary, RUS Form 300

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

Subpart A—General

§ 1730.1 Introduction.

(a) This part contains the policies and procedures of the Rural Utilities Service (RUS) related to electric borrowers' operation and maintenance practices and RUS' review and evaluation thereof.

(b) The policies and procedures included in this part apply to all electric borrowers (both distribution borrowers and power supply borrowers) and are intended to clarify and implement certain provisions of the mortgage and loan contract between RUS and electric borrowers regarding operations and maintenance. This part is not intended to waive or supersede any provisions of the mortgage and loan contract between RUS and electric borrowers.

(c) The Administrator may waive, for good cause on a case by case basis, certain requirements and procedures of this part.

§ 1730.2 RUS policy.

It is RUS policy to require that all borrower property be operated and maintained properly in accordance with the requirements of the loan documents. It is also RUS policy to provide financial assistance only to borrowers whose operations and maintenance practices and records are satisfactory or to those who are taking corrective actions expected to make their operations and maintenance practices and records satisfactory to RUS.

§ 1730.3 RUS addresses.

(a) Persons wishing to obtain forms referred to in this part should contact: Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Ave, SW, Washington, DC 20250–1533, telephone (202) 720–8674. Borrowers or others may reproduce any of these forms in any number required.

(b) Documents required to be submitted to RUS under this part are to be sent to the office of the borrower's assigned RUS General Field Representative (GFR) or such other office as designated by RUS.

§ 1730.4 Definitions.

Terms used in this part have the meanings set forth in 7 CFR part 1710.2. References to specific RUS forms and other RUS documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR part 1710.2, the term Prudent Utility Practice has the meaning set forth in Article 1, Section 1.01 of appendix A to subpart B of 7 CFR part 1718—Model Form of Mortgage for Electric Distribution Borrowers, for the purposes of this part.

§§ 1730.5–1730.19 [Reserved]

Subpart B—Operations and Maintenance Requirements

§ 1730.20 General.

Each distribution borrower and power supply borrower must operate and maintain its system in compliance with Prudent Utility Practice, in compliance with its loan documents, and in compliance with all applicable laws, regulations and orders, must maintain its systems in good repair, working order and condition, and must make all needed repairs, renewals, replacements, alterations, additions, betterments and improvements, in accordance with applicable provisions of the borrower's mortgage. Each borrower is responsible for on-going operations and maintenance programs, for maintaining records of the physical and electrical condition of its electric system and for the quality of services provided to its customers. The borrower is also responsible for all necessary inspections and tests of the component parts of its system, and for maintaining records of such inspections and tests. Each borrower must budget sufficient resources to operate and maintain its system in accordance with the requirements of this part.

§ 1730.21 Inspections and tests.

(a) Each borrower shall conduct all necessary inspections and tests of the component parts of its electric system, and maintain adequate records of such inspections and tests.

(b) The frequency of inspection and testing will be determined by the borrower in conformance with applicable laws, regulations, national standards, manufacturer's recommendations, and Prudent Utility Practice. The frequency of inspection and testing will be determined giving due consideration to the type of facilities or equipment, age, operating environment and hazards to which the facilities are exposed, consequences of failure, and results of previous inspections and tests. The records of such inspections and tests will be retained in accordance with applicable legal requirements and Prudent Utility Practice. The retention period will be sufficient to identify long-term trends. Records must be retained at least until the applicable inspections or tests are repeated.

(c) Inspections of facilities must include a determination of the facility's compliance with the National Electrical Safety Code, National Electrical Code, and applicable local regulations. Any serious or life-threatening deficiencies must be promptly repaired, disconnected, or isolated in accordance with applicable codes or regulations. Any other deficiencies found as a result of such inspections and tests are to be recorded and those records are to be maintained until such deficiencies are corrected or for the retention period required by paragraph (b) of this section, whichever is longer.

§ 1730.22 Borrower analysis.

(a) Each borrower must periodically analyze its operations and maintenance policies, practices, and procedures to determine if they are appropriate and if they are being followed. The records of inspections and tests are also to be analyzed to identify any trends which could indicate deterioration in the physical condition or the operational effectiveness of the system or suggest a need for changes in operations or maintenance practices.

(b) When a borrower's operations and maintenance policies, practices, and procedures are to be reviewed and evaluated by RUS, the borrower shall:

(1) Conduct the analysis required by paragraph (a) of this section not more than 90 days prior to the scheduled RUS review;

(2) Complete RUS Form 300, Review Rating Summary, and other related forms, prior to RUS' review and evaluation; and

(3) Make available to RUS the borrower's completed RUS Form 300 (including a written explanation of the basis for each rating) and records related to the operations and maintenance of the borrower's system.

(c) For those facilities not included on the RUS Form 300 (e.g., generating plants), the borrower shall prepare and complete an appropriate supplemental form for such facilities.

§ 1730.23 Review rating summary, RUS Form 300.

RUS Form 300 in appendix A shall be used when required by this part.

§ 1730.24 RUS review and evaluation.

RUS will initiate and conduct a periodic review and evaluation of the operations and maintenance practices of each borrower for the purpose of assessing loan security and determining borrower compliance with RUS policy as outlined in this part. This review will normally be done at least once every three years. The borrower will make available to RUS the borrower's policies, procedures, and records related to the operations and maintenance of its system. RUS may inspect facilities as well as records, and may also observe construction and maintenance work in the field. Key borrower personnel responsible for the facilities being inspected are to accompany RUS during such inspections, unless otherwise determined by RUS. RUS personnel may prepare an independent summary of the operations and maintenance practices of the borrower.

§ 1730.25 Corrective action.

(a) For any items on the RUS Form 300 rated unsatisfactory (i.e., 0 or 1) by the borrower or by RUS, the borrower must prepare a corrective action plan (CAP) outlining the steps (both short term and long term) the borrower will take to improve existing conditions and to maintain an acceptable rating. The CAP must include a time schedule and cost estimate for corrective actions, and must be approved by the borrower's Board of Directors. The CAP must be submitted to RUS for approval within 90 days after the completion of RUS' evaluation noted in § 1730.24.

(b) The borrower must periodically report to RUS progress under the CAP. This report must be submitted to RUS every six months until all unsatisfactory items are corrected unless RUS prescribes a different reporting schedule.

§ 1730.26 Engineer's certification.

Where provided for in the borrower's loan documents, RUS may require the borrower to provide an ''Engineer's Certification'' as to the condition of the borrower's system (including, but not limited to, all mortgaged property.) Such certification shall be in form and substance satisfactory to RUS and shall be prepared by a professional engineer satisfactory to RUS. If RUS determines that the Engineer's Certification discloses a need for improvements to the condition of its system or any other operations of the borrower, the borrower shall, upon notification by RUS, promptly undertake to accomplish such improvements.

§§ 1730.27—1730.99 [Reserved].

Appendix A to Subpart B of Part 1730—Review Rating Summary, RUS Form 300

Borrower Designation ____
Date Prepared ____
Ratings on form are:
0: Unsatisfactory—no records
1: Unsatisfactory—corrective action needed
2: Acceptable, but should be improved—see attached recommendations
3: Satisfactory—no additional action required at this time
N/A: Not applicable

Part I—Transmission and Distribution Facilities

1. Substations (Transmission and Distribution)

a. Safety, Clearance, Code Compliance Rating: ____
b. Physical Condition: Structure, Major Equipment, Appearance Rating: ____
c. Inspection Records Each Substation Rating: ____
d. Oil Spill Prevention Rating: ____

2. Transmission Lines

a. Right-of-Way: Clearing, Erosion, Appearance, Intrusions Rating: ____
b. Physical Condition: Structure, Conductor, Guying Rating: ____
c. Inspection Program and Records Rating: ____

3. Distribution Lines—Overhead

a. Inspection Program and Records Rating: ____
b. Compliance with Safety Codes: Clearances Rating: ____
Compliance with Safety Codes: Foreign Structures Rating: ____
Compliance with Safety Codes: Attachments Rating: ____
c. Observed Physical Condition from Field Checking: Right-of-Way Rating: ____
Observed Physical Condition from Field Checking: Other Rating: ____

4. Distribution—Underground Cable

a. Grounding and Corrosion Control Rating: ____
b. Surface Grading, Appearance Rating: ____
c. Riser Poles: Hazards, Guying, Condition Rating: ____

5. Distribution Line Equipment: Conditions and Records

a. Voltage Regulators Rating: ____
b. Sectionalizing Equipment Rating: ____
c. Distribution Transformers Rating:____
d. Pad Mounted Equipment—Safety: Locking, Dead Front, Barriers Rating:____
Pad Mounted Equipment—Appearance: Settlement, Condition Rating:____
e. Kilowatt-hour and Demand Meter Reading and Testing Rating:____

Part II—Operation and Maintenance

6. Line Maintenance and Work Order Procedures

a. Work Planning and Scheduling Rating:____
b. Work Backlogs: Right-of-Way Maintenance Rating:____
Work Backlogs: Poles Rating:____
Work Backlogs: Retirement of Idle Services Rating:____
Work Backlogs: Other Rating:____

7. Service Interruptions

a. Average Annual Hours/Consumer by Cause (Complete for each of the previous 5 years)
1. Power Supplier ____
2. Major Storm ____
3. Scheduled ____
4. All Other ____
5. Total ____
Rating:____
b. Emergency Restoration Plan Rating:____

8. Power Quality

General Freedom from Complaints Rating:____

9. Loading and Load Balance

a. Distribution Transformer Loading Rating:____
b. Load Control Apparatus Rating:____
c. Substation and Feeder Loading Rating:____

10. Maps and Plant Records

a. Operating Maps: Accurate and Up-to-Date Rating:____
b. Circuit Diagrams Rating:____
c. Staking Sheets Rating:____

Part III—Engineering

11. System Load Conditions and Losses

a. Annual System Loses, ____ % Rating:____
b. Annual Load Factor, ____ % Rating:____
c. Power Factor at Monthly Peak, ____ % Rating: ____
d. Ratio of Individual Substation Peak kW to kVA, ____ Rating:____

12. Voltage Conditions

a. Voltage Surveys Rating:____
b. Substation Transformer Output Voltage Spread Rating:____

13. Load Studies and Planning

a. Long Range Engineering Plan Rating:____
b. Construction Work Plan Rating:____
c. Sectionalizing Study Rating:____

d. Load Data for Engineering Studies Rating:____
e. Power Requirements Data Rating:____

Part IV—Operation and Maintenance Budgets

For Previous 2 Years:

Normal Operation—Actual $____
Normal Maintenance—Actual $____
Total—Actual $____

For Present Year:

Normal Operation
Budget $____
Staff Hours ____
Normal Maintenance
Budget $____
Staff Hours ____
Total
Budget $____
Staff Hours ____

For Future 3 Years:

Normal Operation
Budget $____
Staff Hours ____
Normal Maintenance
Budget $____
Staff Hours ____
Additional (Deferred) Maintenance
Budget $____
Staff Hours ____
Total
Budget $____
Staff Hours ____

14. Budgeting

Adequacy of Budgets For Needed Work Rating:____

15. Date Discussed with Board of Directors ____

Remarks: ____

Explanatory Notes

Item No. ____
Comments ____
Rated by ____
Title ____
Date ____
Reviewed by ____
Manager ____
Date ____
Reviewed by ____
RUS GFR ____
Date ____

Dated: April 10, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–9849 Filed 4–15–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AB99

Glacier Bay National Park, Alaska; Commercial Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule; withdrawal of earlier proposed rule.

SUMMARY: The National Park Service (NPS) proposes this rule to provide the legal basis for reinitiating public discussion in order to arrive at a prompt final resolution of the longstanding controversy concerning commercial fishing activities in Glacier Bay National Park (NP) by the end of 1997. In addition to seeking comments, NPS expects during the comment period to continue discussions on the record with interested parties including the State of Alaska.

The proposed rule, intended to provide a framework for enhanced review and comment by all interested parties, would implement fair measures to ensure protection of the values and purposes of Glacier Bay NP, including the preservation, enjoyment, and scientific value of the park's unique marine ecosystem. In general, the proposed rule would prohibit all commercial fishing in Glacier Bay proper but provide certain limited exemptions over a 15 year phase-out period, and authorize established commercial fishing in the park's marine waters outside Glacier Bay proper subject to reexamination at the end of 15 years.

To authorize the specific commercial fishing activities, the proposed rule would provide specific exemptions for Glacier Bay NP from the nationwide prohibition on such activities in units of the National Park System. For the phase-out in Glacier Bay proper, the proposed rule would exempt qualifying commercial fishermen who can demonstrate a reasonable history of participation in a specific fishery to continue fishing for a limited period of time on a seasonal basis. For the marine waters outside Glacier Bay proper, the proposed rule would generally exempt existing commercial fishing activities under a Federal-State cooperative management program consistent with protection of park resource values.

With respect to designated wilderness waters in Glacier Bay NP, since the Wilderness Act prohibits this kind of commercial enterprise in designated wilderness, commercial fishing activities must cease in these areas. However, certain crab fishermen essential to an existing multi-agency research project in the Beardslee Islands area may be authorized to take crab in the locations specified by the research project for the remaining five to seven years of the project pursuant to a ''research project'' special use permit. NPS has previously determined that this research project is consistent with, and is likely to produce significant benefits for, wilderness resource management.

The proposed rule would not address legislatively authorized commercial fishing and related activities in the Dry Bay area of Glacier Bay National Preserve.

This proposed rule supersedes and withdraws a previously proposed rulemaking on this subject published on August 5, 1991 (56 FR 37262).

DATES: Written comments postmarked on or before October 15, 1997, will be accepted. For information on public meetings and discussion sessions, see Public Participation at the end of

SUPPLEMENTARY INFORMATION:

ADDRESSES: Comments should be directed to James M. Brady, Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826.

FOR FURTHER INFORMATION CONTACT: James M. Brady, Superintendent, National Park Service, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska, 99827, telephone: (907) 697–2230.

SUPPLEMENTARY INFORMATION:

Background

Establishment of Glacier Bay National Park and Preserve

Glacier Bay National Monument was established by presidential proclamation dated February 26, 1925. 43 Stat. 1988. The monument was established to protect a number of tidewater and other glaciers, and a variety of post glacial forest and other vegetative covering, and also to provide opportunities for scientific study of glacial activity and post glacial biological succession. The early monument included marine waters within Glacier Bay north of a line running approximately from Geikie Inlet on the west side of the bay to the northern extent of the Beardslee Islands on the east side of the bay. The monument was expanded by a second presidential proclamation on April 18, 1939. 53 Stat. 2534. The expanded monument included additional lands and marine waters consisting of all of Glacier Bay; portions of Cross Sound, North Inian Pass, North Passage, Icy Passage, and Excursion Inlet; and Pacific coastal waters to a distance of three miles seaward between Cape Spencer to the south and Sea Otter Creek, north of Cape Fairweather.

Glacier Bay National Monument was redesignated as Glacier Bay National Park and Preserve and enlarged in 1980 by the Alaska National Interest Lands Conservation Act (ANILCA). 16 U.S.C.

410hh–1; see Sen. Rep. No. 413, 96th Cong., 1st Sess. 163 (1979). The legislative history of ANILCA indicates that certain NPS units in Alaska, including Glacier Bay National Park, ''* * * are intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause.'' *Id.* at 137; see ____ Cong. Rec. H10532 (1980). Congress described the park as including the marine waters, and depicted the park accordingly on the official maps.

In addition, ANILCA designated several areas containing marine waters within and near Glacier Bay proper as additions to the National Wilderness Preservation System. 16 U.S.C. 1132 note. These areas include upper Dundas Bay, Adams Inlet, the Hugh Miller Inlet complex, and waters in and around the Beardslee Islands.

As a result of the above actions, Glacier Bay National Park contains the largest protected marine ecosystem on the Pacific Coast of North America. It provides valuable opportunities to study and enjoy marine flora and fauna in an unimpaired state, and to educate the public about the biological richness of this marine system and its dynamic interaction with glacial and terrestrial systems.

Management of Glacier Bay National Park and Preserve

In addition to the national monument proclamations and relevant ANILCA provisions, the management of Glacier Bay National Park and Preserve is governed by the NPS Organic Act, 16 U.S.C. Section 1, *et seq.* The NPS Organic Act authorizes the Secretary of the Interior to manage national parks and monuments to ''conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' *Id.* Section 1. This act further directs that ''[t]he authorization of activities shall be construed and the protection, management, and administration of [NPS areas] shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.'' *Id.* Section 1a–1.

The NPS Organic Act authorizes the Secretary to implement ''rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service.'' *Id.* Section 3. The Secretary has additional specific authority to ''promulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *.'' *Id.* Section 1a–2(h).

The designated wilderness areas within Glacier Bay NP, including the marine areas, are additionally governed by the Wilderness Act, *id.* section § 1131, *et seq.*, which defines wilderness ''as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain.'' The Wilderness Act requires that wilderness be ''administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness.'' *Id.* Section 1131(a). Among other things, the Wilderness Act prohibits ''commercial enterprise * * * within any wilderness area * * * except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act * * *'' *Id.* Section 1133(c).

Commercial Fishing History

The marine waters of Glacier Bay National Park have been fished commercially since prior to the establishment of Glacier Bay National Monument. Commercial fishing continued under federal regulation after the national monument's establishment in 1925 and its subsequent enlargement in 1939. Since 1966, however, regulation and legislation have prohibited commercial fishing in Glacier Bay National Monument and Glacier Bay National Park. Nontheless, commercial fishing is still occuring in Glacier Bay National Park.

The Act of June 6, 1934, 43 Stat. 464, authorized the Secretary of Commerce to ''set apart and reserve fishing areas in any of the waters of Alaska* * *and within such areas * * * establish closed seasons during which fishing may be limited or prohibited * * * .'' The first Alaska Fishery Regulations of the Bureau of Fisheries, promulgated between 1937 and 1939, addressed fisheries in an area designated as the Icy Strait district including Glacier Bay National Monument. See 2 FR 305 (February 12, 1937); 4 FR 927 (February 15, 1939). Those regulations, and regulations promulgated by the U.S. Fish and Wildlife Service (FWS) between 1941 and 1959, set allowances for and restrictions on commercial fisheries in areas within the boundaries of Glacier Bay National Monument. See 6 FR 1252 (March 4, 1941), 50 CFR Part 222; 16 FR 2158 (1951), 50 CFR Part 117; 24 FR 2153 (March 19, 1959), 50 CFR Part 115.

Early NPS fishing regulations prohibited any type of fishing ''with nets, seines, traps, or by the use of drugs or explosives, or for merchandise or profit, or in any other way than with hook and line, the rod or line being held in the hand * * *.'' 6 FR 1627 (March 26, 1941), 36 CFR 2.4. However, in conjunction with the aforementioned FWS regulations, the 1941 NPS regulations also stated that ''commercial fishing in the waters of Fort Jefferson and Glacier Bay National Monuments is permitted under special regulations.'' *Id.* NPS regulations continued to allow commercial fishing in Glacier Bay National Monument through 1966 in accordance with special regulations approved by the Secretary. See 20 FR 618 (1955), 36 CFR 1.4; 27 FR 6281 (July 3, 1962).

In 1966, NPS revised its fishing regulations so as to prohibit commercial fishing activities in Glacier Bay National Monument. Although the 1966 NPS regulations, unlike previous versions, only prohibited fishing ''for merchandise and profit'' in fresh park waters, these same regulations generally prohibited unauthorized commercial activities, including commercial fishing, in all NPS areas. See 31 FR 16653, 16661 (December 29, 1966), 36 CFR §§ 2.13(j)(2), 5.3. In contrast to earlier NPS regulations, the 1966 regulations did not contain specific authorization for commercial fishing in Glacier Bay National Monument.

The 1978 NPS ''Management Policies'' reiterated that ''[c]ommercial fishing is permitted only where authorized by law.'' Furthermore, in 1978, the Department of the Interior directed FWS to convene an Ad Hoc Fisheries Task Force to review NPS fisheries management. See 45 FR 12304 (February 25, 1980). The task force concluded that the extraction of fish for commercial purposes was a nonconforming use of park resources which should be phased out.

As already noted, in 1980, ANILCA redesignated Glacier Bay National

Monument to Glacier Bay National Park and Preserve, enlarged the area, and designated wilderness that included marine waters within the park. 16 U.S.C. 410hh-1, 1132 note. ANILCA specifically authorized certain park areas where commercial fishing and related activities could continue, including the Dry Bay area of Glacier Bay National Preserve but not any area of Glacier Bay National Park. *Id*. section 410hh-4.

The 1983 revision of the NPS general regulations, still applicable, included a prohibition on commercial fishing throughout marine and fresh waters within park areas systemwide, unless specifically authorized by law. 48 FR 30252, 30283; 36 CFR 2.3(d)(4). The 1988 version of NPS ''Management Policies,'' still current, reiterates this approach.

However, certain NPS documents during the 1980's suggested that some commercial fishing would continue in Glacier Bay. For example, the 1980 and 1985 Glacier Bay whale protection regulations implicitly acknowledged commercial fishing operations in Glacier Bay proper. 36 CFR 13.65(b). Also, the park's 1984 General Management Plan stated the following:

> Traditional commercial fishing practices will continue to be allowed throughout most park and preserve waters. However, no new (nontraditional) fishery will be allowed by the National Park Service. Halibut and salmon fishing and crabbing will not be prohibited by the Park Service.
>
> Commercial fishing will be prohibited in wilderness waters in accordance with ANILCA and the Wilderness Act.

The General Management Plan defined ''traditional commercial fishing practices'' to include ''trolling, long lining and pot fishing for crab, and seining (Excursion Inlet only) in park waters * * *.'' General Management Plan at 51. Finally, the 1988 Final Environmental Impact Statement concerning wilderness recommendations for Glacier Bay National Park referred to the continuation of commercial fishing in nonwilderness park waters.

Events Leading to This Proposed Rulemaking

NPS regulations have prohibited commercial fishing in Glacier Bay National Park (and the predecessor National Monument) since 1966, and the Wilderness Act has prohibited commercial fishing in the wilderness waters within Glacier Bay NP since 1980, yet commercial fishing activities have continued in both wilderness and non-wilderness areas of the park. Since 1990, there have been attempts to resolve this situation through litigation, an earlier proposed rulemaking, and proposed legislation.

In 1990, the Alaska Wildlife Alliance and American Wildlands filed a lawsuit challenging the NPS's failure to bar commercial fishing activities from Glacier Bay NP. *Alaska Wildlife Alliance* v. *Jensen*, No. A90–0345–CV (D. Ak.). In 1994, the district court concluded that ''there is no statutory ban on commercial fishing in Glacier Bay National Park provided, however, that commercial fishing is prohibited in that portion of Glacier Bay National Park designated as wilderness area.'' An appeal of the district court's ruling is currently pending before the U.S. Court of Appeals for the Ninth Circuit. *Alaska Wildlife Alliance* v. *Brady*, Nos. 95–25151 and 95–35188 (9th Cir.).

Close to the time that the plaintiffs in the above litigation embarked on a judicial approach to resolution of the commercial fishing issues, the State of Alaska's Citizens Advisory Commission on Federal Areas hosted a series of public meetings in local communities to discuss the issues. After participating in these meetings, the NPS decided to draft a regulatory approach to resolving the issues.

NPS published its proposed rule on August 5, 1991 (56 FR 37262). In essence, the proposed rule would have (a) clarified the prohibition on commercial fishing in designated wilderness waters, and (b) exempted commercial fishing in other park waters from the nationwide regulatory prohibition for a ''phase out'' period of seven years. NPS held ten public meetings on the proposed rule, received over 300 comments, and prepared drafts of a final rule. At the State's request, however, the Department of the Interior refrained from issuing a final rule in 1993, and instead agreed to discuss with State and Congressional staff the possibility of resolving the issues through a legislative approach.

In 1992, Congress had considered but not enacted proposed legislation on commercial fishing in Glacier Bay NP. During the 1993–1994 discussions about legislative and regulatory possibilities, the participants enhanced their understanding of the facts, interests, options, and potential obstacles relevant to any final solution. Although the discussions did not lead to a legislative proposal, they have influenced the Department of the Interior's approach to this proposed rulemaking.

Between Fall 1995 and Spring 1996, officials from Glacier Bay NP and the Alaska Department of Fish and Game co-hosted several meetings in southeast Alaska involving selected ''stakeholders'' interested in trying to resolve the commercial fishing controversy.

Meanwhile during 1995 and 1996, NPS revised its management of vessels at Glacier Bay National Park through issuance of a plan and regulations. See 61 FR 27008 (May 30, 1996). Although the vessel management rule exempted commercial fishing vessels (engaged in fishing and properly licensed) from entry limits established for other motorized vessels, the rule's closure of certain designated park waters to motorized uses created the potential to affect certain commercial fishermen. See 36 CFR § 13.65(b)(3)(vii). In response to comments in that rulemaking, NPS noted its separate efforts to address the future of commercial fishing in Glacier Bay NP. 61 FR at 27013, 27015 (May 30, 1996).

Proposed Action on Commercial Fishing

Circumstances are now ripe to go forward with this new proposed rulemaking effort, taking advantage of the momentum toward a solution described above. This action authorizes full public participation, and will serve to facilitate constructive discussion, and to craft a comprehensive resolution to the controversy before the 1998 summer visitor season at Glacier Bay NP. Toward these ends, NPS is today proposing a rule that is, indeed, a *proposal* which can serve to structure the anticipated public discussion.

The district court's decision in *Alaska Wildlife Alliance* v. *Jensen*, above, upholding the NPS's interpretation of the NPS Organic Act and the Wilderness Act, demonstrates that rulemaking action is necessary. A rulemaking action can determine what commercial fishing activities are appropriate in Glacier Bay NP's waters consistent with the park's conservation and other objectives established by statute and proclamation. Indeed, the currently applicable regulatory prohibition on commercial fishing activities in all Glacier Bay NP waters necessitates a rulemaking to authorize *any* commercial fishing activities in the nonwilderness waters, even for purposes of ''phasing out'' the activities over a specified time.

NPS has several objectives for this rulemaking. First, NPS seeks to ensure fulfillment of the ''fundamental'' statutory purpose of the park, *i.e.*, preservation of park resources and values, which in Glacier Bay NP includes protecting the park's marine ecosystem. Second, NPS seeks to provide for the visitors' enjoyment of these resources and values and to minimize conflicts among visitors

pursuing different yet appropriate park experiences. Third, NPS seeks to provide unique opportunities for scientific study that will benefit the public and enhance resource management. Balancing these objectives, NPS also seeks to act fairly toward individual commercial fishermen with a history of participation in park fisheries, to recognize the important cultural ties that the Hoonah Tlingit people have with respect to Glacier Bay, and to develop an effective partnership with the State of Alaska through the cooperative management program for Glacier Bay NP fisheries.

The proposed rule described below differs from the rule that NPS would have proposed even a few years ago. Several factors have influenced the shape of today's proposed rule, including the passage of many years with the continuation of unauthorized commercial fishing prohibitions in Glacier Bay; potential socioeconomic harm from approaches that would mandate immediate implementation of prohibitions throughout park waters; related equitable considerations for certain fishermen with an historical pattern of use in park waters; the existence of an exciting research project already underway in Glacier Bay proper that can piggyback this rulemaking to expand scientific understanding of the fishery resources and natural processes to everyone's benefit. As participants in the 1995–1996 Alaska-based discussions may perceive, the proposed rule borrows in large measure from the consensus building process in which they were engaged, but provides notice and encourages comment from all interested parties in formulating the optimal solution for Glacier Bay NP, a widely cherished unit of the National Park System.

Overview of Proposed Rule

The proposed rule would prohibit all commercial fishing activities in Glacier Bay proper consistent with existing NPS regulation and policy. This prohibition would bar all such activities during the primary visitor use season beginning in 1998. NPS would offer a 15 year exemption from the prohibition outside the primary visitor use season, however, to accommodate a phase out for fishermen who can demonstrate historical reliance on a specific Glacier Bay fishery. Qualifying criteria for this exemption would include verified participation in the fishery during six of the last ten years. Subject to the availability of funds for this purpose, NPS (or a third party) could offer to purchase and retire the 15 year exemption permits from fishermen willing to sell them.

With respect to designated wilderness waters in Glacier Bay NP, commercial fishing activities must cease in these areas in compliance with the language and intent of the Wilderness Act as recently confirmed in *Alaska Wildlife Alliance* v. *Jensen*, above. However, certain crab fishermen who have been part of the existing multi-agency research project in the Beardslee Islands area may be authorized to take crab in the locations specified by the research project for the remaining five to seven years of the project subject to a special use permit.

The proposed rule would generally authorize commercial fishing to continue in the marine waters outside Glacier Bay proper (the ''outer waters'') by exempting such fishing from the otherwise applicable National Park System-wide prohibition on commercial fishing. This exemption would be subject to re-examination to allow consideration of new scientific and other relevant information at the end of 15 years. The proposed rule would restrict commercial fishing activities in the outer waters to well established fisheries and gear types. Commercial fishing activities in the outer waters, as well as those in Glacier Bay proper during the phase out period, would be governed by a cooperative fisheries management plan developed with the State of Alaska and implemented through the Alaska Board of Fisheries subject to the Secretary of the Interior's authority to protect park resource values. The Secretary, through NPS, would cooperatively ensure adherence to the plan under the provisions of 36 CFR 2.3(a) and 13.21(b).

Although the proposed rule as drafted does not contain a provision requiring additional limitations on, or a phase out of, commercial fishing in certain bays in the outer waters, NPS seeks comments on the inclusion of such protections in special cases, particularly for Lituya Bay on the Outer Coast and Dundas Bay in Icy Strait. These bays are rich in biological resources and scenic beauty, and offer exceptional opportunities for park visitors.

Glacier Bay

This proposed rule would prohibit commercial fishing in the nonwilderness waters of Glacier Bay proper, but would provide a seasonal exemption from that prohibition for 15 years for fishermen who demonstrate a reasonable history of participation in a specific Glacier Bay fishery.

Commercial Fishing Prohibition

The proposed rule would end commercial fishing in Glacier Bay proper within 15 years. This action would bring Glacier Bay into conformance not only with the general policy and rule applicable to units of the National Park System, but also with the particular objectives underlying the establishment of Glacier Bay National Park and its predecessor Glacier Bay National Monument. The value of Glacier Bay as a protected marine ecosystem, rich in biological resources and special in its dynamic interactions with glacial and terrestrial systems, has never been higher. Protected marine ecosystems are scarce commodities. Examples of overfishing and overuse of marine waters have become increasingly common. The commercial fishing ban in Glacier Bay will enhance the protection of the park's ecological resources, while also reducing a variety of use conflicts with visitors seeking the kinds of recreational and inspirational experiences intended to be provided by national parks.

Limited Exemption From Prohibition

The proposed rule would offer a limited exemption from the prohibition on commercial fishing in Glacier Bay proper for purposes of equitably phasing out the activities of fishermen who have developed an historical reliance on a specific affected fishery. The key terms of this limited exemption include the following:

(a) *Fifteen Years*. The exemption, and all commercial fishing in Glacier Bay proper, would terminate in 15 years. This period of time should allow fishermen reasonable opportunity, where necessary, to adjust their fishing activities to areas outside Glacier Bay proper, amortize their current investment in fishing vessels and gear, or in many cases, continue fishing until retirement. In the 1991 proposed rule, NPS offered a seven year exemption to phase out commercial fishing in Glacier Bay NP, and the Department of the Interior recommended a three to five year phase out of Glacier Bay proper during the 1993–1994 discussions. The 15-year phase out proposed in this rule responds to comments made by fishermen concerning the perceived inadequacy of the seven year phase out proposed in the 1991 NPS proposed rule. It also reflects a position that was emerging in the 1995–1996 Alaska-based discussions. NPS welcomes comment on the appropriate length of the exemption period.

(b). *Outside the Primary Visitor Use Season*. The exemption would be

available throughout the 15 years only from October 1 to April 30, *i.e.*, outside the primary visitor use season in Glacier Bay proper. Accordingly, beginning on May 1, 1998, commercial fishing would be prohibited in Glacier Bay NP during the primary visitor season, May 1 through September 30, to achieve substantial reduction in resource impacts and visitor use conflicts. NPS believes that the fishermen who would likely be eligible to qualify for the exemption in Glacier Bay proper (*see* criteria below) would generally be able to adjust their fishing to the October through April time frame during the 15-year phase out.

Glacier Bay National Park is truly a world-class park, with spectacular resources and a rich cultural history. The park is one of Alaska's premier visitor attractions, contributing significantly to the tourism economy of local communities and Southeast Alaska. Park visitation has doubled within the past ten years to over 300,000 visitors in 1996, a reflection of increasing visitor interest in the park and Alaska. Visitor use, formerly concentrated in a few short summer months, now encompasses an expanding visitor use season stretching from April through September.

Commercial fishing vessels are currently the only motorized vessels that are not expressly subject to entry limits and certain other restrictions in Glacier Bay proper. Since NPS vessel regulations were published for Glacier Bay in 1985 (50 FR 19886), the number of motorized vessels allowed in Glacier Bay during the summer months, including cruise ships, tour boats, charter vessels, and private boats, has been closely regulated. The park's recently completed Vessel Management Plan (1996) further refined the management of vessel traffic within Glacier Bay, provided increased opportunities for visitor access, enhanced protection of park resources (*e.g.*, marine mammals and sea birds), and facilitated a range of high quality recreational opportunities for park visitors. All motorized vessels, with the sole exception of commercial fishing vessels, have been limited to daily and seasonal entry caps. Park regulations have also exempted commercial fishing vessels from certain vessel maneuvering requirements designed to minimize disturbance of endangered humpback whales within Glacier Bay. In these respects, unauthorized and unregulated commercial fishing vessel activity within Glacier Bay during the summer visitor use season has been inconsistent with NPS vessel regulations designed to protect park resources, provide for equitable public use of the park, and enhance the quality of the visitor experience at Glacier Bay.

This visitor use season prohibition on commercial fishing activities would minimize conflicts with other visitor activities, including competition for—and, in some cases, gear conflicts within—limited anchorages. Commercial fishing in Glacier Bay proper has disturbed visitors seeking opportunities to experience nature, quiet, solitude, or an escape from the indicia of modern civilization. This visitor use season prohibition would also reduce the effect of unlimited numbers of commercial fishing vessels on sensitive park resources, and would improve the background conditions for critical studies required by the Vessel Management Plan.

The visitor use season closure of Glacier Bay to commercial fishing would almost exclusively affect Dungeness crab (June 15—August 15) and halibut fisheries (March 15—November 15) under current State and International Pacific Halibut Commission (IPHC) regulations. However, federal and State fisheries regulations do permit fishing opportunities for halibut and Dungeness crab during the October 1—April 30 exemption period. Halibut, for example, would still be available for harvest in Glacier Bay for three months under this proposed rule (March 15—April 30, and October 1—November 15); Dungeness crab for two months (October 1—November 30). Halibut fishermen, in particular, would have ample opportunity to fish outside Glacier Bay during the proposed May 1—September 30 prohibition period. Under the IPHC management system, fishermen have eight months to fish within a large management area (of which Glacier Bay is but a portion) to catch their allotted Individual Fishing Quota (IFQ), i.e., pounds of halibut that may be harvested each year. Very little trolling activity for salmon occurs in Glacier Bay during the summer months under current fishing practices and State regulations, and the proposed visitor use season prohibition would be expected to have minimal impact on the activities of troll fishermen.

Although the proposed rule would bracket the visitor use season from May 1 through September 30, NPS solicits comments on the use of a different visitor use season during which all commercial fishing in Glacier Bay proper would be prohibited beginning in 1998. In previous comments and discussions, fishermen have suggested a shorter season (June 1 though August 31), and others have suggested a ''middle'' position of May 15 through September 15.

(c) *Grandfathered (i.e., Qualifying) Fishermen.* The fifteen year exemption would be available to individual owners of valid fishing permits who can demonstrate a history of consistent participation in the specific Glacier Bay fishery for which an exemption is sought. The primary criteria would be documented participation in a given fishery in Glacier Bay proper for at least six of the last ten years (1987–1996), as supported by an affidavit, verified by a minimum number of reported landings from within Glacier Bay each of the six years, and perhaps corroborated by other supporting information. The minimum number of landings required would vary by fishery. For halibut, salmon, and tanner crab, the minimum number of landings in each qualifying year would be one. Ten landings of Dungeness crab would be required in each qualifying year. With these criteria, NPS would hope to identify those fishermen with a consistent (not intermittent or long past) reliance on a Glacier Bay fishery. NPS would also seek the assistance of the State of Alaska, the International Pacific Halibut Commission, and other knowledgeable sources in identifying valid permit owners who meet the historical reliance criteria.

NPS would require those fishermen qualifying for the exemption from the commercial fishing prohibition in Glacier Bay proper to obtain a non-transferable (except for purposes of permit retirement) special use permit from the Superintendent of Glacier Bay NP within two years following the effective date of a final rule. The existing procedures governing permit applications for activities in Alaska national park areas would apply. *See* 36 CFR § 13.31. Commercial fishing in Glacier Bay proper without an NPS special use permit would be prohibited during the 15-year exemption period. At the end of the 15-year exemption, all special use permits would expire and all commercial fishing within Glacier Bay proper would cease.

NPS welcomes comment on the proposed ''grandfathering'' criteria and process.

(d). *Exempted fisheries and gear types.* Commercial fisheries eligible for the 15-year exemption in Glacier Bay proper would include trolling for salmon, long lining for halibut, and pot or ring net fishing for Dungeness and tanner crab. These are the fisheries that have consistently occurred within Glacier Bay for decades. All other fisheries and gear types would be prohibited. Since 1985, NPS regulations

have expressly prohibited commercial fishing for shrimp, herring and whale prey species, and trawling in Glacier Bay. The exempted fisheries would be governed under a cooperative fisheries management plan developed by NPS and the State consistent with federal and non-conflicting State regulations. The plan would be implemented through the Alaska Board of Fisheries, with the Secretary retaining the authority to protect park purposes and values under applicable law.

(e). *Safe Harborage.* Nothing in this proposed rulemaking, or existing NPS regulations, would affect the ability of fishermen or other vessel operators to seek safe harbor within Glacier Bay under hazardous weather or sea conditions, when experiencing mechanical problems, or in other exigent circumstances.

(f). *Opportunity for ''Buy Out.''* Commercial fishermen who qualify for and obtain a special use permit for the 15-year exemption as outlined above might be willing to sell the permit to the NPS or a third party for the sole purpose of retiring the permit. Subject to the availability of funds for this purpose, NPS might be willing to buy these permits, especially early in the 15-year exemption period, to enable and encourage the fishermen who wish to pursue alternatives to fishing in Glacier Bay proper. Any such ''buy out'' would require, at a minimum, a willing seller, a willing buyer, and available funds.

Wilderness

This rulemaking reflects the Wilderness Act's statutory prohibition on commercial fishing within designated wilderness. Within Glacier Bay National Park, the wilderness waters of Dundas Bay, Rendu Inlet, Adams Inlet, the Hugh Miller Inlet complex, and the Beardslee Islands would continue to be closed to commercial fishing, a commercial enterprise incompatible with the requirements of the Wilderness Act of 1964.

Outer Waters

Exemption from current NPS prohibition on commercial fishing

This proposed rule would provide an exemption from the existing regulatory prohibition on commercial fishing in the nonwilderness waters of the Park located outside Glacier Bay proper. Authorized fisheries would be allowed to continue under a cooperative fisheries management plan developed by the NPS and State of Alaska and implemented through the Alaska Board of Fisheries. The NPS recognizes the fisheries management expertise of the Board of Fisheries, and would like to incorporate the use of this established regulatory and public involvement process familiar to the fishing community. NPS management objectives for the outer waters would be incorporated within this plan and include limits on the significant expansion of ongoing fisheries; protection of resident and sensitive fish species, including salmonid populations that spawn within the park; protection of other park wildlife and resources; and, minimization of conflicts with visitor use. A cooperative fisheries management plan would be regularly reviewed and evaluated with respect to achievement of State and NPS management objectives, and modified as necessary. Where NPS management objectives are not met under cooperative State/federal management, the Secretary could move to close or modify ongoing fisheries to protect park purposes and values following appropriate procedures, including notice and hearing in the local area. Continued cooperative management would be reevaluated at the end of 15 years.

The proposed fifteen year exemption from the existing prohibition on commercial fishing in national park waters, with a re-examinaton of scientific and other information at that time, differs in significant respects from the seven-year exemption proposed by NPS in 1991, which would have presumptively closed park waters to commercial fishing at the end of the seven year exemption. This proposed rule responds to concerns from the fishing community and State regarding the long-term viability and importance of fisheries in the outer waters, particularly the troll fishery for salmon, which—according to comments received on the 1991 proposed rule—is of special importance and concern. NPS invites comment on the duration and terms of the proposed exemption for the ''outer waters.''

Gear Types

Fisheries authorized under this proposed rule would be delineated in the cooperative management plan, and would be limited to those species and gear types that have historically occurred and have provided commercially viable fisheries. New fisheries and gear types, or the expansion into the park of relatively new fisheries developing in Southeast Alaska (*e.g.*, sea urchins, sea cucumbers) and other species not previously fished in the park, would be precluded. Gear types would be limited to those that have been historically prevalent in the outer waters: troll, long line, pots and ring nets, and purse seine (Excursion Inlet only).

Lituya and Dundas Bays

Two bays in outer waters merit special consideration: Lituya Bay on the Outer Coast and Dundas Bay in Icy Strait. These bays are arguably unique among outside waters. Both are geologically, culturally, and historically rich. Both provide sheltered habitat for marine life as well as outstanding opportunities for recreation. NPS specifically solicits public comment on whether these two special bays should be afforded additional protection through limitations on commercial fishing, including the possibility of a phase-out similar in approach to that proposed for Glacier Bay proper.

Safe Harborage

This proposed rule would not affect the use of protected bays along the park's outer waters for safe harborage. Safe harborage has always been allowed and will be continued for any vessel.

Research

The continued closure of certain areas of Glacier Bay National Park to commercial fishing as contemplated under this proposed rule presents unique and extremely valuable opportunities for science. The opportunity to pursue scientific endeavors about natural resources and processes was a primary reason Glacier Bay was established as a national monument in 1925. Indeed, Glacier Bay National Park has a distinguished scientific history.

NPS intends to work closely with the State, the scientific community, other fisheries, protected area managers, and the public to evaluate opportunities for carefully considered and designed cooperative studies presented by the proposal under consideration. A cooperative State and NPS fisheries management plan would, in part, identify cooperative research needs and opportunities that can benefit conservation of resources in the Park, and contribute toward models for sustainable fisheries and economies throughout Alaska and elsewhere.

Dungeness Crab Study

The ongoing MADS (Multi-Agency Dungeness Studies) is a cooperative project initiated in 1992 by the National Marine Fisheries Service, University of Alaska, Fairbanks, and the Biological Resources Division (BRD) of the U. S. Geological Service (USGS) (formerly National Biological Service). Phase I of the MADS study gathered data

characterizing the size and structure of the Dungeness crab population at selected sites in Glacier Bay. Phase II of the study (five to seven years) requires both closed and open fishing areas for Dungeness crab within the Beardslee Islands study area, including Bartlett Cove; population parameters in the fished sites will be compared to sites closed to fishing. The information established by this study will provide an invaluable baseline for monitoring these areas with different fishing histories over time.

NPS had previously determined that the aspect of this scientific research that requires limited harvesting within the Beardslee Island wilderness comports with the restrictive criteria applicable to approving scientific research in a wilderness area, including the following: the project is of minimal impact and duration, its information is likely to be of great value for resource protection and protected area management purposes, and alternative locations are not available. Controlled experiments testing the impact of human exploitation on the population structure of harvested marine species are rare. Typically, areas that have been fished in the past are not available to study as ''unfished'' areas until the fishery has ''crashed,'' *i.e.*, been depleted. Comparison of the crab population structure in fished and non-fished areas in Glacier Bay NP during this transitional period will markedly enhance the information base available to NPS managers in evaluating the relationship between fishing activities and the protection of park/wilderness resources, and will also be valuable in quantifying the recovery of wilderness waters to an unexploited state. Furthermore, such information should prove valuable to all agencies involved in fisheries management in Alaska and elsewhere.

A small number of fishermen with an extensive knowledge of the Beardslee Islands Dungeness fishery may be authorized to participate in the study under a ''research project'' special use permit from the NPS. For the stability of the study and principles of equitable selection, participation in the study would be limited to those fishermen who meet the criteria for fishing in Glacier Bay during the fifteen year exemptive period, and have a personal history of Dungeness crab fishing within the Beardslee Islands. Additional criteria may be considered if the number of eligible participants exceeds study needs. Fishing activities during the study would continue consistent with applicable State regulations, including the summer Dungeness fishery, currently June 15—August 15. The participation in this research project does not preclude the fishermen from qualifying separately to fish in nonwilderness waters outside the study area.

The proposed rule would close Bartlett Cove (defined as that area of the cove enclosed by a line drawn between Halibut and Lester Points) and a portion of the Beardslee Island waters to all fishing for Dungeness crab (including sport and personal use) for the purposes and duration of study through December 31, 2002. Maps and charts would be available from the Superintendent delineating the closure area. The closure would not affect fishing opportunities for other species, as otherwise allowed under federal and non-conflicting State regulations.

Halibut Study Proposal

The NPS is specifically seeking public comment at this time on a halibut study that would measure the effects of commercial harvest on halibut in Glacier Bay proper. Since 1992, research on Pacific halibut in Glacier Bay has concentrated on the many unanswered questions about the basic life history and ecological relationships of the species. New knowledge about the behavior of halibut, including their use of small home ranges, site fidelity, and the retention of reproductive individuals in Glacier Bay throughout the year, combined with the species' slow maturation and highly age-dependent reproduction, indicates that halibut have a high potential to experience local depletion through fishing. Thus, this species is a good candidate for additional protection and for examining the effects of commercial fishing by comparing open and closed areas. Through experimental closures, an understanding can be gained of the effects of fishing on halibut population size and structure, as well as any cascade effects on prey species.

The halibut study would require the closure of Glacier Bay above Strawberry Island within the next few years, and would compare catch per unit effort and size structure of the halibut in the closed area to a similar study site in Icy Strait where commercial halibut fishing would continue. Although this experimental closure, as proposed for review and comment, would substantially reduce the area available within Glacier Bay for commercial halibut fishing during the 15-year exemption period, it would not be expected to have an equivalent impact on harvest. Available harvest data indicates a majority (> 50%) of halibut harvested in Glacier Bay are taken from the area of Glacier Bay which would remain open to fishing under this study proposal.

Available biological data correlates with the harvest data, indicating highest numbers of halibut in the lower reaches of Glacier Bay and very few in the upper reaches. Under this study proposal, fishermen would continue to have access to the most productive area in Glacier Bay to harvest their IFQ shares of halibut.

The halibut study outlined above would allow fisheries managers an unparalleled opportunity to measure the effects of commercial fishing on halibut. This information is extremely important to the management and protection of halibut fisheries in and out of the Park, and serves to illustrate the potential benefits Glacier Bay National Park holds for science and the long-term conservation of fisheries resources.

Hoonah Tlingit Cultural Fishery

NPS and the Hoonah Indian Association (HIA), a federally recognized tribal entity, signed a Memorandum of Understanding in 1996, committing to work cooperatively to protect the cultural heritage of the Hoonah Tlingit, explore ways to recognize and honor the Tlingit's cultural connection to Glacier Bay, and allow for—and preserve—cultural activities compatible with park objectives. Toward that end, NPS will work with HIA to develop a cultural fishery program designed to preserve and pass on traditional native fishing methods. The State of Alaska's educational fishery program may serve as a vehicle for developing such a program.

Pending Environmental Assessment: Alternatives under Consideration

A forthcoming Environmental Assessment on commercial fishing within Glacier Bay National Park will more fully describe and analyze the potential effects of a range of alternative actions under consideration by the NPS. Brief descriptions of the draft alternatives under consideration follow and are offered to solicit preliminary public review and comment. A public review and comment period will be provided for the Environmental Assessment and the proposed rule together. NPS will hold public meetings on the proposal and the alternatives and publish a schedule of times, dates and locations in the **Federal Register**. NPS has not made any final decisions regarding any proposals described herein. No final decisions will be reached until all applicable legal

requirements have been met, including environmental review requirements.

Alternative A (No Action)

This alternative would leave in place the current regulations prohibiting commercial fishing activities within Glacier Bay National Park. Enforcement of the regulation would result in the cessation of all commercial fisheries in Park waters. NPS would explore possible mitigation mechanisms for affected fishermen. In addition, the NPS, in cooperation with the State of Alaska, the Biological Research Division, and other research entities, would explore opportunities to facilitate fishery research. This alternative would not require regulatory or legislative action.

Alternative B

This alternative would provide short-term, year round commercial fishing opportunities through a five-year exemption from the existing NPS regulatory prohibition on commercial fishing in Glacier Bay proper and a longer, fifteen year exemption in waters of the Park located outside Glacier Bay. The statutory prohibition on commercial fishing in designated wilderness areas would be reflected in the regulations. Fishing may be continued in specific locations in the Beardslee Islands as part of an ongoing scientific study of Dungeness crabs for a period of five years.

The five-year exemption in Glacier Bay would be available only to individual fishing vessel/permit owners who can demonstrate a history of consistent participation in each specific Glacier Bay fishery. The primary criteria would be documented participation in a given fishery for at least six of the last ten years (1987–1996), as verified by a minimum number of reported Glacier Bay fish landings and ownership of the appropriate fisheries permit(s), effective 1996. Fishermen not meeting criteria demonstrating consistent participation in fisheries, who have used the Bay only intermittently or in recent years, would not be allowed to fish in Glacier Bay.

Fisheries located outside Glacier Bay proper would be allowed to continue under a cooperative fisheries management plan developed with the State of Alaska and implemented through the Alaska Board of Fisheries for 15 years. During the 15-year period studies and research regarding the relationship of commercial fishing uses to park resources and values would be conducted. If data from such studies indicate that certain levels and/or types of commercial fishing can compatibly coexist with conserving park resources in an unimpaired state, then the NPS may allow closely monitored commercial fisheries at prescribed levels after the 15-year period.

Alternative C (Proposed Action)

Alternative C would allow continued fishing in the Park's marine waters outside Glacier Bay proper, subject to achievement of NPS management objectives as would be defined in a cooperative management plan developed with the State. The regulations will reflect the statutory prohibition against commercial fishing in designated wilderness waters. Fishermen with a consistent history of participation would continue to fish within Glacier Bay for halibut, Dungeness and tanner crab, and salmon during a 15-year exemption period. Glacier Bay would close to commercial fishing during the visitor use season, May 1—September 30, to minimize conflicts with visitor use and Vessel Management Plan objectives. A research study on Dungeness crab would occur in the Beardslee Islands requiring closure of part of the Beardslee Islands, and Bartlett Cove, to all Dungeness crab fishing for a five-year study period; an additional research opportunity for halibut is suggested for public comment.

Alternative D (Continued Fishing)

Alternative D would allow continued fisheries harvest at the highest possible level while protecting park resources. This alternative, to the extent possible, would seek to allow local individuals to continue a traditional fishing lifestyle, promote and sustain fishing culture and maintain the economic viability of small business interests in Glacier Bay National Park and adjacent communities. With the exception of some fisheries, most would be authorized to continue throughout Glacier Bay National Park. This alternative would prohibit fisheries for those species vulnerable to over harvest (i.e., all king crab species, all rockfish species and ling cod), fisheries causing unacceptable habitat degradation (i.e., weathervane scallop dredge fishery), and trawling. The statutory prohibition on commercial fishing in Wilderness would be reflected in the regulations. This alternative would require a fisheries research and management program to obtain new information and assemble existing fisheries data for periodic evaluation regarding continued viability of fisheries. Periodic review would be accomplished by the NPS in consultation with appropriate fisheries management agencies. Alternative D would also require regulatory action to authorize commercial fisheries in park waters.

Section-by-Section Analysis

Paragraph (a)(1) would provide an exception, for the non-wilderness marine waters of Glacier Bay National Park, from the general NPS prohibition on commercial fishing; subparagraph (i) clarifies that wilderness waters remain statutorily closed.

Subparagraph (ii)(A) would require an NPS issued permit to conduct commercial fishing activities in Glacier Bay proper; (ii)(B) would establish eligibility and application requirements for commercial fishing in the Bay; (ii)(C) would establish an October 1 through April 30, non-renewable 15-year exemption period for commercial fishing in the Bay; commercial species and methods of take that would be allowed within the Bay are proposed in (ii)(D).

Subparagraph (iii)(A)–(B) would authorize the existing, prevalent commercial fishing operations in the other marine waters of the Park for a period of 15 years under a cooperative Federal/State management plan; (iii)(C) would require reexamination of continued commercial fishing under the cooperative agreement, based on the best scientific information and in consideration of park values and purposes, in the outer waters of the park at the end of the 15-year period.

Paragraph (a)(2) prohibits fishing for Dungeness crab within Beardslee Island study area, including Bartlett Cove, until December 31, 2002, except as authorized by a research permit. This will allow NPS/USGS BRD to complete the Multi-Agency Dungeness Studies initiated in 1992 by National Marine Fisheries Service and the University of Alaska, Fairbanks. The closure would not effect fishing opportunities for other species.

Paragraphs (b)(5)—(6) that prohibit both commercial harvest of species identified as whale prey and methods that remove these species are proposed to be withdrawn and reserved; paragraph (a)(1)(ii)(D) would replace them.

Drafting Information: The primary authors of this rule are Molly N. Ross, Office of the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, Washington, D.C., Randy L. King, Chief Ranger, Glacier Bay National Park and Preserve, and Russel J. Wilson, Alaska Desk Officer, National Park Service, Washington, D.C. Other contributing National Park Service employees include: John W. Hiscock, Marvin Jensen, Mary Beth Moss, and Chad Soiseth.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon a thorough analysis of the comments. NPS will schedule and provide specific notice of public meetings and discussion sessions in various locations during the comment period.

Paperwork Reduction Act

The collection of information contained in section 13.65 (a)(1)(ii)(B) this rule is for the purpose of issuing a permit to allow a continuation of commercial fishing in Glacier Bay National Park based upon historical justification. The information collected will be used to determine who qualifies for the issuance of a permit. The obligation to respond is required to obtain a permit.

Specifically, the NPS needs the following information to issue a permit:

(1) Applicants name, address and date of birth.

(2) Vessel name, registration, ADF&G license numbers and description.

(3) Alaska Limited Entry/Interim Use Permit Card Number.

(4) Halibut Commission license number.

(5) Fishery description/gear type.

(6) Documented fish landings (1987–1996).

NPS has submitted the necessary documentation to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, requesting approval for the collection of this information for all areas covered by this rule. A document will be published in the **Federal Register** establishing an effective date for § 13.65(a)(1)(ii)(B) when that approval is received from OMB.

The public reporting burden for the collection of this information is estimated to average less than two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden of these information collection requests, to Information Collection Officer, National Park Service, 800 North Capitol Street, Washington, D.C. 20001; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Department of the Interior (1024–0125), Washington, D.C. 20503.

Compliance With Other Laws

This rule was reviewed by the Office of Management and Budget under Executive Order 12866. The Department of the Interior determined that the proposed rule is not major.

The Department of the Interior determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The revision mainly clarifies previously existing statutory and regulatory prohibitions. The expected redistribution of commercial fishing efforts to areas outside of the park is not expected to significantly effect a substantial number of small businessmen.

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

Pursuant to the National Environmental Policy Act, 42 U.S.C. 4332, NPS is preparing an environmental assessment (EA) on the proposed action and alternatives that are outlined in this rule. The Service will complete the EA and publish a notice of availability in the **Federal Register** during the comment period provided for in this rule so that interested parties can comment contemporaneously on both documents.

List of Subjects in 36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, NPS proposes to amend 36 CFR part 13 as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for Part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; § 13.65 also issued under 16 U.S.C. 1a–2(h), 20, 1361, 1531, 3197.

2. Section 13.65 is amended by adding paragraph (a) and removing and reserving paragraphs (b)(5) and (b)(6) to read as follows:

§ 13.65 Glacier Bay National Park and Preserve.

(a) *Fishing.*—(1) Commercial fishing. During the time frames that follow, specified commercial fisheries in listed salt waters of Glacier Bay National Park are exempt from the commercial fishing prohibition contained in this chapter:

(i) Commercial fishing and associated buying and processing operations within designated wilderness areas are prohibited. Maps and charts showing designated wilderness areas are available from the Superintendent.

(ii) Glacier Bay. (A) A non-transferable special use permit issued by the Superintendent is required to conduct commercial fishing within Glacier Bay during the exemptive period. Commercial fishing without a special use permit is prohibited.

(B) Eligibility requirements to obtain a special use permit for each fishery include a current, valid State and/or federal commercial fishing permit(s) for Glacier Bay waters; participation in the fishery within Glacier Bay a minimum of six years during the period 1987–1996, as verified by affidavit and documentation of at least one landing in each year from Glacier Bay for halibut, salmon, or tanner crab; for Dungeness crab, ten landings are required in each of the six qualifying years. Application for a special use permit must be made within two years from [effective date of the final regulation].

(C) October 1 through April 30, commercial fishing and associated buying and processing operations are authorized in all non-wilderness waters of Glacier Bay north of a line from Point Carolus to Point Gustavus for a period of 15 years from the effective date of this regulation. At the end of the exemptive periods, all commercial fishing and associated buying and processing operations shall end, and the prohibition contained in this chapter shall apply.

(D) Commercial fishing for other than the following species, or by other than the following methods is prohibited: trolling for salmon, long lining for halibut, pot or ring net fishing for Dungeness and tanner crab.

(iii) Outer waters. (A) Commercial fishing and associated buying and processing operations are authorized in all marine waters within park boundaries not listed in paragraph (a)(1)(ii)(B) of this section, pursuant to a cooperative federal and State of Alaska management plan for a period of 15 years from [effective date of the final regulation].

(B) Commercial fishing by other than the following methods is prohibited: trolling, long lining, pot and ring net

fishing for Dungeness and tanner crab, and purse seining in Excursion Inlet.

(C) At the end of the 15-year exemptive period, the Secretary will reexamine and reevaluate continued commercial fishing in the outer waters, based on the best available scientific information and in consideration of park values and purposes.

(2) Fishing for Dungeness crab within the Beardslee Island study area, including the area enclosed within Bartlett Cove by an imaginary line drawn between Lester and Halibut Points, is prohibited until December 31, 2002, except as authorized by a NPS research permit. Maps and charts showing the Beardslee Island study area are available from the Superintendent.

(b) * * *

(5) [Reserved]

(6) [Reserved]

* * * * *

Dated: February 13, 1997.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–9800 Filed 4–15–97; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH106–1b; FRL–5808–6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On November 12, 1996, USEPA received a State Implementation Plan (SIP) revision request from the Ohio Environmental Protection Agency (Ohio EPA). This revision request was in the form of an amendment to the Ohio Administrative Code (OAC) which added an additional exemption from organic compound emission controls for qualifying new sources. In this action, USEPA is proposing to approve the State's SIP revision request. In the final rules section of this **Federal Register**, the USEPA is approving this action as a direct final rule without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives substantive adverse comments not previously addressed by the State or USEPA, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received on or before May 16, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: April 1, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

[FR Doc. 97–9751 Filed 4–15–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IN73–1b; FRL–5808–1]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve the State Implementation Plan (SIP) revision request submitted by the Indiana Department of Environmental Maintenance (IDEM) on October 2, 1996. In the October 2 submittal, IDEM requested a SIP revision to eliminate references to total suspended particulates (TSP) while maintaining the existing opacity requirements. In the final rules section of this **Federal Register**, USEPA is approving the State's SIP revision as a direct final rule without prior proposal because the agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 16, 1997.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Ryan Bahr, Environmental Engineer, at (312) 353–4366 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ryan Bahr, at (312) 353–4366.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 28, 1997.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 97–9792 Filed 4–15–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[001–7201b; A–1–FRL–5808–8]

Ambient Air Quality Surveillance; Connecticut/Maine/Massachusetts/ New Hampshire/ Rhode Island/ Vermont; Modification of the Ozone Monitoring Season

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revise portions of part 58 of chapter 1 of title 40 of the Code of Federal Regulations (CFR), Appendix D, the Ozone Monitoring Season by State Table in Section 2.5. The revisions change the ozone monitoring season for Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont to April 1–September 30.

DATES: Comments must be received on or before May 16, 1997.

ADDRESSES: Comments may be mailed to Don Porteous, Acting Director, Office of Environmental Measurement & Evaluation, U.S. Environmental Protection Agency, Region I, 60 Westview Street, Lexington, MA 02173. Copies of the documents and data relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Environmental Measurement & Evaluation Division, U.S. Environmental Protection Agency, Region I, 60 Westview Street, Lexington, MA.

FOR FURTHER INFORMATION CONTACT: Mary Jane Cuzzupe, U.S. Environmental Protection Agency, Region I, Office of Environmental Measurement & Evaluation, Ecosystem Assessment, 60 Westview Street, Lexington, MA 02173. Telephone (617) 860–4383.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the rules section of this **Federal Register**.

Dated: March 24, 1997.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 97–9863 Filed 4–15–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–5809–6]

Clean Air Act Promulgation of Extension of Attainment Date for the Portland, Maine Moderate Ozone Nonattainment Area; Maine

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Proposed rule.

SUMMARY: EPA proposes to extend the attainment date for the Portland, Maine moderate ozone nonattainment area to November 15, 1997. This extension is based in part on monitored air quality readings for the national ambient air quality standard (NAAQS) for ozone during 1996. Accordingly, EPA proposes to update the table in 40 CFR part 81 concerning attainment dates in the State of Maine.

In the Final Rules Section of this **Federal Register**, EPA is approving the extension request in a direct final rule without prior proposal because the Agency views this extension as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 16, 1997.

ADDRESSES: Written comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203, (617) 565–3578.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 3, 1997.

John DeVillars,

Regional Administrator, Region I.

[FR Doc. 97–9861 Filed 4–15–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 92

[FRL–5812–9]

RIN 2060–AD33

Emission Standards for Locomotives and Locomotive Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of postponement of public hearing and extension of comment period.

SUMMARY: On February 11, 1997 (62 FR 6365), EPA published a Notice of Proposed Rulemaking (NPRM) that proposed emission standards for locomotives and locomotive engines. EPA is changing the date on which it will hold the public hearing for that NPRM and extending the written comment period.

DATES: The public hearing will be held on May 15, 1997, starting at 9:30 a.m. Persons wishing to present oral testimony are requested to notify EPA on or before May 8, 1997 to allow for an orderly scheduling of oral testimony. Written comments must be received on or before June 16, 1997.

ADDRESSES: The public hearing will be held at the Crown Plaza Hotel (313–729–2600), which is located at 8000 Merriman Road, Romulus, Michigan. Written comments are to be addressed to: EPA Air and Radiation Docket, Attention: Docket No. A–94–31, Room M–1500, Mail Code 6102, U.S. EPA, 401 M Street, S.W., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: For information on this rulemaking contact: John Mueller, U.S. EPA, Engine Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105; Telephone: (313) 668–4275, Fax: (313) 741–7816. Requests for hard copies of the rulemaking documents should be directed to Carol Connell at (313) 668–4349.

List of Subjects in 40 CFR Part 92

Environmental protection, Air pollution control, Railroads.

Dated: April 11, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 97–9945 Filed 4–15–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–114, RM–9059]

Radio Broadcasting Services; Dassel and Hutchinson, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by North American Broadcasting Co., Inc., requesting the substitution of Channel 295C3 for Channel 296A at Hutchinson, Minnesota, and reallotment of Channel 295C3 from Hutchinson to Dassel, Minnesota. Petitioner also requests modification of its license for Station KKJR to specify operation on Channel 295C3 at Dassel. The coordinates for Channel 295C3 at Dassel are 45–08–30 and 94–26–00. We shall propose to modify the license for Station KKJR in accordance with Section 1.420 (g) and (i) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before June 2, 1997, and reply comments on or before June 17, 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: Gregg P. Skall, Pepper & Corazzini, L.L.P., 1776 K Street, NW, Suite 200, Washington, DC 20006.

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. 97–114, adopted April 2, 1997, and released April 11, 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. 97–9824 Filed 4–15–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–77, RM–8780; RM–8818]

Radio Broadcasting Services; Hobbs, Tatum and Jal, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Order to Show Cause.

SUMMARY: The Commission, in response to a counterproposal filed by MTD, Inc., proposes the allotment of Channel 296C to Tatum, NM, as the community's first local aural transmission service. To accommodate the allotment at Tatum, the Commission also proposes that Channel 279C1 be substituted for Channel 296C1 at Jal, NM, and that the construction permit (BPH–950404MA) of John H. Wiggins be modified to specify operation on the alternate Class C1 channel. An Order to Show Cause is directed to the permittee, John H. Wiggins, as to why his permit should not be modified to specify the alternate Class C1 channel. Channel 296C can be allotted to Tatum in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.2 kilometers (8.2 miles) west, at coordinates 33–15–27 North Latitude and 103–27–22 West Longitude, to avoid a short-spacing to Stations KPOS-FM, Channel 297C2, Post, TX, and KSMX, Channel 298C1, Clovis, NM. Channel 279C1 can be allotted to Jal at the transmitter site specified in Wiggins' outstanding construction permit, 32–25–53; 103–09–08. Mexican concurrence in the allotment of Channel 296C at Tatum and 279C1 at Jal is required since both communities are located within 320 kilometers (199 miles) of the U.S.-Mexican border.

DATES: Comments must be filed on or before June 2, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order to Show Cause, MM Docket No. 96–77, adopted April 2, 1997, and released April 11, 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 Services, 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. 97–9825 Filed 4–15–97; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Species Changes Proposed by the United States for the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision on U.S. submissions to amend the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species, which are listed in the appendices of this treaty. The United States, as a Party to CITES, may propose amendments to the appendices for consideration by the other Parties.

In this notice, the U.S. Fish and Wildlife Service (Service) announces the proposals to amend the CITES appendices that it has submitted to the CITES Secretariat on behalf of the United States and which will be considered for adoption by the Parties at the Tenth Meeting of the Conference of the Parties (COP10) in Zimbabwe, June 9–20, 1997. The reasoning for selecting these proposals and rejecting others under consideration is provided below.

In a related notice on March 27, 1997, the Service announced provisional agenda topics, draft resolutions, and other documents that the United States has submitted for consideration by the Parties at COP10 (62 FR 14689).

DATES: Proposals adopted by the Parties will effective on September 18, 1997.

ADDRESSES: Requests for information about species proposals should be directed to Chief, Office of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Room 750; Arlington, VA 22203. Fax: 703–358–2276. Phone: 703–358–1708.

FOR FURTHER INFORMATION CONTACT: Dr. Marshall A. Howe (for animal species) or Dr. Bruce MacBryde (for plant species), Office of Scientific Authority, at the above address, telephone 703–358–1708.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as ''CITES'' or ''the Convention'', regulates import, export, re-export, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in one of three appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless the trade is strictly controlled. Appendix II also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party country identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties to control trade.

In a March 1, 1996 **Federal Register** notice (61 FR 8019), the Service requested public recommendations or draft proposals to amend Appendix I or II that the Service might consider proposing on behalf of the United States at COP10. That notice described the provisions of CITES for listing species in the appendices and set forth information requirements for proposals, based on new listing criteria adopted by the Parties at COP9. An August 28, 1996 **Federal Register** notice (61 FR 44324) requested additional comments from the public on species proposals still being considered after review of materials received in response to the March 1 notice. On the basis of a thorough review of comments received in response to the August 28 notice, the Service identified those proposals that met the listing criteria and presented the most compelling cases. These proposals to amend the appendices were submitted to the CITES Secretariat on January 10, 1997, to be considered and voted upon by the Parties at COP10. The rationale for selecting the proposals the United States submitted and rejecting the proposals it did not is presented below, along with a summary of the substantive public comments that aided in those decisions. Any proposed amendments to the appendices adopted by the Parties will become effective on September 18, 1997, unless the United States enters a reservation before that time. The Service will publish a rulemaking that would implement such amendments.

Public Comments and Decisions on Possible Species Proposals

The biological bases for proposals still being considered for submission by the United States were described in the **Federal Register** notice of August 28, 1996 (61 FR 44324) and are not repeated here in detail in most cases. Decisions and their respective rationales are as follows:

Species Proposals Not Submitted

1. Walrus (*Odobenus rosmarus*).

Although the Service's August 28, 1996 notice said nothing about a possible proposal related to walruses, the Service received a letter from Friends of Animals expressing concern about illegal taking of walruses in Alaska (in particular the discovery of 160 carcasses between Shishmaref and Kotzebue in 1996) and recommending that the United States prepare a proposal to include the walrus in CITES Appendix II. Walruses are presently on Appendix III of CITES (included by Canada) and receive extensive protection in the United States under the Marine Mammal Protection Act (MMPA). The MMPA permits limited take of walruses by Alaskan Natives but limits legal international trade of walrus products for the most part to handicraft items. Such uses are guided by a detailed ''Conservation Plan for the Pacific Walrus in Alaska.'' Population surveys are conducted jointly with Russia at 5-year intervals. Current populations appear to be healthy and have persisted well above the ''optimum sustainable population'' measure used by marine mammal specialists. There is no evidence of dramatic change in walrus populations in recent years, and the legal take has remained stable.

The Service has reviewed the 1996 incident cited by Friends of Animals and concluded that it was one of a small number of unfortunate and reprehensible poaching incidents that have resulted in mortality that, while locally dramatic in some cases, does not represent a significant impact on the walrus population of Alaska. Although there is a possibility that some of the poached ivory finds its way into illegal international trade, there is no evidence to suggest that the volume warrants additional CITES controls. Both on biological and trade grounds, the walrus in the United States does not meet the criteria for inclusion in CITES Appendix II. Therefore no proposal for taking such action was submitted.

2. Urial (*Ovis vignei*).

The Service had requested public comment in its August 28, 1996 notice

on possible co-sponsorship by the United States of a proposal drafted by Germany to include all subspecies of the urial, a species of sheep popular among sport trophy hunters, in Appendix I. There have been varying interpretations of what precise taxonomic entity was intended by the original listing of this species in Appendix I. As reported in the **Federal Register** of December 20, 1996 (61 FR 67293), a review of this problem was undertaken by the CITES Nomenclature Committee at the meeting of the CITES Animals Committee in September 1996, in Prague. The Nomenclature Committee concluded that the taxonomic entity intended for protection by the original listing could not be determined with certainty. It was, therefore, recommended that the current listing be interpreted as being equivalent to that in the CITES-adopted taxonomic reference for mammals, resulting in the entire species being included in Appendix I. The Animals Committee endorsed this interpretation. In light of this recommendation, the draft proposal for listing in Appendix I became redundant and Germany did not submit the proposal.

The Service stated its position in the December 20, 1996 notice that the United States should accept this recommendation of the CITES Nomenclature and Animals Committees and propose a corresponding change in its interpretation of the listing of *Ovis vignei* in 50 CFR part 23. This interpretation will become effective 90 days after the conclusion of COP10, if the Parties adopt the report of the Nomenclature Committee. Under this interpretation, all urial specimens will be considered to be in Appendix I, and imports will be subject to the normal permitting requirements applicable to species included in Appendix I. Public comment on this recommended position was solicited and is presently being reviewed. Irrespective of the final United States position, the proposal by Germany is no longer extant and potential co-sponsorship by the United States is moot. [The Service cautions that the interpretation of *Ovis vignei* likely to be adopted by the CITES Parties, in addition to moving certain sheep populations from unregulated status to Appendix I from the perspective of the United States, is a potential source of confusion with respect to interpretation of taxa listed under the U.S. Endangered Species Act (ESA). It is important to note that changes in CITES nomenclature have no effect whatever on taxa listed under ESA. For example, even though the sheep subspecies *severtzovi* is considered now by CITES to belong to *Ovis vignei* (only one subspecies of which, *O. v. vignei*, is listed under ESA), the ESA continues to consider *severtzovi* to be a subspecies of the argali, *Ovis ammon*. It therefore continues to have endangered status under ESA as a consequence of the *Ovis ammon* listing as endangered].

3. Gyrfalcon (*Falco rusticolus*)

The North American Falconry Association (NAFA) recommended that the Service propose transferring the North American population of the gyrfalcon from Appendix I to Appendix II and prepared a proposal in support of this recommendation. NAFA submitted an identical proposal to Canada. Populations of this species have been stable except for natural fluctuations typical of high arctic breeders. Utilization is almost entirely by falconers and use is slight compared with the total population. Today, with the development of effective husbandry techniques, it appears that most demand for gyrfalcons could be met by captive-bred specimens.

The Humane Society of the United States (HSUS) and the International Wildlife Coalition (IWC) opposed the proposal, citing illegal trade concerns and failure to meet the downlisting criteria of CITES Resolution Conf. 9.24, Annex 4, paragraph B. Eight falconry interests favored the downlisting. Reasons included a price structure for captive birds under $5,000 (some under $2,000); favoring of hybrid falcons over pure gyrfalcons by Middle Eastern falconry interests; and absence of evidence that the wild population is in any difficulty. Sutton Avian Research Center likened their abundance within their range to that of the red-tailed hawk (*Buteo jamaicensis*) and supported the proposal. The North American Raptor Breeders' Association supported a downlisting but indicated that the species is at the peak of its popularity and that breeders are gearing up to ''meet the demand.'' Sweden and Denmark, in response to range state consultations for other populations, objected to the proposed downlisting of the North American population and consequent split-listing of the species, because of the possibility that enforcement of trade restrictions on Appendix I populations of gyrfalcons would be undermined.

The United States indicated in its August 28, 1996 notice that Canada, the primary range state for the North American population, would be consulted before a final decision was reached. Citing Resolution Conf. 9.24, Annex 4, paragraph B, cautioning Parties against a downlisting to Appendix II when enforcement problems for other species may ensue, Canada opted not to submit this proposal until after a working group of the Animals Committee has thoroughly evaluated the status of the species and the potential enforcement impacts of a downlisting. The United States agrees that, given the positions still held by some European Parties, the chances for adoption of a downlisting by the CITES Parties are minimal until there has been further review by the Animals Committee. The Service looks forward to working with interested organizations and Parties in the Animals Committee's working group and will proactively seek consensus on the appropriateness of an Appendix II listing for the species.

4. Yellow-headed Parrot (*Amazona oratrix*) and Lilac-crowned Parrot (*Amazona finschi*)

The Environmental Investigation Agency (EIA), World Wildlife Fund (WWF), IWC, New York Turtle and Tortoise Society (NYTTS), and Defenders of Wildlife (DOW) recommended that the Service propose the yellow-headed parrot, endemic to Mexico and Belize, for transfer from Appendix II to Appendix I. In addition, WWF recommended the lilac-crowned parrot, another Mexican endemic, for transfer from Appendix II to I. The yellow-headed parrot is restricted to the Atlantic and Pacific lowlands of Mexico and Belize and has suffered precipitous population declines (particularly in Mexico) because of habitat loss and collection for the pet trade. It has long been one of the most popular parrots in international trade. The United States believes this species clearly qualifies for inclusion in Appendix I under the new listing criteria. The status of the lilac-crowned parrot, a Mexican endemic, is not as clear. More information is needed on its status to clarify whether an Appendix I listing is warranted.

In its August 28, 1996 notice, the Service noted its understanding that Mexico was reviewing the status of these species and might develop proposals. The Service also indicated its potential willingness to co-sponsor such proposals, if submitted by Mexico. Since that time, Mexican authorities have concluded that there is insufficient information available at this time to warrant proposing the lilac-crowned parrot for inclusion in Appendix I. Although Mexico informed the United States that it was seriously considering proposing the yellow-headed parrot for Appendix I, no proposal was submitted to the Secretariat by the January 10, 1997, deadline. Therefore there are no

proposals on either of these species that will be considered by the Parties at COP10. The Service intends to continue working with Mexico on these issues between now and COP11.

5. North American Softshell Turtles (*Apalone spp.*)

The HSUS submitted a proposal to include the softshell turtle genus *Apalone* in Appendix II. This genus consists of three species of freshwater turtles inhabiting both riverine and stillwater habitats: *A. spinifera*, ranging across most of the eastern and central United States and northeastern Mexico, with scattered populations farther west; *A. mutica*, inhabiting the Missouri, Ohio, and Mississippi River drainages south to the Gulf of Mexico and extending to western Florida and central Texas, with an isolated population in New Mexico; and *A. ferox*, ranging through southern South Carolina, Georgia, Florida, and the coastal plain of Alabama. Although there is little information on the population status of any of these species, none is considered potentially threatened at present. Some studies suggest population declines. They are more prolific than many turtles species, laying up to 40 eggs in a clutch. They can be multiple-brooded, with up to six clutches per year in *A. ferox*. All species are vulnerable to damming of rivers and to loss of preferred habitats in general.

Although some animals are taken for the pet trade, softshell turtles are primarily exploited for food. We understand that the major domestic and foreign markets are Asian communities. Service data suggest that as many as 60,000 live animals may have been exported in 1994 and over 16,000 lbs. of meat exported in 1993. *Apalone ferox* appears to be the species most heavily exploited. Many of the animals exported are produced in turtle farms in Florida and other southeastern states, but the impact of such farms on wild populations is poorly understood.

Several public comments were received. A large commercial dealer in Florida stated that he obtains young animals from a wide area, raises them to the 1–3 lb. stage in enclosed ponds, and sells them to New York Asian markets. He also believed very large numbers of eggs are collected in Lake Okeechobee, hatched, and exported as hatchlings. WWF and the Florida Game and Freshwater Fish Commission stated that large numbers of adults (presumably breeding-age) are taken from Lake Okeechobee illegally and sold for meat. P. Meylan (Eckard College) indicated such take results in local depletion of populations. The Pet Industry Joint Advisory Council (PIJAC) stated that hatchling softshell turtles are exported from Louisiana turtle farms after being tested for *Salmonella* infection. David Cook, a Florida biologist, stated the species is not in immediate danger of extinction and, although there is probably some successful propagation, it is probably not happening without supplementation from the wild. P. Pritchard said *A. ferox* is still abundant in Florida. Two biology graduate students from Florida (J. Roman and B. Bowen) also said that *A. ferox* is abundant throughout peninsular Florida. The Wildlife Conservation Society (WCS) felt the biological information was not adequate to justify a proposal, but that there is enough evidence of high-volume trade to list in order that monitoring efforts would be better.

Despite high and apparently increasing levels of trade, the Service believes that the evidence presented does not at this time suggest that wild populations are being negatively affected or are particularly vulnerable to existing pressures. These species (especially *A. ferox*) have substantial recruitment potential compared with many other turtle species and may well be able to sustain current levels of take and trade. Therefore it appears that they may not meet the criteria for inclusion in Appendix II. Nonetheless, the Service intends to explore the relationships between softshell turtle exports and turtle farming practices before COP11, in order to obtain a better assessment of the impact of international trade on wild populations. The Service will also consult State agencies and turtle biologists, in an effort to better understand the degree to which wild animals are taken directly for export and the status and potential vulnerability of wild populations subject to commercial take.

6. Gila Monster (*Heloderma suspectum*) and Beaded Lizard (*Heloderma horridum*)

The HSUS submitted a proposal to transfer the Gila monster and the beaded lizard from Appendix II to Appendix I and requested the Service to consider submitting it to COP10. The partly arboreal beaded lizard is patchily distributed in tropical dry forests of Mexico from Sonora to northern Chiapas, with one isolated race in eastern Guatemala. In consultation with Mexican authorities, the Service was told that the beaded lizard is fairly common within its Mexican range and is not taken for the pet trade to a significant degree. Mexico does not believe the beaded lizard meets the criteria for inclusion in Appendix I. In the absence of compelling information to the contrary, the United States accepts this position and has not proposed transfer of this species to Appendix I.

The Gila monster occurs in arid and semi-arid gravelly and sandy habitats with some shrubs from southwestern Utah and southern Nevada and California south through Arizona, southwestern New Mexico, and into northern Mexico. Populations are believed by some to have suffered from habitat degradation, killing, and collection for roadside zoos (mainly historically) and the pet trade. But there are no estimates of population size or trend. The species is biologically vulnerable, because it has a clutch size of only 2–12 and it reproduces only every other year. The Gila monster is legally protected from commercial use throughout its range by State and Mexican legislation. Very small numbers appear in legal international trade records (40 were reported exported from the United States in 1994). Illegal trade is considered substantial by some, but total annual confiscations in the United States are typically fewer than 100 animals. The HSUS proposal argued that poaching has reached epidemic levels, individuals cost up to $3,600 in Japan, and an Appendix I listing would eliminate the opportunity for wild-caught animals to be traded falsely as captive-bred.

There was very limited comment from the public on potential transfer of the Gila monster to Appendix I. The EIA, Sedgwick County Zoo, and an unaffiliated biologist supported the transfer. Transfer to Appendix I was opposed by PIJAC, Reptile Masters, two private breeders, and the National Herpetological Alliance (NHA), representing reptile breeders. PIJAC stated that the levels of reported legal trade are consistent with present captive-breeding capability, and that uplisting will drive prices up. The NHA claimed a transfer would discourage captive-breeding efforts and would not reduce the volume of illegal trade. One of the major breeders of *Heloderma* (S. and K. Osborne) disputed the alleged likelihood of much laundering of wild animals through captive-breeding operations and pointed out that there have been significant improvements in husbandry and breeding success since 1992. They indicated that at least 176 were hatched in the U.S. in the past two years. The State of Arizona opposed a transfer to Appendix I, stating that the species was not rare there, was no longer affected by collection for

roadside zoos, and did not meet the criteria for either Appendix I or Appendix II.

The Service has concluded that there is little evidence to suggest that this species meets the criteria for inclusion in Appendix I. There is no evidence for population declines beyond that which can be deduced from development near urban areas of the arid Southwest. Recorded legal trade is very small, and evidence of an illegal trade of sufficient magnitude to cause serious population concerns has not been provided. International trade controls afforded by the Appendix II listing, in combination with additional protections afforded by State and Mexican legislation, appear to be sufficient at the present time. Therefore, no proposal was submitted for this species.

7. Sail-fin Lizards (*Hydrosaurus* spp., *Hypsilurus* spp., and *Physignathus lesueurii*).

Gregory Watkins-Colwell, a biologist and expert on the genus *Hydrosaurus,* submitted a proposal for the inclusion of the two species in this genus (*H. amboinensis = weberi* and *H. pustulatus*) in Appendix II under provisions of Article II(2)(a), and the genus *Hypsilurus* (incorporating 11 species) and the species *Physignathus lesueurii* in Appendix II under provisions of Article II(2)(b) (similarity of appearance), and asked the Service to consider submitting the proposal to COP10. These species, also commonly known as sail lizards, sail-tail dragons, and water dragons, are native to the southwestern Pacific region, including Australia. *Hydrosaurus* lizards are endemic to the Philippines and eastern Indonesia, including western Irian Jaya. *Hypsilurus* are found primarily in New Guinea, with some ranging to Fiji, Oceania, and New South Wales and Queensland in Australia. *Physignathus lesueurii* appears to be confined to eastern Australia.

Virtually nothing is known about current sizes or trends of populations. Clutch size ranges from 5 to 9 eggs and reproduction occurs on an annual cycle. In addition to habitat loss, collection for the pet trade, a practice facilitated by the loss of natural habitat, is perceived to be a potential threat to at least some populations. Service wildlife enforcement records indicate total imports of 1,700 animals reported as *H. pustulatus* from 1993 to 1996.

Of the substantive comments received, eight were opposed to the listing and none were in support. The World Conservation Union (IUCN, R.W. Jenkins) pointed out that wild examples of the mentioned species that occur in Australia and Papua New Guinea are protected by law, that there is not a similarity-of-appearance problem between *Hydrosaurus* and *Physignathus,* and that the species *Hydrosaurus amboinensis* is common to moderately abundant in Indonesia. The latter comment was supported by P. Harlow (University of Sydney), an expert on some of the species. He, along with PIJAC and California Zoological Supply, stated that the proposal was based too much on absence of evidence that Appendix II criteria are not met, rather than on evidence that they are.

In the absence of new information in support of the arguments for an Appendix II listing, the Service is not convinced, by either the biological or trade information, that the criteria for Appendix II are met. Although some of the species proposed, or isolated populations of some species, may face potential threats from international trade, the preponderance of evidence points to species that are fairly common and resilient. More species-specific information, more field evidence of population status, and evidence of higher trade volume would strengthen the proposal. The Service has, therefore, not submitted a proposal on this group of species at this time. However, the Service will make an effort to monitor more closely the imports of *Hydrosaurus* species in particular, and will urge other importing Parties to do the same, in an effort to improve our understanding of the magnitude of trade.

8. Eastern Diamondback Rattlesnake *(Crotalus adamanteus)* and Western Diamondback Rattlesnake *(C. atrox)*

EIA submitted a proposal for including the eastern diamondback rattlesnake in Appendix II and recommended that the Service consider submitting it to COP10. In considering this proposal, the Service suggested, in its August 28, 1996 notice, that the western diamondback should also be included, because of its similarity of appearance and its occurrence in high volumes in trade. Eastern diamondbacks range mainly through lowland pine forests from North Carolina to extreme eastern Louisiana. Because of extensive loss of those natural habitats, these snakes now survive in reduced numbers in other natural and human-altered habitats. Reproduction is limited by delayed sexual maturity (2–3 years) and long inter-birth intervals (2–3 years). Populations have declined significantly enough to result in their classification as a species of special concern in both South Carolina and Alabama. Using a scoring system for vulnerability, the Florida Game and Freshwater Fish Commission ranked it near the median score for ''species of special concern,'' but has not included the species in that list. Because rattlesnakes represent a potential threat to human health and life, this species, like many other rattlesnakes, has historically been killed intentionally in large numbers. Although commercial utilization for the pet trade, and for meat, skins, and novelty jewelry is noteworthy, records of export are not high. Service wildlife enforcement data show exports of 1,510 and 1,475 whole animals in 1992 and 1993 respectively. In 1992, 1993, and 1994, 26.7, 119.8, and 2,419.7 pounds of eastern diamondback meat were also recorded as being exported.

The proposal to include the eastern diamondback rattlesnake in Appendix II was supported by the HSUS and WWF. WWF pointed out, however, that 90% of the international trade is in *C. atrox*. Comments from eight biologists or biological organizations (including the Virginia Herpetological Society and the Herpetologists'' League) were supportive. J.Butler (University of North Florida) said not enough is known about population status. B. Herrington (Georgia Southwestern University) and R. Mount (Auburn University) said there have been declines in populations, the latter saying it has been precipitous in Georgia, Alabama, and Florida. A large commercial dealer in the Southeast (Campbell's Farm) said the species is increasing in the Southeast, and 96% of the snakes he handles (domestic transactions) had been found dead. The Wildlife Conservation Society questioned whether, given the apparently low level of international trade, a listing on Appendix II would confer a significant conservation benefit. Louisiana (where the species is very rare) and Florida opposed listing. Florida advised caution in interpreting their own data on domestic trade, as they have drawn no conclusions themselves. Arizona opposed listing of the western diamondback for reasons of similarity of appearance, stating that the eastern diamondback is more easily confused with some other species of *Crotalus*.

Based upon population and trade data made available to the Service, the Service does not find a convincing case for proposing either of these species for Appendix II at this time. Although there are no quantitative data, population decline speculations for the eastern diamondback are undoubtedly correct. However, the declines appear to be related mainly to factors other than international trade. And there appears to be no basis for concluding (as for the

timber rattlesnake, discussed below) that populations are in such poor condition that even low levels of international trade could be detrimental. However, the Service acknowledges the existence of a significant level of international trade overall in rattlesnake products originating in the United States. Most of this trade is recorded as being in the western diamondback, a species considered biologically more resilient to exploitation than its eastern relative. But the potential for mislabelling eastern diamondbacks as western diamondbacks exists. The Service has not submitted a proposal but will continue to monitor trade in both of these species and reassess before COP11 whether either or both warrant Appendix II status at that time.

9. Western Atlantic and Gulf of Mexico Populations of Requiem Sharks *(Carcharhinidae* spp.*)* and Spiny Dogfish *(Squalus acanthias)*

The Ocean Wildlife Campaign (OWC) initially recommended that the Service propose listing in Appendix II populations of all shark species in the Carcharhinidae family that occur in the western Atlantic and Gulf of Mexico. A complete proposal on the dusky shark *(C. obscurus)* was subsequently received by the Service.

The dusky shark is a cosmopolitan, warm-water species, one of over 50 species in the Carcharhinidae family. The northwest Atlantic population has declined to only a small fraction of 1970's population levels. There is no strong evidence that the population is recovering. It, along with 38 other shark species, is managed in the United States under the National Fisheries Service's (NMFS) Fishery Management Plan for Sharks of the Atlantic Ocean (large coastal shark category). The species is subjected to a targeted long-line and inshore gill net fishery and is one of only several species of requiem sharks targeted by fisheries. It is a very desirable species for its fins, which are exported to Asian markets. Because requiem sharks are long-lived, slow-growing animals with limited reproductive potential, they are particularly vulnerable to overfishing.

Additionally, the OWC proposed that the spiny dogfish population in western Atlantic waters be listed in Appendix II. The western Atlantic population ranges from Greenland to Florida. Like the dusky shark, the spiny dogfish is an elasmobranch or cartilaginous fish. It shares with other elasmobranchs life history characteristics that render it more vulnerable to exploitation than many bony fishes. The spiny dogfish occurs in discrete populations in warm temperate and boreal waters. Currently it appears to be common in northwest Atlantic waters, but it is considered fully utilized by the fishery. Recent stock assessments indicate a rapid increase in landings and a possibly unsustainable take of adult females. Between 1987 and 1993, spiny dogfish landings appear to have increased seven-fold. Dogfish are vulnerable to overharvest, as evidenced by the collapse of the Scottish-Norwegian stock of spiny dogfish. Discards from other fisheries, especially from vessels targeting groundfish, contribute an unknown but substantial fraction to current mortality levels. Spiny dogfish meat is increasingly popular as a substitute for more traditional commercial fish in such products as fish and chips in Europe. The primary commercial markets are Europe, for meat, and Asia, for fins and skin. There is no management plan in the U.S. waters for spiny dogfish, although the mid-Atlantic Fishery Management Council has begun the scoping process for such a plan.

Proposing the dusky shark and spiny dogfish for inclusion in Appendix II was opposed by all commercial interests and supported by all conservation organizations that responded to the August 28, 1996 notice. It was opposed by the National Fisheries Institute (a U.S. non-government organization), Fisheries Agency of Japan, Japan Fisheries Association, Global Guardian Trust (a Japanese non-government organization), International Wildlife Management Consortium, the European Bureau for Conservation and Development, the New Hampshire Commercial Fishermen's Association, Massachusetts Netters Association, and Seatrade (a commercial dealer in dogfish meat). It was supported by the National Coalition for Marine Conservation, National Audubon Society, WCS, OWC, American Society of Ichthyologists and Herpetologists, American Elasmobranch Society, and a petition from 21 scientists in the IUCN Shark Specialist Group.

The main arguments of supporters of the dusky shark proposal were the severely depleted populations, heavy targeted take for fins, lack of data on export from the United States, and the vulnerable biological characteristics of sharks. The main arguments of opponents were lack of adequate population information, existence of other multilateral fisheries management bodies, the need to complete the implementation of CITES Resolution Conf. 9.17, ''Status of International Trade in Shark Species'', before any listings are considered, the existence of a management plan under NMFS, abuse of the precautionary principle (*cf.* Resolution Conf. 9.24), and the unfairness of the implications for commercial take of the other similar species worldwide.

The main arguments of supporters of the spiny dogfish being listed were the very heavy and increasing fishing pressure, decrease in the catch-per-unit-effort in the past few years, the targeting of adult females, the decrease in the size of fish now available and corresponding changes in the types of nets used to catch them, a history of other populations of elasmobranchs collapsing from over-fishing, biological vulnerability, and the absence of a management plan. The main arguments of those opposed to the listing were the large current populations, the importance in the commercial catch of New England fishermen, the prediction of a management plan being developed, existence of other multilateral fisheries management bodies, the need for better population information, and damage to the process for implementation of Resolution Conf. 9.17.

Although the United States believes both of these species meet the criteria for inclusion in Appendix II, for several reasons we have chosen not to propose them at this time. Foremost among these is the fact that management of landings, import, and export of marine fish will be complex and will take time to implement effectively. New mechanisms of interagency and international cooperation, new funding, additional personnel, training, and new permitting procedures will likely be required. Second, there is a serious similarity-of-appearance problem within the requiem shark group that will further complicate implementation and enforcement. Finally, more effective mechanisms of coordination and cooperation between CITES and international commercial fishery management bodies are desirable with respect to regulation of trade in CITES-listed marine fishes. For these reasons the United States has submitted a draft resolution to COP10 proposing establishment of a Marine Fishes Working Group (described in more detail in a notice in the **Federal Register** published on March 27, 1997 (62 FR 14689), under the auspices of the CITES Standing Committee and analogous to the CITES Timber Working Group, to address implementation issues associated with inclusion of sharks or other marine fishes in Appendix II, and to provide a forum for the completion of the implementation of Resolution Conf. 9.17. Given the anticipated substantial progress by this working group, the

United States will be prepared to submit appropriate shark species proposals for consideration by the Parties at COP11.

10. Edible Pearlymussel *(Cyprogenia aberti)*

In the August 28, 1996 notice, the Service was considering proposing removal of four species of freshwater mussels *(Cyprogenia aberti, Fusconaia subrotunda, Lampsilis brevicula [= Lampsilis reeviana brevicula], and Lexingtonia dolabelloides)* from Appendix II. These were among several species recommended for removal from Appendix II by the Periodic Review Working Group of the CITES Animals Committee. This working group examines historical and recent trade levels in species included in Appendix II to determine whether their listing continues to be warranted. There is no evidence that any of the four species listed above have been involved in trade. In reviewing the status of these four species, the United States has concluded that only the edible pearly mussel (= western fanshell) warrants retention in Appendix II as a precautionary measure pending further review, as it is considered endangered by the IUCN. The United States has submitted a proposal, discussed below, to remove the other three species of freshwater mussels from Appendix II. No public comments were received on mussels.

11. Pacific Yew *(Taxus brevifolia)*

The Oregon Natural Resources Council (ONRC) recommended that the United States propose the Pacific yew for inclusion in Appendix II. This species occurs in a limited range on public and private lands in the western United States and Canada. An effective anti-cancer compound (paclitaxel or Taxol) is obtained especially from its bark, as well as to an increasing but unknown extent from other species of *Taxus*, and similar *Taxus* compounds are being investigated. Some companies are working on methods of obtaining paclitaxel from *Taxus* needles and branches (which avoids loss of the whole plant). Laboratory substitutes for the natural compound are either not available or not available in adequate commercial quantity, and there is some semi-synthetic production. This species is not grown commercially in large quantity for medicinal use, but there is some ornamental cultivation. Pacific yew has minor value as a timber species. There is some export of Pacific yew biomass for manufacture of paclitaxel in other countries. The Himalayan yew *(Taxus wallichiana)* was listed in Appendix II at COP9 in 1994, excluding the finished pharmaceutical products (i.e., the end-product medicine).

The Service sought information regarding: (1) the intensity and purposes of removal of the several parts of this species from the wild in various areas, the characteristics of the populations impacted by these extractions, and the trends in those populations; (2) the location, characteristics, and safety of populations that will not be available for extraction; (3) the extent to which biomass from the wild (i.e., materials other than the end-point medicine) is exported from either country; and (4) the degree to which the medicinal trade involves other wild *Taxus* species, and/or non-wild sources of the compound (e.g., from cultivated Pacific yew or other species, or from laboratory synthesis).

Comments were received from eleven organizations or individuals. The California Department of Forestry and Fire Protection stated they were ''not opposed'' to the potential listing in Appendix II, and comments in support of a proposal were received from the Oregon Department of Forestry, ONRC Action and ONRC, and the Humane Society of the United States. Weyerhaeuser Company stated that they were neutral with regard to inclusion of the wild population in Appendix II, and opposed to inclusion of specimens of cultivated origin. Comments in opposition to a proposal were received from the Province of British Columbia, the U.S. Forest Service, U.S. Fish and Wildlife Service Region 1 (which includes the Pacific Northwest region), the American Forest & Paper Association, and a private individual.

The threat (i.e., harvest pressure) on the Pacific yew and other yew *(Taxus)* species may presently be increasing, because of the interest of various companies in obtaining medicinal compounds from yews, and the limited capability of most companies to synthesize the effective medicine. Nevertheless, substantial populations of *Taxus brevifolia* are effectively protected in Federal and State parks and similar natural areas throughout its range in the United States and similarly in British Columbia. In addition, tree species in riparian areas (usually within 100 feet of streams) receive protection on some U.S. Federal lands (e.g., public lands administered by the U.S. Forest Service and the Bureau of Land Management). Furthermore, the U.S. Forest Service has developed thorough detailed management plans for harvesting and conserving Pacific yew, and the Pacific yew also has some direct legal protection in Oregon and British Columbia. Also, efforts are continuing to produce the medicinal compounds in commercial quantity by chemical synthesis, and to cultivate several *Taxus* species in quantity.

Given these several circumstances, the U.S. Fish and Wildlife Service concluded that sufficient wild and managed populations of *Taxus brevifolia* are or can be sufficiently conserved under existing authorities and management systems or plans, so that inclusion of the species in Appendix II was not warranted. Reconsideration of this species for CITES might only become appropriate if, with an increasing interest in harvest from the wild, such authorities and directives in the United States or Canada were to significantly weaken or the management systems and plans were found to be inadequate in practice.

12. Aloe Vera *(Aloe vera* var. *vera)* (Wild Population)

At its meeting in June 1995, the CITES Plants Committee recognized that this taxon may be endangered rather than extinct within its native range, which is increasingly considered to be on the Arabian Peninsula (or possibly the adjacent horn of Africa). At COP9, the wild population was delisted along with the artificially propagated population. All other aloes are listed in Appendix II or Appendix I, but the cultivated specimens of *Aloe vera* var. *vera* and products derived from them are very common in international trade. A specialist in succulents recommended that the United States submit a proposal to return this wild population to Appendix II. Because the focus would be on protecting the plants of this taxon in its isolated native range, such a listing would not interfere with the unregulated trade in the very common artificially propagated specimens and the derivatives of them.

Comments were received from: (1) the Humane Society of the United States recommending that a proposal be submitted to include the taxon in Appendix II or preferably Appendix I; (2) a succulent specialist, supporting a proposal; (3) the California Cactus Growers Association against submitting a proposal; and (4) the World Wildlife Fund-U.S., which provided some comments toward obtaining fuller information on the topic.

The United States considered this subject in coordination with the North Africa representative to the CITES Plants Committee (as agreed at the 1995 meeting of the Plants Committee), and with the IUCN Species Survival Commission Arabian Plant Specialist Group. Results were discussed at the

November 1996 meeting of the Plants Committee. The conclusion there was to agree to a collaborative effort involving especially Morocco, Italy, and the United Kingdom, for field work on the Arabian Peninsula and analysis of genetic variability to ascertain whether populations known there are truly native wild populations or only naturalized (perhaps from ancient introduction). The results are expected to be ready in time to make decisions for COP11.

Species Proposals Submitted

1. Green-cheeked (Red-crowned) Parrot *(Amazona viridigenalis)*

The EIA, WWF, IWC, NYTTS, and DOW recommended that the Service propose the green-cheeked (red-crowned) parrot, a Mexican endemic, for transfer from Appendix II to Appendix I. This species is endemic to riparian forests and deciduous woodlands of Tamaulipas and San Luis Potosí in northeast Mexico. Feral populations have been established in several locations in both Mexico and the United States, including Texas. Recent population estimates of only 3,000 to 6,500 birds in the wild represent a severe decline from populations several decades ago. Habitat loss, control as an agricultural pest, and extensive exploitation for the pet trade have all contributed to the decline. Although protected from capture and trade in Mexico since 1982, the level of illegal trade suggested by confiscations is highly significant relative to the estimated population of the species. The level of known, illegal international trade relative to its population status indicates that trade is a significant contributor to the precarious status of its populations. The Service indicated in its August 28, 1996 notice that it believes this species qualifies for Appendix I under the new listing criteria and that Appendix I trade controls would further discourage illegal trade, because of the more stringent permitting requirements and the rigorous criteria that captive-breeding facilities for Appendix I species must meet.

Proposing the green-cheeked parrot for inclusion in Appendix I was supported by the HSUS, DOW, and the Animal Welfare Institute (AWI). It was opposed by the American Federation of Aviculture (AFA), Hill Country Aviaries, PIJAC, and C. Roscher. Arguments against uplisting any of the *Amazon* parrots then being considered included: insufficient data on the status of wild populations; low likelihood that a complete prohibition on trade would decrease the incidence of illegal trade (because the species is presently protected in both range states); and discouragement of captive-breeding, which is viewed as a hedge against loss of species in the wild for reasons unrelated to international trade.

In its August 28, 1996 notice, the Service noted that it expected Mexico to prepare a proposal to include this species in Appendix I. Mexico did prepare and submit such a proposal to the CITES Secretariat. The United States continues to believe that this species clearly meets Appendix I criteria and will gain a measure of additional security from an Appendix I listing. The United States appreciates that the country to which it is endemic has similarly recognized this need. In response to concerns expressed by avicultural interests about the impact of an Appendix I listing on trade in captive-bred birds, the Service notes that specimens of Appendix I species bred in captivity in accordance with CITES standards (and in facilities registered by the CITES Secretariat, if bred for commercial purposes) can be traded with CITES Appendix II documents. The Service believes that such a listing will encourage captive-breeding operations that are virtually self-sustaining and represent no direct or indirect threat to wild populations. Having received Mexico's concurrence, the United States is now a co-proponent of their proposal. Independently, Germany also submitted a proposal to include the green-cheeked parrot in Appendix I.

2. Straw-Headed Bulbul *(Pycnonotus zeylanicus)*

WWF proposed that ''southeast Asian songbirds'' involved extensively in the pet trade be considered for CITES protection, but did not provide a draft proposal. The Service examined the information contained in the TRAFFIC Southeast Asia report ''Sold for a Song'' provided by WWF, and indicated its interest in proposing one of the species that clearly meets the criteria for inclusion in Appendix II, the straw-headed bulbul of Indonesia (Sumatra, Kalimantan, Java) and Malaysia. This species has declined or been extirpated from all but the remotest parts of its range in Indonesia by a combination of excessive trapping for the pet trade and habitat destruction. The remainder of its natural range, in Peninsular Malaysia, is smaller than its former range in Indonesia.

Subsequent to its initial consideration of developing a proposal, the United States learned that the Netherlands had already drafted a proposal to include the straw-headed bulbul in Appendix II and conducted range-state consultations. In its August 28, 1996 notice, the Service indicated its potential interest in co-sponsoring this proposal with the Netherlands. No public comments were received on this possibility. The Service, therefore, with the approval of the Netherlands, indicated its co-proponency on the proposal submitted to the CITES Secretariat by the Netherlands to include the straw-headed bulbul in Appendix II.

3. Map Turtles (*Graptemys* spp.)

HSUS, supported by DOW, EIA, IWC, and NYTTS, submitted a proposal to include the twelve species of map turtles, genus *Graptemys,* in Appendix II and requested the Service to consider proposing it to COP10. This genus includes the following species: *Graptemys geographica, barbouri, pulchra, ernsti, gibbonsi, caglei, pseudogeographica* (includes *kohnii*), *ouachitensis, versa, oculifera, flavimaculata,* and *nigrinoda. Graptemys geographica* occurs throughout most of the eastern half of the United States and southeastern Canada; *G. pseudogeographica* ranges through the Missouri and Mississippi River drainages; *G. ouachitensis* overlaps extensively with the latter but extends farther east and west. These three species are the most common and widely distributed members of the genus. *Graptemys flavimaculata* and *G. oculifera* are the most geographically restricted species, occurring only in limited river systems in Mississippi (and Louisiana—*G. oculifera* only). Both are listed as threatened under the ESA. *Graptemys nigrinoda* is classified as endangered under Mississippi State law and *G. barbouri* is considered vulnerable to extirpation in Florida.

As with most turtle species, population data are limited, except for those species already considered endangered or threatened. Biologists who have studied seven of the species believe that populations have generally declined. Data from the Service's wildlife enforcement records show that international trade is substantial and may be increasing significantly. Although Service export records identified to genus or species totaled 27,720 for 1991 and 111,674 for 1994, discussions with turtle farmers and the State of Louisiana (see below) indicate that actual numbers are much higher. The bulk of this trade appears to consist of hatchlings produced in captivity on turtle farms in the Southeast. Although some turtle farmers in Louisiana are beginning to recruit some of their own breeding stock from captive-hatched

animals, it is still necessary to draw upon wild populations to varying degrees for establishing and maintaining a breeding population.

There was considerable public reaction to the proposal. The WCS recommended listing for monitoring purposes and recommended that States collect species-specific data on age classes, because of the sensitivity of populations to collection of breeding adults. M. Ewert (Indiana University) felt the genus should be listed because nine of the twelve species are so restricted in distribution. K. Dodd (U.S. Geological Survey, Biological Resources Division) believes some of the unlisted species are vulnerable to international trade, although some species are abundant. S. Santhuff (University of Florida) supported the proposal and believes *G. nigrinoda* should be listed under the ESA. He expressed concern over the vulnerability of the genus to collection and referred to a collector in Georgia who set 3,000 as a goal for a single night's collection.

PIJAC and various commercial interests expressed opposition to the proposal. PIJAC questioned assertions about the popularity of map turtles as pets in the United States, and pointed out that the majority of exporters listed in the proposal are regulated turtle farms. PIJAC recommended that export figures be broken down by ''captive-raised'' and ''wild-caught'' in order to judge potential impacts. The proposal from the HSUS did not reflect the significant portion of the trade attributable to captive-hatched animals. C. Sullivan (a shipper of turtles) stated that there are at least 40 licensed turtle farms in the Southeast and that all exports are of hatchlings from eggs laid in turtle farms. He indicated that Florida, Tennessee, Arkansas, and Louisiana, unlike Mississippi, permit take of map turtles from the wild. This situation was also reflected in comments from several turtle farmers. Sullivan also stated that farmers have recently learned that these species reproduce well in captivity after an adjustment period of about three years. A turtle farmer (Belzoni Turtle Farms) from Mississippi claimed to produce 10,000 hatchlings/year. Another Mississippi farmer (P. Alleman, Sunshine Turtle Farms) said the farms are not currently managed for perpetuity, i.e., young are not raised to replace breeders.

Of States responding to the notice, Pennsylvania, West Virginia, and Mississippi supported the proposal. Wisconsin supported listing of the nine more restricted species, but was neutral on the other three. Louisiana opposed the proposal. Louisiana stated that hatchlings sold from Louisiana are from farms, which restock with fewer than 1,000 wild-caught adults per year total. They estimated that 128,000 to 150,000 hatchlings from Louisiana are exported per year. There is no State management plan in Louisiana, but the State Department of Agriculture and Forestry requires that each farm return at least 200 turtles to the wild annually.

Given the large numbers exported and the restricted distributions and apparently diminished (in some cases) populations of nine *Graptemys* species, the Service is concerned about the potential impact of present levels of international trade on wild populations. The Service believes all species except *G. geographica, G. pseudogeographica*, and *G. ouachitensis* qualify for inclusion in Appendix II under provisions of Article II(2)(a). For effective enforcement of regulations applicable to trade in these nine species, it is also necessary to include the remaining three similar-appearing species in Appendix II pursuant to Article II(2)(b). Therefore the Service has submitted a proposal to include *G. barbouri, pulchra, ernsti, gibbonsi, caglei, versa, oculifera, flavimaculata*, and *nigrinoda* in Appendix II under provisions of Article II(2)(a), and *G. geographica, pseudogeographica*, and *ouachitensis* in Appendix II under provisions of Article II(2)(b). Fortunately, it appears from preliminary information made available to the Service, that *G. pseudogeographica* (including *kohnii*) and *G. ouachitensis*, two of the species proposed under 2(b) provisions, are the dominant species in trade. Scientific Authority findings for species so listed will be based only upon the potential impact of their export on any of the other nine species.

4. Alligator Snapping Turtle (*Macroclemys temminckii*).

The HSUS, supported by DOW, EIA, IWC, and NYTTS, submitted a proposal to include the alligator snapping turtle in Appendix II and requested the Service to consider proposing it to COP10. The alligator snapping turtle, the largest freshwater turtle in North America, inhabits most river systems emptying into the Gulf of Mexico, including the Mississippi River as far north as Illinois. It also makes use of bodies of still water associated with river systems. In these habitats, females of about 12 years and older produce one clutch of 9 to 52 eggs annually, with a mean of 25. From mostly anecdotal evidence, especially from turtle trappers, it is evident that this species has declined severely throughout much of its range. The primary agents of population decline appear to be degradation and damming of river systems and (largely historical) widespread commercial take for its meat, which has been marketed both domestically and internationally. Collection appears to have severely depleted some local populations and altered demographic structure in others.

The species is classified as vulnerable by the IUCN and listed as rare, threatened, or endangered in many of the States on the periphery of the range and in Georgia. Most southeastern States afford this species a greater level of protection than that afforded most other turtles. It is considered a species of special concern in Florida and ''questionable'' as a possible addition to Louisiana's list of species of special concern. Louisiana appears to be the only State that has not prohibited commercial take. Hatchlings, almost entirely produced in turtle-farming operations, are exported for the pet trade. Service wildlife enforcement records show an increase in the export of live turtles from 290 in 1989 to 9,639 in 1994, primarily to markets in Japan, Hong Kong, and Western Europe. Most of these exports probably represent such farm-raised hatchlings.

Inclusion of the alligator snapping turtle in Appendix II was strongly supported by WCS, which cited the well-documented population decline and a need to monitor trade more effectively. The NHA, which opposed listing of other turtles being considered, supported this proposal, if there are data independent of the proposal that support the arguments advanced. NHA also insisted that permits for captive-reared or sustainably wild-taken specimens be issued. P. Meylan (Eckard College) pointed out that this species is threatened by both habitat specificity (like map turtles) and commercial demand for meat (like softshell turtles). M. Ewert (Indiana University) also pointed out the sometimes severe effect that raccoons and fire ants can have as predators on alligator snapper nests. According to a member of the Louisiana Reptile and Amphibian Task Force, in the late 1970's trappers in southern Louisiana had to go to northern part of the State to find significant numbers of this species. Sixty-one percent of the respondents to a questionnaire from the Louisiana Department of Wildlife and Fisheries to trappers on the population status of alligator snappers reported a decrease, especially in the past 10 years. Two graduate students (J. Roman and B. Bowen, University of Florida) who were collecting meat from dealers around the Southeast for mitochondrial DNA

analysis, said that trappers in southern Louisiana reported the area being ''trapped out.'' One turtle farmer (P. Alleman) in Mississippi stated that the species has become very rare in Mississippi.

Three States responded to the notice: Mississippi strongly supported the proposal; Oklahoma had no opinion; and Louisiana opposed it. A consensus of Louisiana turtle farmers was that virtually all exports of alligator snappers were of farm-raised hatchlings and that few animals are taken from the wild. This was supported by the Louisiana Department of Wildlife and Fisheries, which stated that fewer than 100 are sold commercially for meat each year and probably fewer than 100 are collected from the wild annually for any commercial purpose, including supplementation or expansion of farm breeding stock (presently about 1,000 adults in Louisiana). The proposal was opposed by PIJAC on the grounds that the commercial farms in Mississippi and Louisiana are the source of most of the exported animals.

The Service continues to be concerned about the contribution of past commercial take to the current precarious status of alligator snapping turtles in many parts of their range and believes the species clearly meets criteria for inclusion in Appendix II. Although the increasing levels of export appear to be related largely to expanding markets for farm-raised hatchlings, the direct or indirect impact of these practices on wild populations are not well known or monitored. Therefore the Service believes inclusion in Appendix II will provide a needed measure of protection for the species and has submitted an Appendix II proposal.

5. Timber Rattlesnake *(Crotalus horridus)*

The EIA, supported by HSUS and IWC, submitted proposals for including the timber rattlesnake in Appendix II and recommended that the Service consider submitting it to COP10. The timber rattlesnake occurs in 27 States, from New Hampshire and Minnesota south to Texas and Florida, having been extirpated from Maine and Rhode Island, and Canada (Ontario). It occupies a variety of habitats, particularly rugged, rocky outcroppings. Southern forms (''canebrake'' rattlesnakes) use a variety of lowland sites such as pine flatwoods, floodplains, and bottomland hardwoods.

Populations have declined severely in northeastern states, primarily from human encroachment and development and hunting. The species is now known from only 23 localities in New England, contrasted with 90 localities twenty years ago. A 1991 biological symposium concluded that serious declines have taken place in Connecticut, Massachusetts, Michigan, New York, New Jersey, and Vermont. It is considered endangered in Connecticut, Vermont, New Hampshire, Ohio, Massachusetts, and New Jersey and threatened in New York, Texas, Illinois, and Indiana. It is believed to be approaching extinction in Pennsylvania, where large specimens are extremely rare today. It is particularly vulnerable in the northern part of its range, because females mature at age 7–11 years and produce young only every 3–4 years. The habit of congregating in hibernacula during winter months makes them vulnerable to being killed in large numbers.

Trade is relatively limited compared with some of the larger species of *Crotalus*. Only Florida appears to have collected information on domestic trade: between 1990 and 1992, 109 were taken for the pet trade and dealers handled 366 dead animals obtained in Florida and an additional 4,346 obtained from other southeastern states. Service records for international trade show an average of 50–75 live/year and 200–750 leather pieces/year. Most of the trade in parts probably represents the commoner and less vulnerable southeastern ''canebrake'' rattlesnakes.

The proposal was supported by the HSUS. Seven of eight biologists responding to the notice supported the proposal, with one offering no position. One supported mainly due to lack of information and another added parenthetically that the species may actually be increasing in Georgia (where it seems to be more of a habitat generalist than the eastern diamondback). The proposal was opposed by the WCS on the basis of the apparent paucity of trade, and there were no comments from commercial interests. Listing was supported by West Virginia, Connecticut, Illinois, Wisconsin, and Pennsylvania and opposed by Florida and Louisiana, where it is being considered for the status of ''species of special concern.'' Louisiana also commented that a listing would have little impact and would hinder legitimate commercial interests.

Despite low volumes of international trade, the population status of northern forms of the timber rattlesnake is so poor that even a small demand for international trade could be detrimental to the survival of some populations. Therefore the Service has submitted a proposal to include this species in Appendix II and, if the proposal is adopted, will consider the geographic variation in population status of this species when making export findings.

6. Sawfishes (Pristiformes spp.)

Sid F. Cook and Madeline Oetinger, of Argus-Mariner Consulting Scientists, submitted a proposal to include all species of the order Pristiformes (sawfishes) in Appendix I. Sawfishes are a very small group of cartilaginous fishes related to sharks, rays and chimeras (class Chondrichthyes). The order consists of only one family, Pristidae, incorporating seven species (although the taxonomy of the group is debated). As generally accepted, these are: *Pristis pectinata* (smallmouth sawfish), *P. clavata* (dwarf or Queensland sawfish), *P. zijsron* (green sawfish), *P. pristis* (common sawfish), *P. microdon* (freshwater, Leichhardt's, great-tooth, largetooth sawfish), *P. perotteti* (largetooth sawfish), and *Anoxypristis cuspidata* (knifetooth, pointed or narrow sawfish). Cumulatively, sawfish species are distributed worldwide in tropical and temperate marine waters, and in some cases in freshwater habitats. Species-specific distributions are described in detail in the August 28, 1996 notice. *Pristis perotteti* and *P. pectinata* are the only species that occur in waters of the United States.

Sawfishes share with their shark relatives several life history characteristics (e.g., slow growth, low fecundity, late sexual maturity, long life-span, and long gestational period) that render them more vulnerable to overfishing than many bony fishes. Other factors increasing the vulnerability of these species are restriction to a narrow depth range, disjunct distribution patterns, and habitat degradation. Most species have exhibited either severe population declines or have an extremely localized distribution. Four species (*P. pristis, pectinata, perotteti,* and *microdon*) are considered endangered by IUCN (other species have not been evaluated). Although data on international trade and other forms of exploitation of sawfishes are sketchy, localized effects can be seen in individual populations. Quantitative trade data are very limited but sawfish are known to be targeted commercially in artisanal fisheries, taken as live specimens for public aquaria, for the curio trade (rostral saws), for traditional Asian medicines (rostral saws of *Anoxypristis cuspidata*), and for fine leather (hides).

The proposal was opposed by the Japanese Fisheries Agency, Japanese Fisheries Association, International Wildlife Management Consortium, and

European Bureau for Conservation and Development. It was supported by the National Audubon Society, Center for Marine Conservation (CMC), OWC, American Elasmobranch Society, American Society of Ichthyologists and Herpetologists, and by a petition from 21 members of the IUCN Shark Specialist Group. Arguments against were based on the need to follow through on the Resolution Conf. 9.17 process before taking any listing action for sharks; the need for more data on population status to justify listing (abuse of precautionary principle); and lack of evidence that trade has had any impact on populations. Arguments in favor of the proposal were mainly based on the intrinsic vulnerability resulting from the biological attributes described above, the population declines evidenced by declines in by-catch, and also the existence of much more evidence of past and present trade (including provision of biological supply houses with rostral saws) than suggested by those opposed. The CMC also pointed out that evidence of trade is not necessarily a prerequisite to inclusion of taxa in Appendix I (the Service strongly agrees that the criteria in Resolution Conf. 9.24 are unequivocal in this regard).

Of 72 range states to which an earlier draft of the proposal was sent for comment, six responded. The Government of the Philippines supported the proposal. The Government of the Dominican Republic took no position but provided anecdotal information that indicated similar declines there as reported in the proposal. The Government of Mexico considered existing information from that country to be insufficient to enable a determination of eligibility for Appendix I. The Government of Colombia felt that more convincing documentation of historical declines in landings needs to be presented before Colombia could support an Appendix I listing. The Government of Japan opposed the proposal on the grounds that there are not enough data to show convincingly that the sawfish are eligible for Appendix I. The Government of Cyprus indicated that no species in this group occurred in its waters.

Notwithstanding the absence of strong quantitative information on population status, the United States believes that the obvious rarity of these species, and the consistency of anecdotal evidence of population declines wherever data are available, are clear indicators of their vulnerability to any form of use, including international trade. On this basis, the Pristiformes meet the criteria for inclusion in Appendix I, and the United States has submitted a proposal to this effect.

7. Sturgeons (Order Acipenseriformes)

In a December 20, 1996 **Federal Register** notice (61 FR 67293), the Service announced that the United States was considering offering to co-sponsor a proposal by Germany to include all species of sturgeons not presently listed in the appendices in Appendix II. The Acipenseriformes are a primitive group of approximately 27 species of fish, whose biological attributes make them vulnerable to intensive fishing pressure or other agents of elevated adult mortality. Many species of sturgeons, the primary source of commercial caviar, have experienced severe population declines worldwide because of both habitat destruction and excessive take for international trade. Some are at serious risk of extinction. Three species in the United States (shortnosed sturgeon [*Acipenser brevirostrum*], pallid sturgeon [*Scaphirhynchus albus*], and the Kootenai River population of white sturgeon [*A. transmontanus*]) are listed as endangered under the ESA, and a subspecies of the Atlantic sturgeon (the Gulf sturgeon, *A. oxyrhynchus desotoi*) is listed as threatened. CITES presently includes two species, the shortnosed sturgeon and Baltic sturgeon (*A. sturio*), in Appendix I and one species, the Atlantic sturgeon (*A. oxyrhynchus*) in Appendix II. The American paddlefish, *Polyodon spathula,* has also been included in Appendix II since 1992.

Sturgeons of the Caspian Sea produce the highest quality caviar and are the source of more than 90 percent of the world caviar trade. Since the mid-1970's very marked declines in the populations of all six of the Caspian Sea's sturgeon species have been noted, especially populations of the most heavily exploited species: Beluga (*Huso huso*), Russian (*A. gueldenstaedtii*), and stellate (*A. stellatus*) sturgeons. Five of the six species of Caspian sturgeons are considered endangered by IUCN. The problem has become exacerbated in recent years due to deteriorating fishery management and enforcement capabilities in the region, resulting in significant levels of poaching and illegal trade. The total present take is believed to far exceed sustainable levels.

The final proposal from Germany proposes five species for inclusion in Appendix II under provisions of Article II(2)(a), i.e., because of their population status and trade levels: Beluga (*Huso huso*), Russian (*A. gueldenstaedtii*), stellate (*A. stellatus*), Siberian (*A. baerii*), and ship or spiny (*A. nudiventris*) sturgeons. All other species of sturgeons not already listed are proposed for inclusion in Appendix II under provisions of Article II(2)(b), i.e., because of the similarity of appearance of their caviar to that of the Caspian species. The native species of sturgeons not listed under the ESA that would be included in the II(2)(b) category are the following: lake sturgeon (*A. fulvescens*), green sturgeon (*A. medirostris*), non-Kootenai-River populations of white sturgeon (*A. transmontanus*), shovelnose sturgeon (*S. platorynchus*), and Alabama sturgeon (*S. suttkusi*).

The Service participated in a meeting in November 1996 in Moscow involving the Russian Federation and several former Soviet Republics, including several that participate in the Caspian Sea sturgeon fishery: Azerbaijan, Kazakhstan, and Turkmenistan. The meeting, hosted by the Russian Federation State Committee for Environmental Protection and the German Scientific and Management Authorities, yielded an overwhelming acknowledgment of the severity of the threat to sturgeon populations in the Caspian Sea. The existence of a substantial illegal trade in caviar (estimated to constitute up to 80 percent of the trade), which has resulted in a decrease in both the quality and price of caviar in international markets, also was recognized.

Inclusion of the sturgeons in Appendix II as proposed would enable: (1) implementation of management controls necessary to stabilize sturgeon populations in the Caspian Sea and elsewhere in the world; and (2) better regulation of trade by importing countries, especially through an improved capability for distinguishing legal from illegal caviar. The United States is not only a range State for some of the most endangered sturgeon populations, but it is also a major importer of caviar products (between 50 and 60 metric tons per year from 1992 through 1995), mainly from Caspian Sea sturgeon populations. Given these facts, and recognizing the dire situation facing the Caspian Sea sturgeon fishery, the United States has agreed to co-sponsor the proposal of Germany to include five presently unlisted species of sturgeons in Appendix II under provisions of Article II(2)(a) and the remainder in Appendix II under provisions of Article II(2)(b). As with other species proposed for listing under the provisions of Article II(2)(b), findings related to export of sturgeon products from the United States will be based only upon potential impacts of export on those species listed under provisions of Article II(2)(a), or on those included in

Appendix I. Only one public comment on the December 20, 1996 notice was received: the HSUS indicated their support for United States co-sponsorship of the German proposal and stressed the importance of addressing the considerable management and enforcement concerns associated with the potential listing.

8. Freshwater Mussels: Long solid mussel (*Fusconaia subrotunda*), Ozark lamp pearlymussel (*Lampsilis brevicula* [= *L. reeviana brevicula*]), and Slabside pearlymussel (*Lexingtonia dolabelloides*)

The Service indicated its intent in the August 28, 1996 notice to develop a proposal to remove the above three species of freshwater mussels, and the edible pearlymussel (*Cyprogenia aberti*), from Appendix II. These were among several species endemic to the United States that were recommended for removal from Appendix II by the CITES Animals Committee's Periodic Review Working Group, which examines historical and recent trade levels in species included in Appendix II to determine whether their listing continues to be warranted. We have no indication of trade in any of these species in recent years.

Recognizing that as many as 20 percent of the approximately 300 species and subspecies of freshwater mussels may be threatened or endangered, the Service has been reluctant in the past to propose that any of these species be delisted, at least until enforcement difficulties were overcome. Effective August 1, 1996 (61 FR 31850), however, the Service's regulations on importation, exportation, and transportation of wildlife were revised to require that wildlife exports, including freshwater mussels, be made available for inspection and cleared for export prior to being exported from the United States. This provision will enable the Service to better ensure that endangered mussels are not exported, and therefore reduce the need for the application of CITES for non-endangered mussels, especially for those that do not appear to be traded.

The Service received no public comments about its intent to prepare a mussel de-listing proposal. The Service has proposed removal of *Fusconaia subrotunda, Lampsilis brevicula (= L. reeviana brevicula*), and *Lexingtonia dolabelloides* from Appendix II. The Service has not, however, proposed any change in the other species of mussels considered by the Periodic Review Working Group: *Epioblasma torulosa rangiana* and *Pleurobema clava,* which are listed as endangered under the ESA, or *Cyprogenia aberti,* which is considered endangered by the IUCN, as discussed above.

9. Bigleaf Mahogany (*Swietenia macrophylla*)

This proposal was submitted by the United States with the Republic of Bolivia as co-proponent, to include *Swietenia macrophylla* of the neotropics in Appendix II of CITES, to regulate the international trade in its logs, sawnwood, whole veneer sheets and plywood sheets. The listing would not regulate the finished products, such as the furniture. The United States is by far the largest importer of the wood of this species, which occurs from Brazil and Bolivia to Mexico, and Bolivia is the second largest mahogany exporter. The objective of the listing is to better manage *Swietenia macrophylla* to help ensure its conservation and its continued international trade and use.

Background: In response to a March 1, 1996 **Federal Register** notice (61 FR 8019), the World Wildlife Fund-U.S., Defenders of Wildlife, and individuals had requested that the United States propose this species for inclusion in Appendix II (see the **Federal Register** of August 28, 1996 [61 FR 44324]). Bigleaf mahogany from the Americas was listed in Appendix III by Costa Rica in 1995, including its saw-logs, sawn wood, and veneer sheets only—i.e., no other parts or derivatives (see **Federal Register** of February 22, 1996 [61 FR 6793]). The other two species of the genus *Swietenia,* Caribbean mahogany (*Swietenia mahagoni*) and Pacific Coast mahogany (*Swietenia humilis*) are included in Appendix II. Species listed in Appendix II or Appendix III can be traded commercially, whereas trade for primarily commercial purposes is prohibited for the species included in Appendix I.

CITES Appendix II includes species for which the inclusion in Appendix II will facilitate or encourage sustainable, non-detrimental trade in perpetuity. To export regulated Appendix II specimens, a CITES Party country must make a management finding that the specimens were legally acquired (e.g., in the case of mahogany, taken from the country's legally approved areas and logged according to accepted national standards, such as not cutting trees smaller than a legally approved minimum trunk diameter), and a scientific finding that the export is not detrimental to the survival of the species. Importing countries would become partners in this effort, through their obligation to ensure that all the mahogany imports are accompanied by appropriate CITES permits or certificates documenting that the exports have met the standards required by the treaty. A basic goal of CITES is to maintain a species in its natural systems through its range at a level consistent with its role in the ecosystems in which it occurs. By discouraging illegal exploitation, CITES can help to avoid the loss of wild-functioning populations in natural areas such as national parks and similar reserves.

Bigleaf mahogany (*Swietenia macrophylla*) has been proposed for Appendix II, not for the much more restrictive Appendix I. The treaty is founded on two bases: both to strictly protect endangered species (*cf.* Appendix I), and to prevent the endangerment of species that are at increasing risk from international trade, by Appendix II regulation of commercial trade, so that stricter measures (such as an international commercial trade ban) would not have to be taken in the future. Thus consumers should have increased confidence buying products when they include the wood of CITES Appendix II specimens that have been approved under these international standards for export and accepted at import.

Proposals to include *Swietenia macrophylla* in Appendix II were separately submitted to the last two meetings of the Conference of the Parties to CITES (COP9 and COP8) by three governments, the Netherlands in 1994, and Costa Rica and the United States in 1992. At COP9 (in Florida in November 1994), 50 of 83 Parties (among them the United States and the European Union countries) voted in favor of including this species and its logs, sawn wood, and veneer sheets in Appendix II, which fell 6 votes short of the two-thirds majority of voting Parties needed for adoption (see **Federal Register** notices of November 8, 1994 [59 FR 55617] and January 3, 1995 [60 FR 73]). At COP9 as well as COP8 (in Japan in March 1992), the majority of the 13 countries where the species is native (range States) expressed support for including this species in Appendix II.

Recent Activities: In the August 28, 1996 **Federal Register** (61 FR 44324), the U.S. Fish and Wildlife Service sought new information in particular to supplement the information summarized in the COP9 and COP8 proposals (or otherwise available to the Parties at those meetings), especially in relation to the CITES listing criteria as delineated in Resolution Conf. 9.24 (cf. the **Federal Register** of March 1, 1996; 61 FR 8019). The Service also sought details on implementation of the inclusion of this species in Appendix

III, which entered into force on November 16, 1995. The text of the draft proposal was provided to interested organizations and individuals. In September 1996, the Service, which functions as the U.S. Management Authority for CITES, provided the draft proposal to the CITES Management Authorities of the 13 range States of bigleaf mahogany and requested their comments regarding a possible proposal to include the species in Appendix II.

In early October 1996 in Panama the CITES Timber Working Group held its second meeting. The Group's scope or terms of reference covered details of implementation for timber tree species (i.e., they did not include topics directly involving potential new listings). The Group reviewed the experience of the CITES Parties in implementation of the Appendix III listing of *Swietenia macrophylla*, and concluded that no particular difficulties had been encountered with the implementation of this listing.

In mid-November 1996 in Costa Rica the CITES Plants Committee held its annual meeting. The United States earlier had requested that the possible mahogany proposal be included as an information item on the agenda; the U.S. representative reported that the draft potential proposal had been sent to the 13 range States on September 25, 1996, with a request for their comments by November 15 (which was the final day of that Committee's meeting), and explained the U.S. review process. An agenda item of the Netherlands at the meeting addressed tree species in relation to the CITES listing criteria and/or IUCN (World Conservation Union) status criteria. The United States encouraged conceptual discussion on the scope of such findings, stating that it would be particularly helpful in relation to considering a possibly forthcoming proposal for *Swietenia macrophylla*. Although there was no extensive discussion of the potential mahogany proposal at this meeting, at the Committee's meeting in May 1994 in Mexico prior to COP9, there had been lengthy discussion and a conclusion in favor of a similar proposal for *Swietenia macrophylla*.

Comments and Review: International meetings on this issue were held in February 1992 (a Mahogany Workshop in Washington, D.C., hosted by the Tropical Forest Foundation on behalf of the International Wood Products Association and held at the Organization of American States); and in September 1994 (a Mahogany Symposium in London, U.K., hosted by the Linnean Society, a world-renowned scientific organization). A related meeting largely on the forestry aspects of *Swietenia* mahoganies was held in late October 1996 (in San Juan, Puerto Rico, hosted by the U.S. Forest Service's International Institute of Tropical Forestry).

The United States has intensively reviewed and analyzed the pertinent available information related to a proposal and all comments received from range States, industry, the conservation community, and interested agencies and individuals, and the relevant information provided has been incorporated into the final 86-page proposal to include this species in Appendix II. A public meeting was held on October 3, 1996, on the potential CITES COP10 topics and issues. Decisions regarding inclusion of species in the CITES appendices are based upon their status and qualifications in relation to the requirements and criteria of the treaty.

Comments in support of a proposal were received by the October 11, 1996 deadline (which was established in the August 28, 1996 **Federal Register**; 61 FR 44324) from ten organizations (Defenders of Wildlife, EarthCulture, Environmental Investigation Agency, Friends of the Earth-U.K., Humane Society of the United States, Rainforest Action Network, Rainforest Relief, Salt Lake City Rainforest Action Group, Taiga Rescue Network [Sweden], and World Wildlife Fund-U.S.); two businesses (A & M Wood Specialty, Inc. [Ontario, Canada] and The Raintree Group [Texas]); several academics; and several dozen unaffiliated individuals. After that deadline, comments and some substantive information continued to arrive, from many individuals and organizations and several countries. Included were two letters to the Vice President and the Secretary of the Interior from over 150 non-governmental organizations supporting submittal of the proposal. All comments were reviewed, and all the substantive data were considered.

Friends of the Earth-U.K. submitted the transcript of a debate on this issue held in the British Parliament on December 4, 1996, where the U.K. Government noted that twice before it had favored the species' inclusion in Appendix II. The Fondo Mundial para la Naturaleza-Bolivia (World Wildlife Fund-Bolivia) and the World Wildlife Fund-U.S. submitted copies of a detailed study on the status of regeneration of *Swietenia macrophylla* in the Department of Santa Cruz, Bolivia, which had recently been carried out through the Centro Científico Tropical (of San José, Costa Rica).

Bolivia through MDSMA (the Ministerio de Desarrollo Sostenible y Medio Ambiente, their Ministry of Sustainable Development and Environment) wrote the United States on December 18, 1996, offering to co-propose the species with the United States, and similarly advised the CITES Secretariat. Bolivia in addition provided a review of mahogany trade data from its implementation of Appendix III. Ecuador on January 6, 1997, advised the United States that they were in support of the proposal, and Venezuela on January 9, 1997, advised the U.S. Embassy in Caracas that they were in support of the proposal. Also in January 1997, the Brazilian Embassy in Washington, D.C. emphasized Brazil's concerns.

Opposition to a proposal was submitted by the U.S.-based International Wood Products Association (IHPA), and by Brazil through IBAMA (the Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis or Brazilian Environment and Renewable Natural Resources Agency), and Peru through INRENA (the Instituto Nacional de Recursos Naturales, their National Natural Resources Agency). Comments questioned the appropriateness and adequacy of the CITES system for regulating such a trade; the process toward developing and considering a proposal; the threshold at which species should qualify for Appendix II; whether the species was not sufficiently protected in enough designated or remote areas; and the adequacy of the scientific and technical information on biology (including ecology and genetics), regrowth (regeneration) after selective logging or land abandonment, and national and international trade (legal and illegal).

The United States has made a rigorous analysis of the qualification of this species for Appendix II, considering the text of the treaty, the listing criteria of Resolution Conf. 9.24, and the species that have been included by the Parties in the appendices since the Convention was developed in 1973. The potential proposal was subjected to an intensive Federal interagency analysis and review process, including departments or agencies of State, Interior, Agriculture (U.S. Forest Service and Animal and Plant Health Inspection Service), U.S. Trade Representative's Office, Commerce, Justice, and the U.S. Agency for International Development. The U.S. Government concluded by consensus that *Swietenia macrophylla* qualifies for inclusion in Appendix II, and to submit the proposal, with the Republic of Bolivia as co-sponsor. The proposal was

transmitted to the CITES Secretariat on January 10, 1997, which was the deadline for proposals to be considered at the Tenth Meeting of the Conference of the Parties to CITES (COP10), to be held in Zimbabwe in mid-June 1997.

Preparations: The final proposal has been provided to all the CITES Parties (soon to be 135 countries), and to interested organizations and individuals. A thorough review and analysis to prepare for the decision of the Parties at COP10 is ongoing by range States and importing countries, industry, the conservation community, and interested individuals. The United States intends to continue to communicate and work with range States and interested organizations and individuals so that the treaty and this proposal for *Swietenia macrophylla* are accurately understood and its inclusion under CITES can be effectively implemented, which would come into force in Appendix II (if the proposal is adopted) 90 days after the conclusion of COP10, on September 18, 1997. The United States believes that the effective implementation of this listing will help ensure the conservation of the species, so that it never becomes threatened with extinction in the wild, and the maintenance of a sustainable supply of mahogany wood and products for the long-term future.

10. Goldenseal (*Hydrastis canadensis*)

This plant species has been proposed for inclusion in Appendix II, without excluding any parts or derivatives such as the finished pharmaceutical products in order to maintain the full legal option to regulate such end-product medicinals if necessary. Further evaluation of whether that would be necessary is ongoing, and if it is found to be unnecessary, the proposal can be modified at COP10 by for example excluding the finished pharmaceutical products.

This is a herbaceous species of the eastern deciduous forest of the United States and nearby Canada (in southern Ontario). Before European settlement and ensuing medicinal interest in this species, it was thought to be abundant only in the central part of its range (Indiana to West Virginia and Kentucky), and it is now considered uncommon to critically imperilled in at least 16 of the 27 States where it is found.

Goldenseal is a well-known medicinal in the herbal products industry, with a wholesale price in 1995 frequently over $50 but less than $100 per pound dry weight, mostly for rhizomes or roots (with about 200–300 roots per pound). It has been estimated that 150,000 pounds of goldenseal root are collected annually from the wild. The species is cultivated to a limited but unknown extent. Both the internal U.S. trade and export are believed to be escalating, with the international trade (primarily to Canada and Europe) considered to be less than a fifth of the market.

The World Wildlife Fund-U.S. had recommended that the United States propose this species for inclusion in Appendix II. The Service sought information especially regarding: (1) the biological status and life history of this species; (2) the extent to which it is cultivated (i.e., artificially propagated without use of seeds or other parts from the wild); and (3) the extent to which it is collected for trade, and in particular, the extent to which it is exported and the forms in which it is exported.

Comments were received from 22 organizations, and pertinent information provided has been incorporated in the CITES proposal to include this species in Appendix II. Comments in support of a proposal or tending to be favorable were received from Canada, the Province of Ontario, seven States (Illinois, Indiana, Maryland, Massachusetts, Minnesota, New York, and Oklahoma), the U.S. Department of Agriculture Forest Service, the U.S. Fish and Wildlife Service Region 5 (which includes the Northeast region), the Institute of Conservation & Culture, the Humane Society of the United States, and the World Wildlife Fund-U.S. Comments in opposition or tending to be unfavorable were received from seven States (Missouri, North Carolina, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin), and Ohio River Ginseng & Fur, Inc.

Five of the 15 States that are geographically more or less peripheral or less significant in the distribution of *Hydrastis canadensis* provided comments. The responses were favorable from four of them, whereas North Carolina (where the species is considered endangered) raised concerns about the potential regulatory burden. Nine of the 12 States that are more geographically significant in the range of the species commented; 3 were favorable to a proposal, and 6 opposed. In four of those six States, the species is considered uncommon, of special concern, vulnerable or threatened; however, Missouri considered it relatively common, and West Virginia believed it to be increasing along with the increase of forested land in the State. Three of those six opposing States were concerned with the potential regulatory burden.

Panax quinquefolius (American ginseng) has been included in Appendix II of CITES since 1973, and those 4 of the 14 commenting States that noted particular concerns about the regulatory effects of listing *Hydrastis canadensis* tended to assume that goldenseal would be regulated by a similar Federal-State system (see 59 FR 49046). However, this may or may not be the case, since ginseng is primarily exported, whereas goldenseal is involved in considerably less export, being primarily consumed within the United States. The Service intends to work with those States that may become involved in goldenseal export and the industry to develop efficient methods that require the minimum system necessary to meet the CITES requirements for legal and non-detrimental (and thus sustainable) international trade in this species.

11. Tweedy's Bitterroot (*Lewisia tweedyi or Cistanthe tweedyi)*

Proposed for delisting from Appendix II. The recommendation to remove this species from Appendix II was initiated by the CITES Plants Committee, as part of the periodic ongoing process of reviewing listed taxa. This herbaceous mountain species is native in the State of Washington and nearby in the Province of British Columbia, Canada. Because it was found to be sufficiently secure within its range, this species was removed from consideration for the U.S. Endangered Species Act in a 1985 **Federal Register** notice on various taxa (50 FR 39526). Moreover, this species is considered sufficiently easy to propagate and available in cultivation to supply rock-garden enthusiasts.

Comments were received from the Humane Society of the United States in opposition to submitting the proposal, and from Canada in support of the proposal. As the biological status of the species is considered markedly less vulnerable than when it was listed in 1983, and there have been no applications to export it from the wild since then and little reported export and import of artificially propagated specimens, removal of the species from Appendix II is considered appropriate.

Continuing Actions

In early February, the Service received proposals made by other CITES Parties to amend the appendices. A list and copies of these proposals can be obtained from the Office of Scientific Authority (see **ADDRESSES** above). The Service's tentative negotiating positions on these proposals submitted by the other countries, along with a solicitation for public comment, will be announced in a **Federal Register** notice later this month. Further opportunity for public input will be afforded by a public

meeting planned for April 25. The Service will consider all comments received during the comment period, as well as all other available information, in developing a negotiating position on each of the species proposals. These positions will be announced in the **Federal Register** in early June just prior to COP10. Also, in this pre-COP10 notice the Service plans to request comments on any reservations that should be taken on any species amendments (i.e., species changes to the CITES appendices) adopted by the Parties. Immediately after COP10, the Service will announce the species amendments to the appendices adopted by the Parties; in accordance with CITES, all such amendments will become effective on September 18, 1997 (90 days after their adoption by the Parties).

The primary authors of this notice are Dr. Marshall A. Howe, Zoologist, Dr. Bruce MacBryde, Botanist, and Dr. Charles W. Dane, Chief, Office of Scientific Authority.

This document is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; 87 Stat. 884, as amended).

Lists of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Treaties.

Dated: April 8, 1997.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 970403076–7076–0; I.D. 030397B]

RIN 0648–AI80

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Allocation Among Nontribal Sectors

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

ACTION: Proposed rule; request for comments.

SUMMARY: This rule proposes: Allocation of the commercial harvest guideline of Pacific whiting (whiting) among nontribal sectors; a framework procedure for annually choosing the starting dates of the primary whiting seasons for the nontribal sectors; and allowing the processing of fish waste at sea when at-sea processing of whiting is otherwise prohibited. This rule also proposes starting dates for the 1997 primary seasons under the proposed framework. These actions are intended to provide equitable allocation of the whiting resource and to provide flexibility in harvesting and processing opportunities.

DATES: Comments will be accepted on or before April 30, 1997.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115. Comments on the information collection requirements that would be imposed by this rule should be sent to Mr. William Stelle at the address above, and to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington DC, 20503. Other information relevant to this proposed rule is available for public review during business hours at the Office of the Administrator, Northwest Region, NMFS. Copies of the environmental assessment/regulatory impact review also are available from that address.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: NMFS is issuing a proposed rule, based on the agency's authority under the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). At the same time, NMFS is seeking public comment on the starting dates for the primary whiting seasons in 1997 and on several housekeeping measures. These actions were recommended by the Pacific Fishery Management Council (Council) at its October 1996 meeting in San Francisco, CA and at meetings of its ad hoc whiting allocation subcommittee that were held in 1996.

Background

Whiting allocation

Whiting is the largest groundfish resource managed by the Council, and makes up over 50 percent of the potential annual groundfish harvest. Until the early 1980's, whiting off Washington, Oregon, and California were harvested predominantly by foreign fisheries. Between 1982–88, foreign fishing was displaced by joint venture operations in which U.S. vessels fished for whiting and delivered it to foreign processing vessels at sea. By 1989, joint ventures were displaced by domestic harvesting and processing operations, as contemplated by the Magnuson-Stevens Act. (The Magnuson-Stevens Act established priorities for allocating fish in the EEZ, giving domestic fishing and processing operations first priority, joint ventures second priority, and foreign fishing lowest priority.) The shift away from joint ventures occurred abruptly with the introduction of domestic at-sea processing vessels: Catcher/processors (also called factory trawlers) that both harvest and process fish; and motherships that process fish delivered from other catcher vessels. Consequently, the joint venture catcher vessels that had harvested and delivered almost all of the whiting harvest guidelines in 1989–90 to foreign processing vessels lost their foreign markets in 1991. The joint venture markets were only partly replaced by new markets with mothership and shore-based processors. Generally, the shore-based fishery operates at a slower pace and has a more limited fishing range, and catcher vessels are smaller than catcher/processors and can take a much smaller amount of whiting in the same amount of time. Therefore, to avoid extensive preemption of shore-based operations by the high-capacity at-sea processing fleet, whiting has been allocated among domestic sectors since 1991.

The most recent allocation, which was in effect from 1994–96, was based on a 3-year industry agreement to provide 40 percent of the whiting harvest guideline to catcher vessels delivering to shore-based processors, plus any additional whiting taken while all sectors competed for the first 60 percent. In 1994 and 1995, the 40–percent reserve was applied to the entire whiting harvest guideline (50 CFR 663.23(b)(4), subsequently changed to 660.323(a)(4). In 1996, whiting was allocated to the Makah treaty Indian tribe for the first time (50 CFR 660.324). Thereafter, any allocation among domestic sectors was to be based on the ''commercial harvest guideline,'' the harvest guideline minus any tribal allocation. Provisions were made for reapportioning the unused portion of the shorebased reserve later in the year, but this occurred only in 1994.

The allocations for 1997 and beyond were derived by industry agreement in a series of public meetings sponsored by the Council. The proposed allocations, which are within a few percent of the proportions harvested in 1994–96, are: 42 percent for the shoreside sector (catcher vessels delivering to shoreside

processors), 24 percent for the mothership sector (motherships and catcher vessels delivering to motherships), and 34 percent for the catcher/processor sector (catcher/processor vessels). When applied to the 1997 commercial harvest guideline of 207,000 metric tons (mt), these percentages result in whiting allocations of 86,900 mt for vessels that deliver shoreside, 49,700 mt for vessels that deliver to motherships, and 70,400 mt for catcher/processors. Surplus whiting would be reallocated (via notice in the **Federal Register**) to the other sectors, in proportion to their initial allocations, near September 15. As in 1994–96, only the framework process for determining the allocations would be codified. The allocations would be calculated and announced annually, generally with the annual cycle for announcing specifications and management measures for the groundfish fishery in January each year.

The proposed allocation, and intended effect on the fishery, differ from 1994–96 in several respects.

1. Three separate allocations are proposed, one for each sector (catcher/processors, mothership, and shoreside). In contrast, the only allocation in 1994–96 was the 40–percent set aside for catcher vessels delivering shoreside. The proposed allocation removes the uncertainty of amounts available for each sector and will be easier to monitor.

2. By eliminating the competition among sectors inherent in a first-come-first-served fishery (the no-action alternative), separate allocations would encourage each sector to operate at a more leisurely and safe pace and to move to other fishing grounds if necessary to lower bycatch levels, particularly of yellowtail rockfish and salmon. As a result, separate allocations would provide greater accountability and opportunity for each sector to minimize bycatch.

3. Separate allocations also would provide each sector the flexibility of starting at different times without losing any competitive advantage. Because whiting migrate from south to north during the fishing season, the shore-based fishery south of 42° N. lat. has been, and still would be, allowed to start earlier than north of 42° N. lat. However, to avoid effort shifts to the south early in the year, a 5–percent cap would be placed on the amount of the shore-based allocation that may be taken south of 42° N. lat. before the start of the shore-based primary season north of 42° N. lat. If the proposed 5–percent cap is reached, the routine trip limit under § 660.323(b) would be resumed until the northern season begins, at which time the southern primary season also would resume. The routine trip limit (10,000 lb (4,536 kg) in 1997) provides for small bait, fresh fish, and bycatch fisheries, and cannot sustain a large-scale target fishery. The 5–percent cap (which would be 4,345 mt in 1997) is not intended or expected to be constraining on traditional operations. The annual whiting catch south of 42° N. lat. would have been below 5 percent of the shore-based allocation if these proposed allocations had been in effect in 1994–96.

4. Additional constraints were agreed to by the industry to assure that each sector has the opportunity to take its allocation by assuring that high-capacity catcher/processors do not participate in more than one sector in a given year. Within the same calendar year, a catcher/processor may not also act as a catcher vessel that delivers shoreside or to another at-sea processor. A catcher/processor may operate solely as a mothership for that calendar year, but only if this has been requested and so designated on renewal of its limited entry permit for the Pacific coast groundfish fishery (Office of Management and Budget (OMB) #0648–0203). A catcher/processor may receive codends over-the-side from a catcher vessel, but any such catch would be counted toward the catcher/processor allocation and would end when the catcher/processor allocation is taken. Catcher vessels that do not process may deliver to any or all of the processing sectors as long as the season for that sector is open.

Seasons

A framework for setting separate starting dates for each sector's primary season and the starting dates for 1997, also are proposed. The framework procedures for determining the starting dates would be codified, and the starting dates would be announced annually, generally with the annual cycle for announcing specifications and management measures for the groundfish fishery in January each year. However, because the annual cycle for 1997 has passed, the starting dates for the 1997 fishery would be announced with the final rule for this action. The primary seasons for the whiting fishery are: For the shore-based sector, the period(s) when the large-scale target fishery is conducted (when trip limits under § 660.323(b) are not in effect); for catcher/processors, the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector; and for vessels delivering to motherships, the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector.

Separate starting dates enable each sector to accommodate its operational needs. However, other factors also must be considered during the Council's two-meeting process. Consideration of the following factors, if applicable, would be included: The size of the harvest guidelines for whiting and bycatch species; status of whiting and bycatch stocks; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

The starting dates also are constrained by the incidental take statement dated May 14, 1996, issued pursuant to § 7 (b)(4) of the Endangered Species Act (ESA) to protect threatened or endangered species of salmon. The incidental take statement in that biological opinion requires that the large-scale at-sea processing fishery north of 42° N. lat. not begin before May 15. This constraint remains in effect unless changed in a subsequent incidental take statement.

In 1997, the proposed starting dates are May 15 for the catcher/processor and mothership sectors and June 15 for the shore-based sector north of 42° N. lat. The shore-based fleet operating in California between 42° and 40° 30' N. lat. would start on March 1, as in the past, in recognition that this rule would not be implemented by that time. The season south of 40° 30' N. lat. remains unchanged at April 15 as stated at § 660.323(a)(3)(i), and would not be subject to the proposed framework provisions for changing the starting date primarily due to concerns over potential salmon bycatch and harvest of juvenile whiting.

Processing waste products at sea

The quantity of waste from shore-based processing has been so high as to sometimes exceed the capacity of existing facilities. A solution to this problem is to provide for processing fish waste at sea, even at times when at-sea processing of whiting by catcher/processors or motherships is prohibited. These are completely different operations. A vessel processing whiting waste at sea, and not otherwise involved in the target fishery for whiting, would have very few whole whiting on board, although they may occasionally be found. To be considered a ''waste-processing vessel,'' the vessel must

make only meal, oil, or minced product and cannot make or have on board surimi, fillet, or headed and gutted fish. To assure that no fishing or receipt of whole fish is occurring while at-sea processing of whiting is prohibited, the following restrictions on processing whiting waste are proposed: (1) The vessel must be incapable of fishing for whiting, which would be accomplished by stowing any trawl gear on board and making it inoperable; (2) receipt of codends containing any species of fish would be prohibited; (3) the amount of whole whiting on board must be less than any trip limit for whiting authorized under 50 CFR 660.323(b); and the vessel could not operate as a waste-processing vessel within 48 hours immediately before and after any primary season in which it operates as a catcher/processor or mothership.

Housekeeping

A revision to a current prohibition also is proposed. The current regulation at 50 CFR 660.306(m) makes it unlawful to: ''Fish with groundfish trawl gear, or carry groundfish trawl gear on board a vessel that also has groundfish on board * * * without having a limited entry permit valid for that vessel * * *.'' This precludes a vessel from operating as a mothership in the whiting fishery if that vessel still has on board a trawl net from fishing in Alaska. It is not unusual for motherships to enter the whiting fishery directly after departing Alaskan fisheries. To accommodate these vessels, this regulation is proposed to be changed to allow a vessel to operate as a mothership in the whiting fishery as long as any trawl net on board is stowed and rendered inoperable.

A regulation was issued on June 6, 1996, (61 FR 28786) that provided for whiting authorized under old § 663.24, but not needed in the tribal fishery, to be made available to other users. This provision was inadvertently deleted when the regulations governing the Pacific Coast groundfish fisheries were consolidated at 61 FR 34570, July 2, 1996, with all other regulations governing the fisheries off the west coast states and in the Western Pacific, and therefore is included in this proposed rule. Also in the consolidation, an error was made in paragraph (b) of § 660.306 regarding the citation for the definition of prohibited species and a typo exists in paragraph (r) of § 660.306. The corrections are included in this proposed rule.

The Magnuson-Stevens Act requires that the public be provided with a comment period of 15 to 60 days to respond to proposed regulations. Without the final rule being in place by May 15, the season north of 42° N. lat. will open on May 15 (50 CFR 660.323(a)(3)), but the fishery would open without any allocation between competing sectors because codified Pacific whiting allocation regulations for this area only applied from 1994 through 1996 (50 CFR 660.323(a)(4)). A derby fishery would ensue and a substantial portion of the harvest guideline could be taken before the final rule was made effective, thereby disrupting 1997 allocations that would be implemented by the final rule. Considering the urgency of completing rulemaking regarding these proposed measures, NMFS has provided for a 20-day public comment period.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has preliminarily determined that this proposed rule is necessary for management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable law.

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The NMFS standards for determining if an action will have a significant economic impact on a substantial number of small entities are: (1) 5 percent loss of revenue for 20 percent of the participants; (2) 10 percent increase in compliance costs for 20 percent of the participants; and (3) 2 percent of the participants cease operations. In the whiting fishery, catcher/processor and mothership (at-sea processing) vessels are considered large businesses, and catcher vessels (that do not process) and shore-based processors are considered small businesses. The allocations, which were derived by industry consensus at a number of public meetings in 1996, are within 5 percent of the proportions taken in 1994–96.

The proposed action would result in shore-based catcher vessels harvesting, and shore-based processors receiving, 42 percent of the annual commercial harvest guideline for whiting, which is a 5 percent increase over their 1994–96 average proportion of catch. Catcher vessels delivering to motherships would realize a 4 percent decline compared to their 1994–96 average proportion of catch. Many catcher vessels deliver both on shore and to motherships at sea, and the impact on catcher vessels is most relevant by combining the impacts on all catcher vessels that do not process, whether delivering on shore or at sea. The proposed rule would provide a net increase of 1 percent of the commercial harvest guideline (from 65 to 66 percent) for catcher vessels that do not process, an increase of 5 percent shoreside, and a decrease of 4 percent for at sea deliveries to motherships. The ''no action alternative,'' that is to not make an allocation, would result in a derby style fishery (given that the 1994–96 allocation expired in 1996) with the shore-based sector taking as little as 16 percent of the commercial harvest guideline and nonprocessor catcher vessels taking as little as 49 percent. Therefore, the ''no action alternative'' could result in a significant adverse economic impact on these small businesses.

The proposed rule seeks to maintain approximate allocation percentages based on the 1994–96 averages, and thus to minimize disruption of current operations. The framework process for changing season dates and for allowing processing of fish waste at sea outside the primary season will provide flexibility in operations of both small and large businesses without changing the total amounts of whiting available to each sector. Therefore, these proposed actions will not have a significant impact on a substantial number of small entities.

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

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. This collection-of-information requirement has been submitted to OMB for approval (OMB #0648–0203). It involves, concurrent with renewal of a limited entry permit, checking a box to indicate if a catcher/processor will operate entirely as a mothership in the whiting fishery during the year covered by the permit. Fewer than 15 catcher/processors operate in this fishery, and even fewer are expected to exercise this option. Therefore the information collection is so minor as not to result in an increase in burden hours on the public.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection techniques or other forms of information technology. Comments on the collection of information burden or any other aspect of the information

collection may be sent to OMB, listed in the ADDRESSES section above.

A formal section 7 consultation under the ESA was initiated for the groundfish fishery. In a biological opinion dated August 28, 1993, and subsequent biological opinions dated September 27, 1993, and May 14, 1996, resulting from reinitiations, the AA determined that fishing activities conducted under the PCGFMP and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This proposed rule is within the scope of those consultations.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 9, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

l. The authority citation for part 660 continues to read as follows:

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

2. In § 660.306, in paragraph (b), the reference to § 660.302 is changed to § 660.323(c), paragraphs (j), (k), (m), (q), and (r) are revised, and paragraphs (u), (v), and (w) are added, to read as follows:

§ 660.306 Prohibitions.

* * * * *

(j) Process whiting in the fishery management area during times or in areas where at-sea processing is prohibited for the sector in which the vessel participates, unless:

(1) The fish are received from a member of a Pacific Coast treaty Indian tribe fishing under § 660.324;

(2) The fish are processed by a waste-processing vessel according to § 660.323(a)(4)(vii); or

(3) The vessel is completing processing of whiting taken on board during that vessel's primary season.

(k) Take and retain or receive, except as cargo or fish waste, whiting on a vessel in the fishery management area that already possesses processed whiting on board, during times or in areas where at-sea processing is prohibited for the sector in which the vessel participates, unless the fish are received from a member of a Pacific Coast treaty Indian tribe fishing under § 660.324.

* * * * *

(m) Fish with groundfish trawl gear, or carry groundfish trawl gear on board a vessel that also has groundfish on board, without having a limited entry permit valid for that vessel affixed with a gear endorsement for trawl gear, unless:

(1) The vessel is in continuous transit from outside the fishery management area to a port in Washington, Oregon, or California; or

(2) The vessel is a mothership, in which case trawl gear must be stowed in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing.

* * * * *

(q) Carry on board a vessel, or deploy, limited entry gear when the limited entry fishery for that gear is closed, except a vessel may carry on board limited entry gear as provided in paragraph (m) of this section.

(r) Refuse to submit fishing gear or fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

* * * * *

(u) To participate in the mothership or shoreside sector as a catcher vessel that does not process fish, if that vessel operates in the same calendar year as a catcher/processor in the whiting fishery, according to § 660.323(a)(4)(ii)(B).

(v) Operate as a waste-processing vessel within 48 hours of a primary season for whiting in which that vessel operates as a catcher/processor or mothership, according to 660.323(a)(4)(vii).

(w) Fail to keep the trawl doors on board the vessel and attached to the trawls on a vessel used to fish for whiting, when taking and retention is prohibited under § 660.323(a)(3)(v).

3. In § 660.323, paragraphs (a)(3)(i), (a)(3)(iv), and (a)(4) are revised to read as follows:

§ 660.323 Catch restrictions.

* * * * *

(a) * * *

(3) *Pacific whiting (whiting)*—(i) *Seasons.* The primary seasons for the whiting fishery are: For the shore-based sector, the period(s) when the large-scale target fishery is conducted (when trip limits under paragraph (b) of this section are not in effect); for catcher/processors, the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector; and for vessels delivering to motherships, the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector. Before and after the primary seasons for the shore-based sector, trip landing or frequency limits may be imposed under paragraph (b) of this section. The sectors are defined at paragraph (a)(4) of this section.

(A) *North of 40°*30' N. lat. Different starting dates may be established for the catcher/processor sector, the mothership sector, and vessels delivering to shoreside processors north of 42° N. lat., and catcher vessels delivering to shoreside processors between 42°–40°30' N. lat.

(*1*) *Procedures.* The primary seasons for the whiting fishery north of 40°30' N. lat. generally will be established according to the procedures in the PCGFMP for developing and implementing annual specifications and apportionments. The season opening dates remain in effect unless changed, but will be announced annually, generally with the annual specifications and management measures.

(*2*) *Criteria.* The start of a primary season may be changed based on a recommendation from the Council and consideration of the following factors, if applicable: Size of the harvest guidelines for whiting and bycatch species; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

(B) *South of 40°*30' N. lat. The primary season starts on April 15 south of 40°30' N. lat.

* * * * *

(iv) *At-sea processing.* Whiting may not be processed at sea south of 42°00' N. lat. (Oregon-California border), unless authorized under paragraph (a)(4)(vii) of this section.

* * * * *

(4) *Whiting—allocation.* (i) *Sectors and allocations.* The commercial harvest guideline for whiting is allocated among three sectors, as follows.

(A) *Sectors.* The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting during a calendar year. The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels

that process, but do not harvest, whiting during a calendar year. The shoreside sector is composed of vessels that harvest whiting for delivery to shore-based processors.

(B) *Allocations.* The allocations are: 34 percent for the catcher/processor sector; 24 percent for the mothership sector; and 42 percent for the shoreside sector. No more than 5 percent of the shoreside allocation may be taken and retained south of 42° N. lat. before the start of the primary season north of 42° N. lat. These allocations are harvest guidelines unless otherwise announced in the **Federal Register**.

(ii) *Additional restrictions on catcher/processors.*

(A) A catcher/processor may receive fish from a catcher vessel, but that catch is counted against the catcher/processor allocation unless the catcher/processor has been declared as a mothership under paragraph (a)(4)(ii)(C) of this section.

(B) A catcher/processor may not also act as a catcher vessel delivering unprocessed whiting to another processor in the same calendar year.

(C) When renewing its limited entry permit each year under § 660.333, the owner of a catcher/processor used to take and retain whiting must declare if the vessel will operate solely as a mothership in the whiting fishery during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded by written request from the permit holder. The request to rescind a declaration must be granted in writing by the Regional Administrator before the vessel can take whiting on board.

(iii) *Reaching an allocation.* If the whiting harvest guideline, commercial harvest guideline, or a sector's allocation is reached, or is projected to be reached, the following action(s) for the applicable sector(s) may be taken as provided under paragraph (a)(4)(vi) and will remain in effect until additional amounts are made available the next fishing year or under paragraph (a)(4)(iv) of this section.

(A) *Catcher/processor sector.* Further taking and retaining, receiving, or at-sea processing of whiting by a catcher/processor is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

(B) *Mothership sector.* (*1*) Further receiving or at-sea processing of whiting by a mothership is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a mothership may continue to process whiting that already was on board before at-sea processing was prohibited.

(*2*) Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(C) *Shoreside sector.* Whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the shoreside sector except as authorized under a trip limit specified under § 660.323(b).

(D) *Shoreside south of 42°* N. lat. If 5 percent of the shoreside allocation for whiting is taken and retained south of 42° N. lat. before the primary season for the shoreside sector begins north of 42° N. lat., then a trip limit specified under paragraph (b) of this section may be implemented south of 42° N. lat. until the northern primary season begins, at which time the southern primary season would resume.

(iv) *Reapportionments.* That portion of a sector's allocation that the Regional Administrator determines will not be used by the end of the fishing year shall be made available for harvest by the other sectors, if needed, in proportion to their initial allocations, on September 15 or as soon as practicable thereafter. NMFS may release whiting again at a later date to ensure full utilization of the resource. Whiting not needed in the fishery authorized under §660.324 also may be made available.

(v) *Estimates.* Estimates of the amount of whiting harvested will be based on actual amounts harvested, projections of amounts that will be harvested, or a combination of the two. Estimates of the amount of whiting that will be used by shoreside processors by the end of the fishing year will be based on the best information available to the Regional Administrator from state catch and landings data, the survey of domestic processing capacity and intent, testimony received at Council meetings, and/or other relevant information.

(vi) *Announcements.* The Assistant Administrator will announce in the **Federal Register** when a harvest guideline, commercial harvest guideline, or an allocation of whiting is reached, or is projected to be reached, specifying the appropriate action being taken under paragraph (a)(4)(iii) of this section. The Regional Administrator will announce in the **Federal Register** any reapportionment of surplus whiting to other sectors on September 15, or as soon as practicable thereafter. In order to prevent exceeding the limits or to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of whiting, or reapportionment of surplus whiting may be made effective immediately by actual notice to fishermen and processors, by phone, fax, Northwest Region computerized bulletin board (contact 206–526–6128), letter, press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF), followed by publication in the **Federal Register**, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council, the Regional Administrator will inform the Council in writing of actions taken.

(vii) *Processing fish waste at sea.* A vessel that processes only fish waste (a ''waste-processing vessel'') is not considered a whiting processor and therefore is not subject to the allocations, seasons, or restrictions for catcher/processors or motherships while it operates as a waste-processing vessel. However, no vessel may operate as a waste-processing vessel 48 hours immediately before and after a primary season for whiting in which the vessel operates as a catcher/processor or mothership. A vessel must meet the following conditions to qualify as a waste-processing vessel:

(A) The vessel makes meal (ground dried fish), oil, or minced (ground flesh) product, but does not make, and does not have on board, surimi (fish paste with additives), fillets (meat from the side of the fish, behind the head and in front of the tail), or headed and gutted fish (head and viscera removed).

(B) The amount of whole whiting on board does not exceed the trip limit (if any) allowed under paragraph (b) of this section.

(C) Any trawl gear on board is stowed in a secured and covered manner, detached from all towing lines, so that it is rendered unusable for fishing.

(D) The vessel does not receive codends containing fish.

(E) The vessel's operations are consistent with applicable state and Federal law, including those governing disposal of fish waste at sea.

[FR Doc. 97–9705 Filed 4–10–97; 5:10 pm]

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Notices

Federal Register

Vol. 62, No. 73

Wednesday, April 16, 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

Agricultural Research Service

Notice of Intent To Extend a Currently Approved Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 109–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Agricultural Research Service's (ARS) intention to request an extension for a currently approved information collection in support of USDA's Biological Control Documentation Program dealing with documenting the importation and release of foreign biological control agents.

DATES: Comments on this notice must be received by June 20, 1997, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Jack R. Coulson, Director, ARS Biological Control Documentation Center, Insect Biocontrol Laboratory, Plant Sciences Institute, ARS, USDA, National Agricultural Library, 4th Floor, 10301 Baltimore Avenue, Beltsville, MD 20705–2330, (301) 504–6350.

SUPPLEMENTARY INFORMATION:

Title: USDA Biological Shipment Record—Record of Shipment of Exotic Microorganisms for Biological Control (AD–944); Release of Exotic Microorganisms for Biological Control (AD–944A).

OMB Number: 0518–0017.

Expiration Date of Current Approval: October 31, 1997.

Type of Request: Intent to extend the currently approved information collection.

Abstract: The purpose of the Biological Control Documentation Program is to record the importation (AD–944) and field release (AD–944A) of foreign/introduced beneficial microorganisms (biological control). The information collected is entered into the USDA ''Releases of Beneficial Organisms in the United States and Territories'' (ROBO) database, established in 1984. It is a cooperative program among USDA and other federal agencies, state governmental agencies, and U.S. universities. The use of the forms and the information provided is voluntary. The program is for the benefit of biological control research and action agency personnel, taxonomists, federal and state regulatory agencies, agricultural administrators, and the general public. Efforts are underway to replace the paper forms with computerized information collection, and when completed, the forms would be used only by those units for which computerized input is not possible. This information collection is due to expire on October 31, 1997. ARS intends to request an extension of three years.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1/12 hour per response.

Non-Federal Respondents: Non-profit institutions, universities, and state and local governments.

Estimated Number of Non-Federal Respondents: 20.

Estimated Number of Responses per Respondent: An average of 3 (range 1–10).

Estimated Total Annual Burden on Respondents: 5 hours.

Copies of the 2 forms used in this information collection can be obtained from Jack R. Coulson, ARS Biological Control Documentation Center, at (301) 504–6350.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology. Comments may be sent to: Jack R. Coulson, Director, ARS Biological Control Documentation Center, Insect Biocontrol Laboratory, Plant Sciences Institute, ARS, USDA, National Agricultural Library, 4th Floor, 10301 Baltimore Avenue, Beltsville, MD 20705–2350.

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.

Signed at Beltsville, MD, March 25, 1997.

A. Rick Bennett,

Acting Assistant Administrator, Office of International Research Programs, Agricultural Research Service, U.S. Department of Agriculture.

[FR Doc. 97–9860 Filed 4–15–97; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Tracking Nutrition Security Changes: State Choices and the National Food Stamp Program

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's intention to request Office of Management and Budget approval of the Tracking Nutrition Security Changes Study.

DATES: Written comments on this notice must be received by June 16, 1997.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michael E. Fishman, Acting Director, Office of Analysis and Evaluation, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection forms should be directed to Michael E. Fishman, (703) 305–2117.

SUPPLEMENTARY INFORMATION:

Title: Tracking Nutrition Security Changes: State Choices and the National Food Stamp Program.

OMB Number: Not yet assigned.

Expiration Date: Not applicable.

Type of Request: New collection of information.

Abstract: The new welfare reform law, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, grants States a number of options in how they administer the Food Stamp Program. The Tracking Nutrition Security Changes Study will provide the USDA Food and Consumer Service with information on the nature and extent of States' decisions since the passage of the new law. The study will collect and synthesize information on State choices, primarily in three programmatic areas: eligibility determination, benefit calculation, and work requirements. The study will also assess the variance of food stamp policy choices across States and the implementation of these choices at the local food stamp office level.

Information will be collected from States in two stages. First, descriptive information will be collected from all 50 State food stamp agencies by telephone interviews to identify the nature and scope of selected State food stamp choices. Next, on-site interviews with key informants will be conducted in 10 to 15 States. These data will be collected for a qualitative analysis of implementation issues and descriptions of specific agency practices.

Affected Public: State and local governments, State nonprofit organizations.

Estimated Number of Respondents: One or two State food stamp officials will respond from each of the 50 States for the telephone survey. An average of 20 State and local government and nonprofit officials in each of up to 15 States will respond to on-site interviews, for a maximum total of 300 on-site interview respondents.

Estimated Time per Response: Phone interviews will average 60 minutes per State. On-site interviews will average 90 minutes per respondent.

Estimated Total Annual Burden on Respondents: 500 hours.

Dated: April 7, 1997.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 97–9741 Filed 4–15–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

RIN 0584–AC54

Food Stamp Program: Maximum Allotments for Alaska, Hawaii, Guam, and the Virgin Islands

AGENCY: Food and Consumer Service, USDA.

ACTION: General notice.

SUMMARY: By this notice, the Department of Agriculture is updating the maximum food stamp allotments for participating households in Alaska, Hawaii, Guam, and the Virgin Islands. These annual adjustments, required by law, take into account changes in the cost of food and statutory adjustments since the amounts were last calculated.

EFFECTIVE DATE: October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302, or telephone at (703) 305–2516.

SUPPLEMENTARY INFORMATION:

Implementation

As required by Section 3(o) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2012(o), State agencies should have implemented this action on October 1, 1996 based on advance notice of the new amounts. As required by regulations published at 47 FR 46485 (October 19, 1982), annual statutory adjustments to the maximum allotment levels, income eligibility standards, and deductions are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule and related notice to 7 CFR Part 3015, Subpart V (48 FR 29916, June 24, 1983), this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

The Under Secretary for Food, Nutrition, and Consumer Services has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through increases in food stamp benefits. However, this money will be distributed among all eligible food stamp vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or record keeping requirements subject to review by OMB pursuant to the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Background

Thrifty Food Plan (TFP) and Allotments

As provided for in Section 3(o) of the Act, the TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. The plan provides for a diet required to feed a family of four persons consisting of a man and woman aged 20 to 50, a child 6 to 8 and a child 9 to 11. The cost of the TFP is adjusted monthly to reflect changes in the costs of the food groups.

The TFPs for Alaska and Hawaii are based on an adjusted average for the six-month period that ends with June 1996. Since the Bureau of Labor Statistics (the source of food price data) no longer publishes monthly information to compute Alaska and Hawaii TFPs, the adjusted average provides a proxy for actual June 1996 TFP costs. The adjusted average is equal to January-June 1996 TFP costs for Alaska and Hawaii increased by the average percentage difference between the cost of the TFP in Alaska and Hawaii in June

and the January-June average from 1976 through 1986 (a 1.53 percent increase over January-June costs in Alaska and 1.82 percent increase in Hawaii).

For the period January through June 1996, the average cost of the TFP was $491.50 in Alaska, and $625.20 in Hawaii. The proxy in Alaska for actual June 1996 TFP costs was $499.02. This proxy is multiplied by three separate adjustment factors to create three TFPs for Urban Alaska, Rural I Alaska, and Rural II Alaska. The proxy in Hawaii was $636.57. The June 1996 cost of the TFP was $590.40 in Guam and $515.00 in the Virgin Islands.

The TFP is also the basis for establishing food stamp allotments. ''Allotment'' is defined in Section 3(a) of the Act as ''the total value of coupons a household is authorized to receive during each month.'' Food stamp allotments are adjusted periodically to reflect the changes in food cost levels indicated in the changing amounts of the TFP. Prior to the amendment of Section (3)(o) of the Act by Section 804 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. Law 104–193, on August 22, 1996, allotment amounts were established on each October 1 at 103 percent of the cost of the TFP in the previous June. Amended Section 3(o)(4) of the Act now provides that the TFP will be adjusted each October 1 to reflect the exact cost, or 100 percent, of the TFP for the previous June. This provision was implemented by the Department as a requirement of the Food Stamp Program on October 1, 1996, without prior notice and comment due to the binding, non-discretionary nature of the statutory provision. In accordance with 5 U.S.C. 553(b)(3)(B), the Department has determined that good cause existed to justify such implementation. In a subsequent rulemaking, the Department will issue a corresponding regulatory change to 7 CFR 273.10(e)(4)(ii).

The maximum food stamp allotment is paid to households that have no net income. For households with some type of income, their allotments are determined by reducing the maximum allotment for their household size by 30 percent of the household's net income in accordance with Section 8(a) of the Act, 7 U.S.C. 2017(a). To obtain the maximum food stamp allotment for each household size, the TFP costs are divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result rounded down to the nearest dollar.

Section 804 of Pub. L. 104–193 also amended Section 3(o) of the Act to prohibit reducing food stamp allotments for Fiscal Year (FY) 1997 below those in effect on September 30, 1996. In FY 1996, Alaska (Urban, Rural I and II) and Hawaii maximum food stamp allotments for a four person household were $510, $650, $791, and $663, respectively. Based on the formula discussed above, FY 1997 allotments would have fallen below FY 1996 levels to $502, $641, $780, and $636, respectively. Consequently, in accordance with the law, the food stamp allotments for Alaska and Hawaii published in this notice will remain the same as last year's.

Pursuant to Section 3(o)(3) of the Act, maximum food stamp benefits for Guam and the Virgin Islands cannot exceed those in the 50 States and the District of Columbia, so they are based upon the lower of their respective TFPs or the TFP for rural II Alaska.

MAXIMUM ALLOTMENT AMOUNTS [1].—OCTOBER 1996, AS ADJUSTED

Household size	Urban Alaska [2]	Rural I Alaska [2]	Rural II Alaska [2]	Hawaii [2]	Guam [3]	Virgin Islands [3]
1	$153	$195	$237	$198	$177	$154
2	280	357	435	364	324	283
3	401	512	623	522	464	405
4	510	650	791	663	590	515
5	605	772	939	787	701	611
6	726	926	1127	945	841	733
7	803	1024	1246	1044	929	811
8	918	1170	1424	1193	1062	927
Each additional member	+115	+146	+178	+149	+133	+116

[1] Adjusted to reflect the cost of food in June, adjustments for each household size, economies of scale, and 1.00 percent of the TFP and rounding.
[2] Held at FY 1996 levels as a result of the Personal Responsibility and Work Opportunity Act of 1996.
[3] Adjusted to reflect changes in the cost of food in the 48 States and the District of Columbia, which correlate with price changes in these areas. Maximum allotments in these areas cannot exceed those in Rural II Alaska.

Maximum allotments for the 48 States and the District of Columbia are published in a separate notice in the **Federal Register**. Adjustments covered by this notice are announced for Alaska, Hawaii, Guam, and the Virgin Islands only, reflecting revisions required by changes in the cost of food and Pub. Law 104–193.

(7 U.S.C. 2011–2034)

Dated: April 4, 1997.

William E. Ludwig,

Administrator.

[FR Doc. 97–9858 Filed 4–15–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

RIN 0584–AC53

Food Stamp Program: Maximum Allotments for the 48 States and the District of Columbia, and Income Eligibility Standards and Deductions for the 48 States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands

AGENCY: Food and Consumer Service, USDA.

ACTION: General notice.

SUMMARY: The purpose of this notice is to update for Fiscal Year 1997: the maximum allotment levels, which are the basis for determining the amount of food stamps which participating households receive, the gross and net income limits for food stamp eligibility, the standard deduction available to certain households, and the homeless household shelter allowance. These adjustments, required by law, take into account changes in the cost of living and statutory adjustments since the amounts were last calculated.

DATES: The effective date of this notice regarding the adjustment of the maximum allotments was October 1,

1996. The effective date of this notice regarding deductions from income was January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Chief, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2516.

SUPPLEMENTARY INFORMATION:

Implementation

As required by Section 3(o) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2012(o), State agencies should have implemented the adjustments to the maximum food stamp allotments reflected in this notice on October 1, 1996, based on advance notice of the new amounts. Similarly, State agencies received notice of the changes in deductions from income that were required to be implemented on January 1, 997. In accordance with regulations published at 47 FR 46485–46487 (October 19, 1982), annual statutory adjustments to the maximum allotment levels, income eligibility standards, and deductions are issued by general notices published in the **Federal Register** and not through rulemaking proceedings.

Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, was enacted on August 22, 1996. Several provisions of that law affect Food Stamp Program allotment levels, income eligibility standards and deduction amounts. The provisions of Pub. L. 104–193 discussed herein were intended by Congress to be binding and non-discretionary. In that light, the Department has determined in accord with 5 U.S.C. 553(b)(2)(B) that good cause existed to implement the required statutory changes without prior notice and comment. To meet the implementation requirements of Public Law 104–193, State agencies were informed of the new standards in guidance issued by the Department prior to the publication of this notice. Subsequent to the publishing of this notice, various regulatory changes corresponding to the statutory changes will be promulgated. These regulatory changes will not affect the provisions of Pub. L. 104–193 hereby implemented but will simply correlate the Code of Federal Regulations with the Act.

Classification

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance Under No. 10.551. For the reasons set forth in the final rule related notice to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

The Under Secretary for Food, Nutrition and Consumer Services, has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or record keeping requirements subject to approval by OMB pursuant to the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Background

Income Eligibility Standards

The eligibility of households for the Food Stamp Program, except those in which all members are receiving ''benefits under a State program funded under part A of title IV of the Social Security Act [], supplemental security income [SSI] benefits under title XVI of the Social Security Act [], or aid to the aged, blind, or disabled under title I, X, XIV, or XV of the Social Security Act. * * *'', is determined by comparing their incomes to the appropriate income eligibility standards (limits). Pursuant to Section 5(c)(2) of the Act, 7 U.S.C. 2014(c)(2), households containing an elderly or disabled member are required to have qualifying net incomes, while households which do not contain an elderly or disabled member must have qualifying net incomes *and* qualifying gross incomes. Households in which all members are receiving Social Security Act title IV benefits or SSI are ''categorically eligible;'' under 7 CFR 273.2(j)(2) their incomes do not have to be below the income limits.

As provided in Section 5(c)(1) of the Act, the net and gross income limits applicable to food stamp eligibility are derived from the Federal income poverty guidelines established under Section 673(2) of the Community Services Block Grant Act, 42 U.S.C. 9902(2). The net income limit is 100 percent of the poverty line. The gross income limit is 130 percent of the poverty line. The guidelines are updated annually. Based on that update, the Food Stamp Program's income eligibility standards are updated each October 1. Instructions for implementation of the required adjustments for October 1, 1996, were issued by the Deputy Administrator of the Food and Consumer Service in an August 2, 1996, memorandum to all State Food Stamp Program Directors. The revised income eligibility standards for the 48 States (including the District of Columbia, Guam and the Virgin Islands), Alaska and Hawaii are as follows:

Food Stamp Program; October 1, 1996–September 30, 1997

NET MONTHLY INCOME ELIGIBILITY STANDARDS

[100 Percent of Poverty Level]

Household size	48 States	Alaska	Hawaii
1	$ 645	$ 805	$ 743
2	864	1,079	994
3	1,082	1,352	1,245
4	1,300	1,625	1,495
5	1,519	1,899	1,746
6	1,737	2,172	1,997
7	1,955	2,445	2,248
8	2,174	2,719	2,499

NET MONTHLY INCOME ELIGIBILITY STANDARDS—Continued

[100 Percent of Poverty Level]

Household size	48 States	Alaska	Hawaii
Each add. member	+219	+274	+251

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS

[130 Percent of Poverty Level]

Household size	48 States	Alaska	Hawaii
1	$ 839	$1,047	$ 966
2	1,123	1,402	1,292
3	1,407	1,758	1,618
4	1,690	2,113	1,944
5	1,974	2,468	2,270
6	2,258	2,824	2,596
7	2,542	3,179	2,922
8	2,826	3,534	3,248
Each add. member	+284	+356	+327

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS FOR HOUSEHOLDS WHERE ELDERLY DISABLED ARE A SEPARATE HOUSEHOLD

[165 Percent of Poverty Level]

Household size	48 States	Alaska	Hawaii
1	$1,065	$1,329	$1,226
2	1,425	1,780	1,639
3	1,785	2,231	2,053
4	2,145	2,682	2,467
5	2,506	3,133	2,881
6	2,866	3,584	3,295
7	3,226	4,035	3,709
8	3,586	4,486	4,123
Each add. member	+361	+451	+414

Thrifty Food Plan (TFP) and Allotments

As provided for in Section 3(o) of the Act, the TFP is a plan for the consumption of foods of different types (food groups) that a household might use to provide nutritious meals and snacks for household members. The plan reflects a diet required to feed a family of four persons consisting of a man and a woman aged 20 to 50, a child 6 to 8 and a child 9 to 11. The cost of the TFP is adjusted monthly to reflect changes in the costs of the food groups.

The TFP is also the basis for establishing food stamp allotments. ''Allotment'' is defined in Section 3(a) of the Act as ''the total value of coupons a household is authorized to receive during each month.'' Food stamp allotments are adjusted periodically to reflect the changes in food cost levels indicated in the changing amounts of the TFP. Prior to the amendment of Section 3(o) of the Act by Section 804 of Pub. L. 104–193, allotment amounts were established on each October 1 at 103% of the cost of the TFP in the previous June. Amended Section 3(o)(4) of the Act now provides that the TFP will be adjusted each October 1 to reflect the exact cost, or 100%, of the TFP for the previous June, rounding the results to the nearest lower dollar increment for each household size, except that on October 1, 1996, the TFP was not to have been reduced below the amounts in effect on September 30, 1996.

To obtain the maximum food stamp allotment for each household size for the period October 1, 1996 to September 30, 1997, June 1996 TFP costs for the above described four-person household were divided by four, multiplied by the appropriate household size and economy of scale factor, in accordance with Section 3(o)(1) of the Act and the final result was rounded down to the nearest dollar. The maximum benefit, or allotment, is paid to households with no net income. For a household with income, the household's allotment is determined by reducing the maximum allotment for the household's size by 30 percent of the individual household's net income in accordance with Section 8(a) of the Act, 7 U.S.C. 2017(a). The following tables show the current allotments for the 48 States and the District of Columbia.

Food Stamp Program; October 1, 1996–September 30, 1997

MAXIMUM FOOD STAMP ALLOTMENTS

Household size	48 States and the District of Columbia
1	$120
2	220
3	315
4	400
5	475
6	570
7	630
8	720
Each additional person	+90

Minimum Benefit

Prior to Public Law 104–193, Section 8(a) of the Act, 7 U.S.C. 2017(a), provided that the minimum benefit for one- and two-person households would be $10 per month and would be adjusted to the nearest $5 each October 1 based on the percentage change in the TFP for the twelve-month period ending

the preceding June. Section 826 of Public Law 104–193 amended Section 8(a) effective October 1, 1996 by removing the annual adjustment provision, thus freezing the minimum benefit at $10.

Standard Deduction

Section 5(e)(1) of the Act, 7 U.S.C. 2014(e)(1), provides that, in computing household income, households shall be allowed a standard deduction. Prior to August 22, 1996, Section 5(e) also required that the standard deduction be adjusted periodically. Section 809 of Public Law 104–193 amended Section 5(e)(1) to eliminate the periodic adjustment, freezing the standard deduction for each household in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands of the United States at the 1994 level, $134, $229, $189, $269, and $118, respectively.

Shelter Deduction

Prior to August 22, 1996, Section 5(e) of the Act also mandated increases in the shelter deduction limitation effective July 1, 1994, and October 1, 1995, and an elimination of the limitation effective January 1, 1997. Section 809 of Public Law 104–193 amended Section 5(e)(7) of the Act to provide that a household shall be entitled to an excess shelter expense deduction to the extent that the monthly amount expended by a household for shelter exceeds an amount equal to 50 percent of monthly household income after all other applicable deductions have been allowed. However, in the case of a household that does not contain an elderly or disabled individual, in the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands of the United States, the excess shelter deduction shall not exceed:

(i) for the period beginning on the date of enactment of the law and ending on December 31, 1996, $247, $429, $353, $300, and $182 per month, respectively;

(ii) for the period beginning on January 1, 1997, and ending September 30, 1998, $250, $434, $357, $304, and $184 per month, respectively;

(iii) for fiscal years 1999 and 2000, $275, $478, $393, $334, and $203 per month, respectively;

(iv) for fiscal year 2001 and each subsequent fiscal year, $300, $521, $429, $364, and $221 per month, respectively.

Homeless Shelter Allowance

Prior to August 22, 1996, Section 11(e)(3)(E) of the Act, 7 U.S.C. 2020(e)(3)(E), required the Secretary of Agriculture to prescribe rules requiring State agencies to develop standard estimates of the shelter expenses that could reasonably be expected to be incurred by households in which all members were homeless but which are not receiving free shelter throughout the month. In recognition of the difficulty State agencies could face in gathering the necessary information to compute standard shelter estimates for their States, the Department offered a standard estimate which could be used by all State agencies in lieu of their own estimates.

Sections 809 and 835 of Pub. L. 104–193 required revisions in the above described procedures. Section 809 amended Section 5(e)(5) of the Act, 7 U.S.C. 2014(e)(5), to allow State agencies the option to develop a standard, stand-alone homeless shelter allowance, which shall not exceed $143 per month and is not to be adjusted annually, for such expenses as may reasonably be expected to be incurred by households in which all members are homeless individuals but are not receiving free shelter throughout the month. State agencies that develop the allowance may use it in determining eligibility and allotments for the households. State agencies may make a household with extremely low shelter costs ineligible for the allowance. In essence, these rules match those in existence at 7 CFR 273.9(d)(5), with the exception of establishing a maximum allowance of $143. Therefore, no additional rulemaking was required prior to the implementation of this provision of Pub. L. 104–193. Section 835 of Pub. L. 104–193 repealed Section 11(e)(3)(E) of the Act.

Dated: April 4, 1997.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 97–9830 Filed 4–15–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice: Availability of appealable decisions; legal notice for availability for comment of decisions that may be appealable under 36 CFR part 215.

SUMMARY: Responsible Officials in the Southwestern Region will publish notice of availability for comment and notice of decisions that may be subject to administrative appeal under 36 CFR part 215. These notices will be published in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 215.5 and 215.9, such notice shall constitute legal evidence that the agency has given timely and constructive notice for comment and notice of decisions that may be subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purpose of publishing legal notices for comment and decisions that may be subject to appeal under 36 CFR part 215 shall begin April 16, 1997 and continue until further notice.

FOR FURTHER INFORMATION CONTACT: Pat Jackson, Regional Appeals Coordinator, Southwestern Region, 517 Gold Avenue SW., Albuquerque, NM 87102, 505–842–3305.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Southwestern Region will give legal notice of decisions that may be subject to appeal under 36 CFR part 215 in the following newspaper which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice for comment and for decisions that may be subject to administrative appeal. As provided in 36 CFR part 215.5, the timeframe for appeal shall be based on the date of publication of a notice for decision in the primary newspaper.

Notice by Regional Forester of Availability for Comment and Decisions Affecting New Mexico Forests

Albuquereque Journal, published daily in Albuquerque, Bernalillo County, New Mexico, for comment and decisions affecting National Forest System lands in the State of New Mexico and for any decisions of Region-wide impact.

Notice by Regional Forester of Availability for Comment and Decisions Affecting Arizona Forests

The Arizona Republic published daily in Phoenix, Maricopa County, Arizona, for comment and decisions affecting National Forest System lands in the State of Arizona and for any decisions of Region-wide impact

Notice by Regional forester of Availability for Comment and Decisions Affecting National Grasslands in New Mexico, Oklahoma, and Texas

Kiowa National Grassland in Colfax, Harding, Mora and Union Counties, New Mexico: Union County Leader, published weekly on Wednesday in Clayton, Union County, New Mexico

Rita Blanca National Grassland in Cimarron County, Oklahoma: Boise City News, published weekly on Wednesday in Boise City, Cimarron County, Oklahoma.

Rita Blanca National Grassland in Dallam County, Texas: The Dalhart Texan, published semi-weekly on Tuesday and Saturday in Dalhart, Dallam County, Texas.

Black Kettle National Grassland in Roger Mills County, Oklahoma: Cheyenne Star, published weekly on Thursday in Cheyenne, Roger Mills County, Oklahoma.

Black Kettle National Grassland in Hemphill County, Texas: The Canadian Record, published weekly on Thursday in Canadian, Hemphill County, Texas.

McClellan Creek National Grassland in Gray County, Texas: The Pampa News, published semi-weekly on Friday and Sunday in Pampa, Gray County, Texas.

Arizona National Forests

Apache Sitgreaves National Forests

Notice by Forest Supervisor of Availability for Comment and Decisions

Alpine District: The White Mountain Independent, published Tuesday and Friday semi-weekly in Show Low and Navajo County, Arizona.

Chevelon District: The White Mountain Independent, published Tuesday and Friday semi-weekly in Show Low and Navajo County, Arizona.

Clifton District: Cooper Era, published Wednesday weekly in Clifton, Greenlee County, Arizona.

Heber District: The White Mountain Independent, published Tuesday and Friday semi-weekly in Show Low and Navajo County, Arizona.

Lakeside District: The White Mountain Independent, published Tuesday and Friday semi-weekly in Show Low and Navajo County, Arizona.

Springerville District: The White Mountain Independent, published Tuesday and Friday semi-weekly in Show Low and Navajo County, Arizona.

Coconino National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions

Arizona Daily Sun, published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions

Beaver Creek Disrtrict: Arizona Daily Sun, published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

Blue Ridge District: Arizona Daily Sun, published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

Peaks District: Arizona Daily Sun, published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

Long Valley District: Arizona Daily Sun, published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

Mormon Lake District: Arizona Daily Sun, published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

Sedona District: Red Rock News, published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

Coronado National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions

The Arizona Daily Star, published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions

Douglas District: Arizona Daily Dispatch, published daily Tuesday-Friday, in Flagstaff, Coconino County, Arizona.

Nogales District: Nogales International, published daily Tuesday-Friday, in Flagstaff, Coconino County, Arizona.

Sierra Vista District: Sierra Vista Herald, published daily Sunday-Friday, in Sierra Vista, Cochise County, Arizona.

Safford District: Eastern Arizona Courier, published weekly on daily Wednesday, in Safford, Graham County, Arizona.

Santa Catalina District: The Arizona Daily Star, published daily Monday-Sunday, in Tucson, Pima County, Arizona.

Kaibab National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions

Arizona Daily Sun, published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions

Chalendar District: Arizona Daily Sun, published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

North Kaibab District: Arizona Daily Sun, published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

Tusayan District: Arizona Daily Sun, published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

Williams District: Arizona Daily Sun, published daily Monday-Sunday, in Flagstaff, Coconino County, Arizona.

Prescott National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions

Prescott Courier, published daily in Prescott, Yavapai County, Arizona.

Notice by Forest Supervisor of Availability for Comment and Decisions

Bradshaw District: Prescott Courier, published daily in Prescott, Yavapai County, Arizona.

Chino Valley District: Prescott Courier, published daily in Prescott, Yavapai County, Arizona.

Verde District: Prescott Courier, published daily in Prescott, Yavapai County, Arizona.

Tonto National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions

Mesa Tribune, published daily in Mesa, Maricopa County, Arizona.

Newspapers Providing Additional Notice by Tonto Forest Supervisor of Availability for Comment and Decisions

Foothills Sentinel, published weekly on Wednesday in Cave Creek, Maricopa County, Arizona.

Arizona Silver Belt, published weekly on Thursday in Globe, Gila County, Arizona.

Payson Roundup, published weekly on Friday in Payson, Gila County, Arizona.

Notice by District Ranger of Availability for Comment and Decisions

Cave Creek District: Foothills Sentinel, published weekly on Wednesday in Cave Creek, Maricopa County, Arizona.

Globe District: Arizona Silver Belt, published weekly on Thursday in Globe, Gila County, Arizona.

Mesa District: Mesa Tribune, published daily in Mesa, Maricopa County, Arizona.

Payson District: Payson Roundup, published weekly on Friday in Payson, Gila County, Arizona.

Pleasant Valley District: Payson Roundup, published weekly on Friday in Payson, Gila County, Arizona.

Tonto Basin District: Payson Roundup, published weekly on Friday in Payson, Gila County, Arizona.

New Mexico National Forests

Carson National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions

The Taos News, published weekly on Thursday in Taos, Taos County, New Mexico.

Notice by District Ranger of Availability for Comment and Decisions

Canjilon District: Rio Grande Sun, published Wednesday in Espanola, Rio Arriba County, New Mexico.
El Rito District: Rio Grande Sun, published Wednesday in Espanola, Rio Arriba County, New Mexico.
Jicarilla District: Farmington Daily Times, published daily in Farmington, San Juan County, New Mexico.
Camino Real District: Taos News, published weekly on Thursday in Taos, Taos County, New Mexico.
Tres Piedras District: Taos News, published weekly on Thursday in Taos, Taos County, New Mexico.
Questa District: Taos News, published weekly on Thursday in Taos, Taos County, New Mexico.

Cibola National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions Affecting Lands in New Mexico, Except the National Grasslands

Albuquerque Journal, published daily in Albuquerque, Bernalillo County, New Mexico.

Notice by Forest Supervisor of Availability for Comment and Decisions Affecting National Grasslands in New Mexico, Texas and Oklahoma

Kiowa National Grassland in Colfax, Harding, Mora and Union Counties, New Mexico: Union County Leader, published weekly on Wednesday in Clayton, Union County, New Mexico.
Rita Blanca National Grassland in Cimarron County, Oklahoma: Boise City News, published weekly on Wednesday in Boise City, Cimarron County, Oklahoma.
Rita Blanca National Grassland in Dallam County, Texas: Dalhart Texan, published semi-weekly on Tuesday and Saturday in Dalhart, Dallam County, Texas.
Black Kettle National Grassland, Roger Mills County, Oklahoma: Cheyenne Star, published weekly on Thursday in Cheyenne, Roger Mills County, Oklahoma.
Black Kettle National Grassland, Hemphill County, Texas: The Canadian Record, published weekly on Thursday in Canadian, Hemphill County, Texas.
McClellan Creek National Grassland, Gray County, Texas: The Pampa News, published semi-weekly on Friday and Sunday in Pampa, Gray County, Texas.

Notice by District Ranger of Availability for Comment and Decisions

Mt. Taylor District: Cibola County Beacon, published semi-weekly on Wednesday and Friday in Grants, Cibola County, New Mexico.

Newspapers Providing Additional Notice of Availability for Comment and Decisions for the Mt. Taylor District Ranger

Gallup Independent, published daily Monday through Saturday in Gallup, McKinley County, New Mexico.

Magdalena District: Defensor-Chieftain, published semi-weekly Wednesday and Saturday in Socorro, Socorro County, New Mexico.

Mountainair District: Estancia Valley Citizen, published weekly on Friday in Estancia, Torrance County, New Mexico.

Newspapers Providing Additional Notice of Availability for Comment and Decisions for the Mountainair District Ranger

Valencia County News, published semi-weekly on Wednesday and Saturday in Belen, Valencia County, New Mexico.

Sandia District: Albuquerque Journal, published daily in Albuquerque, Bernalillo County, New Mexico.

Kiowa National Grassland: Union County Leader, published weekly on Wednesday in Clayton, Union County, New Mexico.

Rita Blanca National Grassland: Boise City News, published weekly on Wednesday in Boise City, Cimarron County, Oklahoma.

Newspapers Providing Additional Notice of Availability for Comment and Decisions for the Rita Blanca National Grassland

Dalhart Texan, published semi-weekly on Tuesday and Saturday in Dalhart, Dallam County, Texas.

Black Kettle National Grassland: Cheyenne Star, published weekly on Thursday in Cheyenne, Roger Mills County, Oklahoma.

Black Kettle National Grassland: The Canadian Record, published weekly on Thursday in Canadian, Hemphill County, Texas.

McClellan Creek National Grassland: The Pampa News, published semi-weekly on Friday and Sunday in Pampa, Gray County, Texas

Newspapers providing additional Notice of Availability for Comment and Decisions for the McClellan Creek National Grassland

Amarillo Globe News, published semi-weekly on Monday and Saturday in Amarillo, Potter and Randall Counties, Texas.

Gila National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions

Silver City Daily Press, published Monday-Saturday in Silver City, Grant County, New Mexico.

Notice by District Ranger of Availability for Comment and Decisions

Black Range District: The Herald, published in Truth or Consequences Weekly on Thursday, Sierra County, New Mexico.
Quemado District: Silver City Daily Press, published Monday-Saturday in Silver City, Grant County, New Mexico.
Reserve District: Silver City Daily Press, published Monday-Saturday in Silver City, Grant County, New Mexico.
Glenwood District: Silver City Daily Press, published Monday-Saturday in Silver City, Grant County, New Mexico.
Mimbres District: Silver City Daily Press, published Monday-Saturday in Silver City, Grant County, New Mexico.
Silver City District: Silver City Daily Press, published Monday-Saturday in Silver City, Grant County, New Mexico.
Wilderness District: Silver City Daily Press, published Monday-Saturday in Silver City, Grant County, New Mexico.

Lincoln National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions

Alamogordo Daily News, published Sunday-Monday in Alamogordo, Otero County, New Mexico.

Notice by District Ranger of Availability for Comment and Decisions

Sacramento District: Alamogordo Daily News, published Sunday-Monday in Alamogordo, Otero County, New Mexico.
Guadalupe District: Carlsbad Current Argus, published daily except Saturday, in Carlsbad, Eddy County, New Mexico.
Smokey Bear District: Ruidoso News, published weekly Monday and Thursday in Ruidoso, Lincoln County, New Mexico.

Santa Fe National Forest

Notice by Forest Supervisor of Availability for Comment and Decisions

Albuquerque Journal, published daily in Albuquerque, Bernalillo County, New Mexico.

Notice by District Ranger of Availability for Comment and Decisions

Coyote District: Albuquerque Journal, published daily in Albuquerque, Bernalillo County, New Mexico.

Cuba District: Albuquerque Journal, published daily in Albuquerque, Bernalillo County, New Mexico.

Espanola District: Albuquerque Journal, published daily in Albuquerque, Bernalillo County, New Mexico.

Jemez District: Albuquerque Journal, published daily in Albuquerque, Bernalillo County, New Mexico.

Pecos-Las Vegas District: Albuquerque Journal, published daily in Albuquerque, Bernalillo County, New Mexico.

Dated: September 3, 1997.

John R. Kirkpatrick,

Deputy Regional Forester.

[FR Doc. 97–9709 Filed 4–15–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Province Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The California Coast Province Advisory Committee (PAC) will meet for a field trip to the Fork Fire area of the Upper Lake Ranger District, Mendocino National Forest, on May 7, 1997. The field trip will begin at 10:30 a.m. at the Upper Lake Ranger District, 10025 Elk Mtn. Road, Upper Lake, CA, and conclude at 4 p.m. The PAC will also meet from 8:30 a.m. to 5 p.m. on May 8, 1997, at the Aurora RV Park meeting room, 2985 Lakeshore Blvd., Nice, CA. Agenda items to be covered include: (1) Discussion of Fork Fire field trip and PAC recommendations; (2) Summary of April 3, 1997, Interagency Advisory Committee presentation; (3) Report and recommendations from Public/Private Subcommittee; (4) Report and recommendations from Monitoring Subcommittee; (5) Report and recommendations from Work on the Ground Subcommittee; (6) Report and recommendations from the PAC/SCERT coordinating committee; (7) Agency updates; and (8) Open public forum. All California Coast Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, USDA, Forest Supervisor, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (916) 934–3316 or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA, 95988, (916) 934–3316.

Dated: April 8, 1997.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 97–9722 Filed 4–15–97; 8:45 am]

BILLING CODE 3410–FK–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: National Employers Survey-III.

Form Number(s): Automated survey instrument.

Agency Approval Number: 0607–0787.

Type of Request: Reinstatement, with change, of a previously approved collection.

Burden: 3,250 hours.

Number of Respondents: 6,500.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Census Bureau plans to conduct the National Employers Survey (NES)–III. This survey is an extension and expansion of two previous NES surveys that were conducted in 1994 and 1996. As with the previous surveys, the NES–III will be conducted on a reimbursable basis for the National Center on the Employment Quality of the Workforce (EQW) administered through the Institute for Research in Higher Education of the University of Pennsylvania. The EQW is a group of professors, social scientists, and researchers from universities around the country studying the workplace in America. The EQW will incorporate the results of this survey into a larger five-year examination of the American workplace and will coordinate their efforts with similar studies and groups in other countries and with the World Bank.

The NES-III will provide unique information on employers' hiring and human resources practices and policies. In addition to adding to the base of information from the previous NES surveys, this survey will provide several new and important data products, such as hiring and workforce characteristics, expanded analysis and estimation of return on human and physical capital, new data on partnerships between business and schools, measurements of technological change, and an employee survey.

This project is designed to provide planners and policymakers, in government and the private sector, with sophisticated information on how our workforce compares and competes with other countries in South America and the Far East.

Affected Public: Businesses or other for-profit.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Sections 8 and 9.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: April 10, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–9718 Filed 4–15–97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 970310048–7048–01]

RIN 0610–xx03

Wisconsin Steel Site—Proposed Settlement

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Notice of proposed settlement

SUMMARY: The Economic Development Administration has agreed to a settlement with Navistar International Transportation Corporation (Navistar) regarding the Wisconsin Steel Works, located in Chicago, Illinois (the Site), pursuant to Section 122 (i) of the Comprehensive Environmental

Response, Compensation and Liability Act (42 U.S.C. 9601 *et seq.*) (CERCLA).

DATES: This notice is effective on April 16, 1997. Submit comments by May 16, 1997.

FOR FURTHER INFORMATION CONTACT: Send comments to Ken Kukovich, Director, Liquidation Division, Economic Development Administration, Room 7840, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4965, fax number (202) 482–2217. Copies of the proposed settlement agreement, Consent Order, and all attachments, can be requested at the same address and telephone numbers above. Electronically the information on the proposed settlement agreement and the Consent Order (without the attachments) is available via the Internet on EDA's Home Page at http://www.doc.gov/agencies/eda/index.html (under Regulations and Notices).

SUPPLEMENTARY INFORMATION:

Background

Between 1876 and 1980 various portions of the former Wisconsin Steel Works, located in Chicago, Illinois (the Site) functioned as a fully-integrated steel mill. EDA guaranteed a loan of $100 million under its Special Steel Loan Guaranty Program in 1979. After the Wisconsin Steel Company filed for protection under the bankruptcy laws in 1980, EDA honored its guaranty. EDA and the International Harvester Corporation, the predecessor to Navistar, a former owner of the Site and also a guarantor of the loan, thereafter foreclosed upon the mortgages securing the loan. Title to the Site is currently held by American National Bank as trustee for the Wisconsin Steel Land Trust an Illinois land trust. EDA is the 90 percent beneficiary of the Trust and Navistar is the 10 percent beneficiary.

No steel-making operations have been conducted on the Site since 1980. In 1984, EDA, as directing beneficiary, directed the demolition of the majority of above-ground structures. The demolition was conducted by Cuyahoga Wrecking Company and, after Cuyahoga filed for protection under the bankruptcy laws, demolition was completed by the National Wrecking Company.

EDA undertook a preliminary assessment and a site investigation of the Site. EDA also had on-going discussions with the Illinois Environmental Protecting Agency (IEPA), and the U.S. Environmental Protection Agency (USEPA), on how best to address the environmental conditions found at the Site. In November 1990, IEPA formally notified EDA that enforcement by the state would be suspended and the matter deferred to USEPA for cleanup under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 *et seq.*) (''CERCLA'').

In April 1991, EDA directed the U.S. Army Corps of Engineers (the Corps) to investigate and remediate the Site on EDA's behalf. The Corps conducted two Rapid Response removals at the Site to secure it and make it safe for investigation, the first in 1992 and the second in 1993. The Corps completed the Phase I Remedial Investigation in the Spring of 1994.

Proposed Settlement

EDA has agreed to a settlement with Navistar relating to the Site. EDA is publishing this Notice of Proposed Settlement pursuant to Section 122(i) of CERCLA. EDA may withdraw from or modify the proposed settlement should public comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

In brief, the proposed settlement provides that EDA will transfer its 90 percent beneficial ownership under an Illinois land trust in the Site to Navistar at a closing (the Closing) which will occur after the following three events have occurred:

(1) An Illinois state court judge shall have approved an Administrative Order by Consent between Navistar and the State of Illinois.

(2) EDA shall have obtained written approval of this Agreement from the U. S. Department of Justice.

(3) EDA shall have informed Navistar, in writing, of EDA's decision to finalize this Agreement after EDA's consideration of all comments received in response to publication of this Agreement in the **Federal Register**.

The proposed settlement further provides that Navistar shall pay $10,950,000 to EDA at the closing. Of this sum, $5,000,000 is attributed to EDA's environmental claims against Navistar, under various state and Federal environmental statutes and the common law. The remaining $5,950,000 is attributed to EDA's non-environmental claims against Navistar, including claims arising under a guaranty between EDA and Navistar, and real estate taxes paid by EDA. In addition, EDA shall be entitled to the first $1,244,000 of net proceeds received from the sale of the real estate of the Site after remediation is completed, and shall share in the net proceeds of any further sales on a 50–50 basis with Navistar.

Navistar covenants not to sue the United States, including EDA, for any of its claims in connection with the Site, as defined therein. The United States, including EDA, covenants not to sue Navistar for its environmental claims and non-environmental claims as defined therein. Navistar also indemnifies the United States, including EDA, from any and all claims asserted by non-parties to the settlement relating to the environmental conditions of the Site.

As a further condition of the settlement, Navistar and the State of Illinois have negotiated a Consent Order under the Illinois pre-notice site cleanup program, which has been entered by the circuit court for Cook County, Illinois, on December 30, 1996, in the matter: *State of Illinois* v. *Navistar International Transportation Corporation, Inc.*, Case No. 96CH0014146 (Circuit Court, Cook County, Illinois). Such Consent Order provides, *inter alia*, that:

(1) Navistar shall conduct all phases of environmental remediation at the Site, including completion of the Remedial Investigation, Feasibility Study, Remedial Design, Remedial Action, and Operation and Maintenance;

(2) Navistar agrees to submit all scopes of work and work plans for the work outlined above, as well as Navistar's proposed selection of a remedial remedy, to the Illinois Environmental Protection Agency for review and approval;

(3) Navistar waives its right to withdraw from the program; and

(4) The Consent Order is enforceable by IEPA.

Dated: April 10, 1997.

Phillip A. Singerman,

Assistant Secretary for Economic Development.

[FR Doc. 97–9795 Filed 4–15–97; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 85–6A018.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to U.S. Shippers Association (''USSA'') on June 3, 1986. Notice of issuance of the

Certificate was published in the **Federal Register** on June 9, 1986 (51 FR 20873).

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. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1996).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 85–00018, was issued to USSA on June 3, 1986 (51 FR 20873, June 9, 1986), and previously amended on January 16, 1990 (55 FR 2543, January 25, 1990); November 13, 1990 (55 FR 48664, November 21, 1990); September 22, 1993 (58 FR 51061, September 30, 1993); and on June 28, 1994 (59 FR 34411, July 5, 1994).

USSA's Export Trade Certificate of Review has been amended to add the following companies as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1) (1996)): NOVA Chemicals Inc., Monaca, PA (Controlling Entity: NOVA Corporation, Calgary, Alberta, Canada); Pecten Chemicals Inc., Houston, TX (Controlling Entity: Royal Dutch Petroleum Company, The Hague, The Netherlands); and Phillips Petroleum Company, Bartlesville, OK.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: April 10, 1997.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 97–9885 Filed 4–15–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040997C]

Endangered Species; Permits

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

ACTION: Receipt of applications for modification 6 to research/enhancement permit 848 (P507D) and modification 1 to research/enhancement permit 1011 (P211J).

SUMMARY: Notice is hereby given that the Washington Department of Fish and Wildlife in Olympia, WA (WDFW) and the Oregon Department of Fish and Wildlife in La Grande, OR (ODFW) have applied in due form for modifications to permits authorizing takes of threatened species for research/enhancement purposes.

DATES: Written comments or requests for a public hearing on either of these modification applications must be received on or before May 16, 1997.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Environmental and Technical Services Division, Portland.

SUPPLEMENTARY INFORMATION: WDFW and ODFW request modifications to permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Permit 848 (P507D) authorizes WDFW takes of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a supplementation hatchery program and scientific research/monitoring. For modification 6 to permit 848, WDFW requests takes of juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with scientific research designed to answer questions on fall chinook salmon production in the lower Tucannon River. ESA-listed fish are proposed to be captured, handled, and released; captured, marked with fin clips or tagged with passive integrated transponders, transported, and released; or captured and sacrificed for genetic analysis or pathologic studies. An indirect mortality of ESA-listed juvenile salmon associated with the research is requested. Also for modification 6, WDFW requests to return adult, ESA-listed, Snake River spring/summer chinook salmon carcasses from the supplementation program back to the Tucannon River for nutrient enrichment. Modification 6 is requested for the duration of the permit. Permit 848 expires on March 31, 1998.

Permit 1011 (P211J) authorizes ODFW takes of juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a captive broodstock program for Catherine Creek, upper Grande Ronde River, and Lostine River populations. For modification 1 to permit 1011, ODFW requests to collect a percentage of the returning adult, ESA-listed, naturally-produced fish from these watersheds in 1997 to begin a supplementation program. ODFW anticipates sufficient adult returns to these watersheds in 1997 to allow the collection of ESA-listed adults for hatchery broodstock. ODFW proposes to transport the collected adults to Lookingglass Hatchery where they will be spawned, the resulting eggs incubated, and the juveniles reared. ODFW believes that the collection of ESA-listed adults for hatchery supplementation will increase the probability of the persistence of the populations because of the survival advantage provided by the hatchery. Releases of fish from the supplementation program is not requested at this time. ODFW will request a modification to permit 1011 for authorization to release fish prior to any fish releases. The future request for a modification to the permit will include a detailed plan on proposed fish releases and a plan for the disposition of any excess hatchery fish. The collection of ESA-listed adults for broodstock is proposed for 1997 only. The incubation of eggs and the rearing of ESA-listed juveniles is requested for the duration of the permit. Permit 1011 expires on December 31, 2000.

Those individuals requesting a hearing on either of these permit modification requests should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant

Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summaries are those of the applicants and do not necessarily reflect the views of NMFS.

Dated: April 10, 1997.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc 97–9822 Filed 4–15–97; 8:45am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041097B]

Endangered Species; Permits

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

ACTION: Notice of receipt of application for a research permit (P45Z).

SUMMARY: Notice is hereby given that Jorgen E. Skjeveland of the U.S. Fish and Wildlife Service (P45Z) has applied in due form for a scientific research permit to take listed shortnose sturgeon.

DATES: Written comments or requests for a public hearing on this application must be received on or before May 16, 1997.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250).

Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

SUPPLEMENTARY INFORMATION: Jorgen E. Skjeveland, U.S. Fish and Wildlife Service (P45Z), requests a research permit under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The applicant requests a five year permit to take listed shortnose sturgeon to determine the status of the species in Maryland waters of the Chesapeake Bay with emphasis on the waters around the Aberdeen Proving Grounds (APG). The sturgeon will be tagged, measured, tissue sampled and released to collect range, migration and genetic information, and to identify dredged material disposal sites that will have minimal environmental impact to sturgeon species.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: April 10, 1997

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–9854 Filed 4–15–97; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission.

TIME AND DATE: Friday, April 25, 1997 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: April 14, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–9994 Filed 4–14–97; 3:04 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 97–12]

Section 36(b)(1) Arms Sale Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT:

Ms. J. Hurd, DSAA/COMPT/FPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–12, with attached transmittal, policy justification, and sensitivity of technology pages.

Dated: April 10, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

In reply refer to: I–04140/97.

April 8, 1997.

Honorable Newt Gingrich,

Speaker of the House of Representatives, Washington, D.C. 20515–6501.

Dear Mr. Speaker: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97–12, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $200 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame,

Lieutenant General, USA, Director.

Attachments

Same ltr to:

House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 97–12

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) *Prospective Purchaser:* Israel.

(ii) *Total Estimated Value:*

Major Defense Equipment* ..	$175 million.
Other	25 million.
Total	200 million.

*As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description of Articles or Services Offered:* Fifteen UH–60L BLACKHAWK helicopters, 30 GE turbine engines, four spare GE turbine engines with containers, external rescue hoist provisions, rotor brake system, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team (QAT), contractor engineering and technical support services and other related elements of logistics support.

(iv) *Military Department:* Army (YPR).

(v) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vi) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(vii) *Date Report Delivered to Congress:* April 8, 1997.

Policy Justification

Israel—UH–60L BLACKHAWK Helicopters

The Government of Israel has requested the purchase of 15 UH–60L BLACKHAWK helicopters, 30 GE turbine engines, four spare GE turbine engines with containers, external rescue hoist provisions, rotor brake system, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, U.S. Government Quality Assurance Team (QAT), contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $200 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Israel, which already has Blackhawk helicopters in its inventory, will have no difficulty absorbing the additional helicopters.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractors participating in the program will be United Technologies, Sikorsky Aircraft, Stratford, Connecticut and General Electric, Lynn, Massachusetts. There are no offset agreements proposed to be entered into in connection with this potential sale.

A United States Government Quality Assurance Team will be required in-country for a minimum of one week during the delivery and initial operation of the helicopters. A U.S. contractor field service representative will also be required in-country for approximately six months to support the new helicopters.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Annex Item No. vi

(vi) *Sensitivity of Technology:*

1. The UH–60L BLACKHAWK helicopter is Unclassified. The highest level of classified information required to be released for training, operation and maintenance of the BLACKHAWK is Confidential. The highest level which could be revealed through reverse engineering or testing of the end item is Confidential. This information includes Confidential reports and test data, as well as performance and capability data, classified Confidential/Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 97–9740 Filed 4–15–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Advanced Modeling and Simulation for Analyzing Combat Concepts in the 21st Century

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Advanced Modeling and Simulation for Analyzing Combat Concepts in the 21st Century will meet in open session on April 28–29, 1997 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Suite 175, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Mr. Ted Stump or Mr. Dave Bicksler at (703) 527–5410.

Dated: April 10, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–9737 Filed 4–15–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Innovative Support Structure, Phase II

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Innovative Support Structure, Phase II will meet in closed session on May 13, 1997 at Strategic Analysis, Inc., Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will participate in an advisory capacity to the Infrastructure Panel Chairman, Quadrennial Defense Review, and provide appropriate analysis and inputs to the Infrastructure Panel deliberations.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: April 10, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–9738 Filed 4–15–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Deep Attack Weapons Mix Study (DAWMS), Phase II

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Deep Attack Weapons Mix Study (DAWMS), Phase II will meet in closed session on April 24, 1997 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will develop an independent assessment of the analytic

tools and models employed in the DoD internal DAWMS effort. Specifically, the Task Force will (1) assess the analysis developed in part one of the study, (2) evaluate the soundness of the analytic approach proposed for part two, and (3) review the alternatives—developed in part two to ensure that they are balanced and representative.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: April 10, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–9739 Filed 4–15–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Exclusive, Partially Exclusive, or Nonexclusive Licenses

AGENCY: U.S. Army Soldier Systems Command.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following patents. Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

Issued Patent: 5,614,301.
Title: Chemical Protective Fabric.
Issue Date: 03/25/97.

Issued Patent: 5,603,117.
Title: Protective Helmet Assembly.
Issue Date: 02/18/97.

Issued Patent: 5,538,583.
Title: Method of Manufacturing a Laminated Textile Substrate for A Body Heating or Cooling Garment.
Issue Date: 07/23/96.

Issued Patent: 5,529,931.
Title: Time-Temperature Indicator for Establishing Lethality of High Temperature Food Processing.
Issue Date: 06/25/96.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of one of the listed patents, please contact either Mr. Vincent Ranucci, Patent Counsel, or Ms. Jessica M. Niro, Paralegal Specialist, by telephone at 508–233–5167, or by writing to the U.S. Army Soldier Systems Command, Office of Chief Counsel, Attn: Patents, Natick, Massachusetts 01760–5035.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–9793 Filed 4–15–97; 8:45 am]

BILLING CODE 3710–18–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Amend record systems.

SUMMARY: The Department of the Navy proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The alteration will be effective on May 16, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350092000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685096545 or DSN 325096545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on April 3, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A09130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: April 10, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05520095

SYSTEM NAME:

Navy Joint Adjudication and Clearance System (NJACS) *(February 22, 1993, 58 FR 10764).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Personnel Security Program Management Records System.'

SYSTEM LOCATION:

Delete entry and replace with 'Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5389.

System computer facility: Defense Investigative Service, Personnel Investigations Center, 911 Eldridge Landing Road, Linthicum, MD 21090092902.

Record documentation: Naval Criminal Investigative Service (NCIS), Washington Navy Yard, Building 111, Records Management Division, 901 M Street, SE, Washington, DC 20388–5380.

Decentralized segments: The security office of command to which the individual is assigned; Headquarters, Naval Security Group Command, 9800 Savage Road, Fort George G. Meade, MD 20755–6585; Office of Naval Intelligence, National Maritime Intelligence Center, ATTN: ONI-OCB3, 4251 Suitland Road, Washington, DC 20395095720; and, Headquarters, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 901 M Street, SE, Washington, DC 20388–5380.

Additionally, duplicate portions of records may be held by the Chief of Naval Personnel (Pers-81), Washington, DC 20370–5000, Office of Civilian Personnel Management, 800 N. Quincy Street, Arlington, VA 22203–1998; Naval Reserve Personnel Center, New Orleans, LA 70149097800; Headquarters, U.S. Marine Corps (Code MIF), 2 Navy Annex, Washington, DC 20380–0001; and, the security office at the local activity to which the individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All Department of the Navy military personnel and civilian employees and certain 'affiliated employees' whose duties require a DON security clearance or assignment to sensitive positions and aliens being processed for access to National Security information. Also included are DON adjudicative actions for all U.S. Coast Guard (USCG) military personnel whose duties require a USCG security clearance and those USCG

civilian employees having access to sensitive compartmented information only. Individuals adjudicated as a result of interservice and interagency support agreements. 'Affiliated employees' include contractors, consultants, nonappropriated fund employees, USO personnel and Red-Cross volunteers and staff.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Navy Joint Adjudicative and Clearance System (NJACS), the automated portion of this system, contains records that include an individual's name, Social Security Number, date and place of birth, citizenship status and the unit identification code (UIC) of the individual's assignment. Other data elements track the individual's status in the clearance adjudication process and records the final determination. Data files may also include duty-assignment designations and sensitivity levels, as well as specific access such as cryptographic information access or participation in the Personnel Reliability Program.

The documentation system includes information pertaining to the investigation, inquiry, or its adjudication by clearance authority to include: (1) chronology of the investigation, inquiry, and/or adjudication; (2) all recommendations regarding future status of subject; (3) decisions of security/loyalty review boards and Defense Office of Hearings and Appeals (DOHA); (4) final actions/determinations made regarding subject; and (5) security clearance, access authorizations, or security determination; index tracings that contain aliases and names of subject as reflected in Defense Clearance and Investigations Index (DCII) under system notice V5-02; security termination; notification of denial, suspension, or revocation of clearance or access; classified nondisclosure agreements created from 1987 to early 1992 and managed by DON CAF; and other documentation related to the adjudication decision.

At local command security offices information includes tickler copies of requests for clearance and access; records of access, reports of disqualifying/derogatory information; records of clearance of individual personnel as well as accreditation of personnel for access to classified information requiring special access authorizations; nondisclosure agreements, associated briefings and debriefing statements; and other related records supporting the Personnel Security Program.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 7311; 10 U.S.C. 5013; and E.O. 9397 (SSN); E.O. 10450, Security Requirements for Government Employees, in particular sections 2, 3, 4, 5, 6, 7, 8, 9, and 14; 12958, Classified National Security Information; 12968, Access to Classified Information; DoD Regulation 5200.2-R, Personnel Security Program Regulation; and OPNAV Instruction 5510.1H, Department of Navy Information and Personnel Security Program Regulation.'

PURPOSE(S):

Delete entry and replace with 'To provide a comprehensive system to manage information required to adjudicate and document the eligibility of DON military, civilian, and certain affiliated employees for access to classified information and assignment to sensitive positions. These records are also used to make determinations of suitability for promotion, employment, or assignments.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to the entry 'To the White House to obtain approval of the President of the United States regarding certain military personnel officer actions as provided for in DoD Instruction 1320.4.

To the Immigration and Naturalization Service for use in alien admission and naturalization inquiries for purposes of determining access to National Security information.'

* * * * *

STORAGE:

Delete entry and replace with 'Maintained on paper records in file folders, audio or audiovisual tapes, micro-imaging; CD-ROM; optical digital data disk; computers; magnetic tapes, disks, and drums; and computer output products.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Buildings employ alarms, security guards, and/or rooms are security controlled areas accessible only to authorized persons. DON CAF primary system paper and microfilm records are maintained in General Service Administration approved security containers and/or are stored in security controlled areas accessible only to authorized persons. Locally generated paper security records and/or copies of investigative reports are stored in a vault, safe, or steel file cabinet having at least a lock bar and approved three-position, dial type combination padlock, or in similarly protected containers or area. Electronically and optically stored records are maintained in 'fail-safe' system software with password protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared, and trained.

Files transferred to NCIS Records Management Division for storage are monitored and stored on open shelves and filing cabinets located in secure areas accessible to only authorized personnel.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Investigative/adjudicative records on non-DoD persons who are considered for affiliation with DoD are destroyed after 1 year if affiliation is not completed.

Investigative/DON CAF adjudicative records of a routine nature are retained in the active file until final adjudicative decision is made; then retired to NCIS Records Management Division and retained for 15 years after last action reflected in the file, except that files that contain significant derogatory information and/or resulted in adverse action(s) against the individual are destroyed after 25 years. Administrative papers not included in the case file are destroyed 1 year after closure or when no longer needed, whichever is later. Records determined to be of historical value, of wide spread value or Congressional interest are permanent. They will be retained for 25 years after the date of last action reflected in the file and then permanently transferred to the National Archives. Classified nondisclosure agreements if maintained separately from the individual's official personnel folder will be destroyed when 70 years old. If maintained in the individual's personnel folder, the disposition for the official personnel file applies. Locally stored case file paper or automated access records are destroyed when employee/service member is separated or departs the command, except for access determinations not recorded in official personnel folders. They are destroyed 2 years after the person departs the command. However, once affiliation is terminated, acquiring and adding material to the file is prohibited unless affiliation is renewed. The automated NJACS maintains records on persons as long as they continue to be employed by or affiliated with the DON. NJACS computer data records are purged two years after an individual terminates DON employment or affiliation. General and flag officer

data records are maintained until the individual's death. Destruction of records will be by shredding, burning, or pulping for paper records; burning for microform records and magnetic erasing for computerized records. Optical digital data and CD-ROM records are destroyed as required by NAVSO P0952390926, 'Remanence Security Guidebook' of September 1993.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Information in this system is generated by the cognizant security manager or other officials sponsoring the security clearance/sensitive assignment determination for the subject and from information provided by other sources, e.g., personnel security investigations, personal financial records, military service records and the subject.'

* * * * *

N05520095

SYSTEM NAME:

Personnel Security Program Management Records System.

SYSTEM LOCATION:

Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5389.

System computer facility: Defense Investigative Service (DIS), Personnel Investigations Center, 911 Eldridge Landing Road, Linthicum, MD 21090–2902.

Record documentation: Naval Criminal Investigative Service (NCIS), Washington Navy Yard, Building 111, Records Management Division, 901 M Street, SE, Washington, DC 20388–5380.

Decentralized segments: The security office of command to which the individual is assigned; Headquarters, Naval Security Group Command, 9800 Savage Road, Fort George G. Meade, MD 20755–6585; Office of Naval Intelligence, National Maritime Intelligence Center, ATTN: ONI-OCB3, 4251 Suitland Road, Washington, DC 20395–5720; and, Headquarters, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 901 M Street, SE, Washington, DC 20388–5380.

Additionally, duplicate portions of records may be held by the Chief of Naval Personnel (Pers-81), Washington, DC 20370–5000, Office of Civilian Personnel Management, 800 N. Quincy Street, Arlington, VA 22203–1998; Naval Reserve Personnel Center, New Orleans, LA 70149–7800; Headquarters, U.S. Marine Corps (Code MIF), 2 Navy Annex, Washington, DC 20380–0001; and, the security office at the local activity to which the individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department of the Navy military personnel and civilian employees and certain 'affiliated employees' whose duties require a DON security clearance or assignment to sensitive positions and aliens being processed for access to National Security information. Also included are DON adjudicative actions for all U.S. Coast Guard (USCG) military personnel whose duties require a USCG security clearance and those USCG civilian employees having access to sensitive compartmented information only. Individuals adjudicated as a result of interservice and interagency support agreements. 'Affiliated employees' include contractors, consultants, nonappropriated fund employees, USO personnel and Red-Cross volunteers and staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Navy Joint Adjudicative and Clearance System (NJACS), the automated portion of this system, contains records that include an individual's name, Social Security Number, date and place of birth, citizenship status and the unit identification code (UIC) of the individual's assignment. Other data elements track the individual's status in the clearance adjudication process and records the final determination. Data files may also include duty-assignment designations and sensitivity levels, as well as specific access such as cryptographic information access or participation in the Personnel Reliability Program.

The documentation system includes information pertaining to the investigation, inquiry, or its adjudication by clearance authority to include: (1) chronology of the investigation, inquiry, and/or adjudication; (2) all recommendations regarding future status of subject; (3) decisions of security/loyalty review boards and Defense Office of Hearings and Appeals (DOHA); (4) final actions/determinations made regarding subject; and (5) security clearance, access authorizations, or security determination; index tracings that contain aliases and names of subject as reflected in Defense Clearance and Investigations Index (DCII) under system notice V5-02; security termination; notification of denial, suspension, or revocation of clearance or access; classified nondisclosure agreements created from 1987 to early 1992 and managed by DON CAF; and other documentation related to the adjudication decision.

At local command security offices information includes tickler copies of requests for clearance and access; records of access, reports of disqualifying/derogatory information; records of clearance of individual personnel as well as accreditation of personnel for access to classified information requiring special access authorizations; nondisclosure agreements, associated briefings and debriefing statements; and other related records supporting the Personnel Security Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 7311; 10 U.S.C. 5013; and E.O. 9397 (SSN); E.O. 10450, Security Requirements for Government Employees, in particular sections 2, 3, 4, 5, 6, 7, 8, 9, and 14; 12958, Classified National Security Information; 12968, Access to Classified Information; DoD Regulation 5200.2-R, Personnel Security Program Regulation; and OPNAV Instruction 5510.1H, Department of Navy Information and Personnel Security Program Regulation.

PURPOSE(S):

To provide a comprehensive system to manage information required to adjudicate and document the eligibility of DON military, civilian, and certain affiliated employees for access to classified information and assignment to sensitive positions. These records are also used to make determinations of suitability for promotion, employment, or assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the White House to obtain approval of the President of the United States regarding certain military personnel officer actions as provided for in DoD Instruction 1320.4.

To the Immigration and Naturalization Service for use in alien admission and naturalization inquiries for purposes of determining access to National Security information.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's

compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper records in file folders, audio or audiovisual tapes, micro-imaging; CD-ROM; optical digital data disk; computers; magnetic tapes, disks, and drums; and computer output products.

RETRIEVABILITY:

By name, dossier number, Social Security Number, and date and place of birth.

SAFEGUARDS:

Buildings employ alarms, security guards, and/or rooms are security controlled areas accessible only to authorized persons. DON CAF primary system paper and microfilm records are maintained in General Service Administration approved security containers and/or are stored in security controlled areas accessible only to authorized persons. Locally generated paper security records and/or copies of investigative reports are stored in a vault, safe, or steel file cabinet having at least a lock bar and approved three-position, dial type combination padlock, or in similarly protected containers or area. Electronically and optically stored records are maintained in 'fail-safe' system software with password protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared, and trained.

Files transferred to NCIS Records Management Division for storage are monitored and stored on open shelves and filing cabinets located in secure areas accessible to only authorized personnel.

RETENTION AND DISPOSAL:

Investigative/adjudicative records on non-DoD persons who are considered for affiliation with DoD are destroyed after 1 year if affiliation is not completed.

Investigative/DON CAF adjudicative records of a routine nature are retained in the active file until final adjudicative decision is made; then retired to NCIS Records Management Division and retained for 15 years after last action reflected in the file, except that files that contain significant derogatory information and/or resulted in adverse action(s) against the individual are destroyed after 25 years. Administrative papers not included in the case file are destroyed 1 year after closure or when no longer needed, whichever is later. Records determined to be of historical value, of wide spread value or Congressional interest are permanent. They will be retained for 25 years after the date of last action reflected in the file and then permanently transferred to the National Archives. Classified nondisclosure agreements if maintained separately from the individual's official personnel folder will be destroyed when 70 years old. If maintained in the individual's personnel folder, the disposition for the official personnel file applies. Locally stored case file paper or automated access records are destroyed when employee/service member is separated or departs the command, except for access determinations not recorded in official personnel folders. They are destroyed 2 years after the person departs the command. However, once affiliation is terminated, acquiring and adding material to the file is prohibited unless affiliation is renewed. The automated NJACS maintains records on persons as long as they continue to be employed by or affiliated with the DON. NJACS computer data records are purged two years after an individual terminates DON employment or affiliation. General and flag officer data records are maintained until the individual's death. Destruction of records will be by shredding, burning, or pulping for paper records; burning for microform records and magnetic erasing for computerized records. Optical digital data and CD-ROM records are destroyed as required by NAVSO P0952390926, 'Remanence Security Guidebook' of September 1993.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5089.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5389 or to the Commanding Officer/Director of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individuals requesting personal records must properly establish their identity to the satisfaction of the Director, Navy Central Adjudication Facility or the Commanding Officer/Director of the local command, as appropriate. This can be accomplished by providing an unsworn declaration subscribed to be true that states 'I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct'. Individual should also provide their full name, aliases, date and place of birth, Social Security Number, or other information verifiable from the records in the written request.

Individuals should mark the letter and envelope containing the request 'Privacy Act Request'.

Proposed amendments to the information must be directed to the agency which conducted the investigation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Department of the Navy Central Adjudication Facility, Washington Navy Yard, Building 176, Room 308, Washington, DC 20388–5389 or the Commanding Officer/Director of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Individuals requesting personal records must properly establish their identity to the satisfaction of the Director, Navy Central Adjudication Facility or the Commanding Officer/Director of the local command, as appropriate. This can be accomplished by providing an unsworn declaration subscribed to be true that states 'I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct'. Individual should also provide their full name, aliases, date and place of birth, Social Security Number, or other information verifiable from the records in the written request.

Individuals should mark the letter and envelope containing the request 'Privacy Act Request'.

Proposed amendments to the information must be directed to the agency which conducted the investigation.

Attorneys or other persons acting on behalf of an individual must provide a written authorization from that individual for their representative to act on their behalf.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy

Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the cognizant security manager or other official sponsoring the security clearance/ determination for the subject and from information provided by other sources, e,g., personnel security investigations, personal financial records, military service records and the subject.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

[FR Doc. 97–9736 Filed 4–15–97; 8:45 am]

BILLING CODE 5000–40–F

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685© of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: May 15, 1997, from 1:00 p.m. to 4:30 p.m.

ADDRESSES: Wilbert J. Cohen Building, Room 5051 (Snow Room), 330 Independence Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3127, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to discuss issues related to the scope and limits of public entitlement, in light of new treatments and/or intervention options for young children.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 600 Independence Avenue, S.W., Room 3127, Switzer Building, Washington, DC 20202–2644, from the hours of 9:00 a.m. to 5:00 p.m., weekdays, except Federal Holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–9846 Filed 4–15–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Floodplain and Wetlands Involvement for the Weldon Spring Site

AGENCY: Office of Environmental Management, DOE.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to conduct a removal action at the Weldon Spring Site to remove radiologically and chemically contaminated sediment from an intermittent stream located in St. Charles County, Missouri. The proposed action will protect human health and the environment. The stream channel contains a number of small wetlands and a portion of the stream is located within the Missouri River 100-year floodplain. In accordance with 10 CFR Part 1022, DOE will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

DATES: Comments are due to the address below no later than May 1, 1997.

ADDRESSES: Comments should be addressed to Mr. Steve McCracken, U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, MO 63304. Comments may be faxed to (314) 447–0739.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION, CONTACT:

Mr. Steve McCracken, U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, MO 63304, (314) 441–8978.

FOR FURTHER INFORMATION CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The DOE is conducting response actions at its Weldon Spring Site under the direction of the DOE Office of Environmental Management. The Weldon Spring Site is located in St. Charles County, Missouri,

approximately 48 km (30 miles) west of St. Louis. As part of the overall cleanup of the Weldon Spring Site, the DOE is proposing to remove contaminated sediment from the Southeast Drainage to reduce the levels of environmental contamination and protect human health and the environment. The drainage is a natural 1.5 mi stream channel extending from the southeastern portion of the chemical plant area to the Missouri River, and is located within the State of Missouri Weldon Spring Conservation Area. Flows within the Southeast Drainage result from surface water runoff and groundwater discharge through four springs. Portions of the stream channel contain unvegetated riverine wetlands. The 100-year floodplain of the Missouri River extends into the lower portion of the Southeast Drainage approximately 1,200 feet.

Sediments within the Southeast Drainage became radioactively contaminated as a result of past activities of the U.S. Department of Energy (and its predecessors). The contaminants include uranium, radium, and thorium. Sediments would be excavated from selected locations within the drainage utilizing conventional excavation technologies and existing right-of-way routes. Excavation would be accomplished by the use of tracked equipment, which would operate within the channel as frequently as possible to minimize impacts to the environment. Occasional crossing of the channel by excavation equipment may be necessary. This method would be used to minimize clearing and grubbing of vegetation, and other potential impacts to the drainage. The estimated sediment excavation depth would be 2 to 4 ft below the surface. The anticipated volume of sediment removed would be approximately 2,000 yd^3. Excavated sediment would be stored temporarily at the chemical plant area before final disposal in the engineered disposal facility planned for the Weldon Spring site.

Water quality within the channel would be protected during excavation to the extent practicable by several measures. Administrative controls would be used to stop work during major storm events. When excavations would remain exposed overnight, erosion controls would be installed to prevent the transport of silt downstream by stormwater flows. Additionally, silt dams will be constructed within the drainage in areas where the existing right-of-way route deviates significantly from the defined channel. Restoration of excavated areas within the drainage would include grading to avoid steep or vertical slopes, and to minimize ponding and backfilling. Areas of exposed soil outside the stream channel would be mulched and reseeded with an annual grass to minimize erosion and allow the natural seedbank to reestablish vegetative cover.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), DOE will prepare a floodplain and wetlands assessment for this proposed DOE action. After DOE issues the assessment, a floodplain Statement of Findings will be published in the **Federal Register**.

Issued in Oak Ridge, Tennessee on April 7, 1997.

James L. Elmore,

Alternate NEPA Compliance Officer.

[FR Doc. 97–9805 Filed 4–15–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR97–8–000]

Central Oklahoma Oil and Gas Corporation; Notice of Petition for Rate Approval

April 10, 1997.

Take notice that on April 1, 1997, Central Oklahoma Oil and Gas Corporation (COOG), One Leadership Square, 211 North Robinson, Suite 1510, Oklahoma City, Oklahoma 73102, filed, pursuant to section 311(a)(2) of the Natural Gas Policy Act and section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as ''fair and equitable'' market-based rates for firm and interruptible storage services COOG proposes to provide from the Stuart Natural Gas Storage Facility located in Hughes County, Oklahoma. The rates for these storage services will be determined by arms length negotiations between COOG and individual shippers. COOG proposes to retain up to 2.5% of the injection/withdrawal volumes as an allowance for compressor fuel and losses for storage of natural gas.

COOG's petition states that, as owner of the Stuart Natural Gas Storage Facility, an existing storage facility currently rendering intrastate storage services, it is an intrastate pipeline within the meaning of section 2(16) of the NGPA. At current operating pressures, the Stuart Natural Gas Storage Facility has 8 Bcf of working gas capacity and can achieve a maximum daily withdrawal rate of 300,00 Mcf. The facility also includes ten storage wells, four compressor units and approximately forty miles of pipeline interconnecting the storage facility with Enogex Inc., an intrastate pipeline which furnishes interstate transportation services under Section 311(a)(2) of the NGPA. COOG, although currently provider of intrastate storage services, is a new entrant into the interstate storage market and has not previously offered Section 311 services. COOG proposes to charge market-based rates, subject to refund, effective upon the filing of this petition.

COOG avers that it has no market power in any relevant product or geographic market for storage services of the sort it proposes to furnish. COOG has submitted with its petition for rate approval a study which, according to COOG, supports this conclusion.

COOG has also submitted with its petition a Statement of Interstate Storage Service Terms and Conditions in compliance with 18 CFR Part 284. This Statement would govern COOG's provision of storage services under Section 311.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, COOG's proposed rates will be deemed to be fair and equitable. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for oral presentation of views, data and arguments.

Any person desiring to participate in this proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the Secretary of the Commission on or before April 25, 1997. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9761 Filed 4–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–197–001]

Chandeleur Pipe Line Company; Notice of Compliance Filing

April 10, 1997.

Take notice that on April 7, 1997, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the revised tariff sheets set forth in Appendix A to the filing, in compliance with the Commission's Order No. 587 and the Commission's March 4, 1997 Order in this docket, to become effective June 1, 1997.

On July 17, 1997, The Commission issued Order No. 587 in Docket No. RM96–1–000 which revised the Commission's regulations governing interstate natural gas pipelines to require such pipelines to follow certain standardized business practices issued by the Gas Industry Standards Board (GISB) and adopted by the Commission in said Order 18 CFR 284.10(b). On December 18, 1997, Chandeleur made its compliance filing submitting proforma tariff sheets to comply with Order No. 587. On March 4, 1997, the Commission issued an order in this docket in response to Chandeleur's filing. The order required Chandeleur to revise and submit its compliance filing for implementation of the approved standards by June 1, 1997.

Chandeleur states that it is serving copies of the filing to its customers, State Commissions and interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 28, 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. 97–9758 Filed 4–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–317–000]

Chandeleur Pipe Line Company; Notice of Application

April 10, 1997.

Take notice that on March 31, 1997, Chandeleur Pipe Line Company (Chandeleur), 1400 Woodloch Forest Drive, The Woodlands, Texas 77380 filed an application pursuant to Sections 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction, installation, and operation of two (2) compressors with a total of 10,380 HP, approximately 16 miles of 24-inch pipeline, five miles of 12-inch pipeline, and all related pipeline interconnection, metering, and control equipment (the ''System Expansion''). Chandeleur's application is on file with the Commission and open to public inspection.

Chandeleur states that one compressor will be located at Venice in Plaquemines Parish, Louisiana and the other compressor will be at Pascagoula in Jackson County, Mississippi. Chandeleur states that the proposed System Expansion will increase its system delivery capacity from 280 MMcf per day to 400 MMcf per day. Chandeleur further states that the System Expansion will relieve a bottleneck that is projected to develop in the interstate pipeline grid in Louisiana. In addition, Chandeleur states that the System Expansion will provide for more efficient use of its existing system and provide access, through the facilities proposed to be constructed by Destin Pipeline Company, L.L.C. (''Destin''), in Docket No. CP96–655–000, *et al.*, to six interstate pipelines.

In addition, Chandeleur is filing *pro forma* tariff sheets to implement a Transportation Cost Rate Adjustment (''TCRA''). If Chandeleur shippers do not choose to hold Destin capacity directly, Chandeleur proposes to recover the costs related to that capacity through the TCRA mechanism.

Chandeleur estimates the cost of the System Expansion at $45.6 million. Chandeleur states it proposes to roll the costs of the System Expansion into its existing open access transportation rates, because roll-in results in significant system-wide benefits. Chandeleur also proposes to mitigate the effect of rolled-in rates on its current shippers.

Chandeleur's application requests that the Commission issue a preliminary order on all non-environmental issues by November 1, 1997 and a final order approving construction of the system Expansion by April 1, 1998. Chandeleur proposes to place the System Expansion facilities in place by January 1, 1999.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 1, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not severe to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Chandeleur to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9763 Filed 4–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–176–001]

MIGC, Inc.; Notice of Compliance Filing

April 10, 1997.

Take notice that on April 4, 1997, MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain tariff sheets to be effective June 1, 1997.

MIGC states that the purpose of the filings is to (1) comply with the Commission's Order issued March 5, 1997, in Docket No. RP97–176–000; and (2) reflect changes in its tariff to conform to the standards adopted by the Gas Industry Standards Board and incorporated into the Federal Energy Regulatory Commission's (Commission) Regulations by Order Nos. 587 and 587–B.

MIGC states that copies of its filing are being mailed to its jurisdictional customers, all parties on the official service list in Docket No. RP97–176–000, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 28, 1997. Protest 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. 97–9760 Filed 4–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–298–001]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 10, 1997.

Take notice that on April 4, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, to become effective May 1, 1997:

Substitute First Revised sheet No. 262

Upon subsequent review of MRT's March 25, 1997 filing, MRT discovered an administrative oversight on one of the tariff sheets. Two fields to the proposed Transportation Service Agreement for Rate Schedule [FTS, SCT, ITS] were inadvertently omitted from the original filing and are necessary fields in the Service Agreement because Section 7.5(a) and 7.11(a) of the General Terms and Conditions reference ''the maximum pressure specified in the applicable Service Agreement''.

MRT states that a copy of this filing is being mailed to each of MRTs customers and to the state commissions of Arkansas, Illinois and Missouri.

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 18 CFR 385.211 of the Commissions Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commissions 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. 97–9756 Filed 4–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–53–005]

N E Hub Partners, L. P.; Notice of Amendment

April 10, 1997.

Take notice that on April 4, 1997, NE Hub Partners, L.P. (NE Hub) filed in Docket No. CP96–53–005, an amendment to its pending application filed in Docket No. CP96–53–000, requesting to omit the original request for authorization to construct and operate facilities necessary to dispose of brine by underground injection produced from the leaching of two gas storage caverns which NE Hub would construct and operate pursuant to Section 7 of the NGA, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, NE Hub seeks authorization to deliver the brine produced from leaching the two proposed caverns to a third-party salt company that would use the brine as feedstock for various commercial salt products rather than inject the brine underground as originally proposed.

Any person desiring to be heard or to make any protest with reference to said petition to amend should, on or before May 1, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9764 Filed 4–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–137–002]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

April 10, 1997.

Take notice that on April 7, 1997, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets set forth on Appendix A to the filing, in compliance with the Commission's Order No. 587–B and the Commission's February 13, 1997 Order in this docket, to become effective June 1, 1997.

On July 17, 1996, the Commission issued Order No. 587 in Docket No. RM96–1–000 which revised the Commission's regulations governing interstate natural gas pipelines to require such pipelines to follow certain standardized business practices issued by the Gas Industry Standards Board (GISB) and adopted by the Commission

in said Order. 18 CFR 284.10(b). The standards govern certain aspects of the following practices of natural gas pipelines: nominations, allocations, balancing, measurement, invoicing, and capacity release. The revisions shown on the Tariff Sheets filed herewith reflect Southern's compliance filing to conform with the GISB standards.

On December 2, 1996, Southern made its compliance filing submitting pro forma tariff sheets to comply with Order No. 587. On February 13, 1997, the Commission issued an order in this docket in response to Southern's filing. The order required Southern to revise and submit its compliance filing for implementation of the approved standards by June 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedures. All such protests must be filed on or before April 28, 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. 97–9759 Filed 4–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–001]

TransColorado Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 10, 1997.

Take notice that on April 4, 1997, TransColorado Gas Transmission Company (TransColorado) tendered for filing and acceptance the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective March 20, 1997:

Substitute Second Revised Sheet No. 103
Substitute First Revised Sheet No. 113
Substitute First Revised Sheet No. 262
Substitute Original Sheet No. 263

TransColorado states that it has revised certain aspects of its negotiated rate tariff provisions in compliance with the Commission's order issued March 20, 1997 at Docket No. RP97–255–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests 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. 97–9757 Filed 4–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–324–000]

Vermont Gas Systems, Inc.; Notice of Application To Amend Presidential Permit and Section 3 Authorization

April 10, 1997.

Take notice that on April 1, 1997, Vermont Gas Systems, Inc. (Vermont Gas), 85 Swift Street, South Burlington, Vermont 05401, filed in Docket No. CP97–324–000 an application to amend its Presidential Permit, originally issued in Docket No. CP65–141–000 on November 17, 1964, and amended by the Commission on September 23, 1983, and to amend its existing Section 3 authorization to import natural gas through facilities at the international border (Border Facilities) between the United States and Canada at a point near Highgate Springs, Vermont, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Vermont Gas requests the Commission to clarify and restate the facilities subject to its existing Presidential Permit to include only the pipeline that passes under the border and the border-station facilities consisting of approximately 44 feet of 8-inch O.D. pipeline which connects with the facilities of TransCanada Pipe Lines Limited at the International Boundary between the United States and Canada at a point near Highgate Springs, Vermont, and, by amendment beginning in August 1997, to authorize Vermont Gas to site, construct, connect, operate and maintain certain additional border-station facilities. These facilities will be constructed as part of Vermont Gas' future looping of its existing, non-jurisdictional pipeline facilities south of the international border.

In addition, Vermont Gas seeks to amend its existing Section 3 authorization to allow it to site, construct and operate the Border Facilities to import up to 52,000 Mcf per day of natural gas from Canada.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 1, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the application should be approved. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Vermont Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–9762 Filed 4–15–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2221–000, et al.]

Central Illinois Light Company, et al.; Electric Rate and Corporate Regulation Filings

April 7, 1997.

Take notice that the following filings have been made with the Commission:

1. Central Illinois Light Company

[Docket No. ER97–2221–000]

Take notice that Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, on March 24, 1997, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for four new customers.

CILCO requested an effective date of February 25, 1997.

Copies of the filing were served on all affected customers and the Illinois Commerce Commission.

Comment date: April 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Ohio Edison Company; Pennsylvania Power Co.

[Docket No. ER97–1557–000]

Take notice that on April 3, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, an amendment to the Service Agreements with The Cleveland Electric Illuminating Company and The Toledo Edison Company under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: April 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Public Service Company

[Docket No. ER97–2222–000]

Take notice that on March 24, 1997, Central Illinois Public Service Company (CIPS) submitted Service Agreements establishing PacifiCorp Power Marketing, Inc. and Southern Illinois Power Cooperative as new customers under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of February 23, 1997, for the two service agreements with new customers and the revised Index of Customers. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon the two customers and the Illinois Commerce Commission.

Comment date: April 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2223–000]

Take notice that Central Hudson Gas and Electric Corporation (CHG&E), on March 24, 1997, tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Aquilla Power Corporation. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Central Hudson Gas and Electric Corporation

[Docket No. ER97–2224–000]

Take notice that Central Hudson Gas and Electric Corporation (CHG&E), on March 24, 1997, tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and PECO Energy Company—Power Team. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: April 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER97–2225–000]

Take notice that PacifiCorp on March 24, 1997, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Service Agreements with MP Energy, Inc. and Otter Tail Power Company under, PacifiCorp's FERC Electric Tariff, Fourth Revised Volume No. 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: April 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Interstate Power Company

[Docket No. ER97–2226–000]

Take notice that on March 24, 1997, Interstate Power Company tendered for filing a Notice of Cancellation of its Municipal Electric Wholesale Agreement with the Village of Albany filed with FERC under Original Volume No. 1.

Comment date: April 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Hartford Power Sales, L.L.C.

[Docket No. ER97–2227–000]

Take notice that on March 24, 1997, pursuant to 18 CFR 35.15(c), Hartford Power Sales, L.L.C. filed a notice of termination of the Power Purchase Agreement (Dunkirk) by and between Niagara Mohawk Power Corporation and Hartford Power Sales, L.L.C., dated September 15, 1995. The termination of this agreement shall be effective April 10, 1997.

Comment date: April 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Interstate Power Company

[Docket No. ER97–2228–000]

Take notice that on March 24, 1997, Interstate Power Company (IPW) tendered for filing a Transmission Service Agreement between IPW and Electric Clearinghouse, Inc. (ECI). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to ECI.

Comment date: April 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Interstate Power Company

[Docket No. ER97–2229–000]

Take notice that on March 24, 1997, Interstate Power Company (IPW) tendered for filing a Transmission Service Agreement between IPW and Southern Minnesota Municipal Power

Agency (SMMPA). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to SMMPA.

Comment date: April 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Public Service Corporation

[Docket No. ER97–2231–000]

Take notice that on March 24, 1997, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Transmission Service Agreement between WPSC and Wisconsin Power & Light Company. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: April 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Illinois Power Company

[Docket No. ER97–2232–000]

Take notice that on March 24, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which PacifiCorp Power Marketing, Inc. will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 20, 1997.

Comment date: April 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. MidAmerican Energy Company

[Docket No. ER97–2234–000]

Take notice that on March 25, 1997, MidAmerican Energy Company (MidAmerican) submitted for filing with the Commission a Service Agreement dated February 28, 1997 with the City of Geneseo, Illinois (Geneseo) entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff), and the First Amended and Restated Interchange Agreement (Restated Agreement) dated February 26, 1997 with Geneseo entered into pursuant to the Service Agreement and the Tariff.

MidAmerican requests an effective date of March 1, 1997 for these Agreements, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Geneseo, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: April 21, 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. 97–9765 Filed 4–15–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00476; FRL–5596–8]

Renewal of Pesticide Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that the following Information Collection Requests (ICRs) are coming up for renewal. The ICRs titled ''Notice of Supplemental Distribution of a Registered Pesticide Product'' (ICR No. 0278.06, OMB No. 2070-0044) and ''FIFRA Reregistration Fees'' (ICR No. 1495.04, OMB No. 2070-0101) will expire on August 31, 1997, and the ICR titled ''Pesticide Product Registration Maintenance Fees'' (ICR No. 1214.04, OMB No. 2070-0100) will expire on September 30, 1997. Before submitting the renewal packages to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of these collections as described below.

DATES: Comments must be submitted on or before June 16, 1997.

ADDRESSES: Submit written comments identified by the docket control number OPP–00476 and the appropriate ICR number by mail to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments directly to the OPP docket which is located in Rm. 1132 of Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–00476'' and the appropriate ICR number. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

Information submitted as a comment concerning this document may be claimed to be confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All non-confidential written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ellen Kramer, Policy and Special Projects Staff, Office of Pesticide Programs, Environmental Protection Agency, Mail Code (7506C), 401 M St., SW., Washington, DC 20460, Telephone: (703) 305-6475, e-mail: kramer.ellen@epamail.epa.gov. Copies of the complete ICR and accompanying appendices may be obtained by contacting Ellen Kramer.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the ICRs are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/).

I. Information Collection Requests

EPA is seeking comments on the following Information Collection Requests (ICRs).

ICR No. 0278.06

Title: Notice of Supplemental Distribution of a Registered Pesticide Product, ICR No. 0278.06, OMB No. 2070-0044. Expiration date: August 31, 1997.

Affected entities: Parties affected by this information collection are registrants of pesticide products.

Abstract: Under section 3(e) of the Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, products which ''have the same formulation, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same pesticide may be registered as a single pesticide, and additional names and labels shall be added to the registration by supplemental statements.'' This information collection activity is the completion and submission of the supplemental statements referred to in FIFRA section 3(e). A standard form (EPA Form 8570-5) is provided for the applicant's convenience in providing the necessary information (name and address of the basic product registrant and of the distributor, and the name and EPA Registration Number of the product involved in the distributorship agreement) to EPA. The pesticide registrant notifies EPA with the use of this form, that it has entered into an agreement with a second company which will distribute the registrant's product under the second company's name and product name.

Burden Statement: The information covered by this request is collected on occasion when the producer of a pesticide product enters into agreement with a supplemental distributor. As small businesses are involved in this information collection activity, their needs have been taken into account so that the burden imposed is the minimum level at which the program can run effectively under the requirements specified under FIFRA.

The annual respondent burden for this program is estimated to average 0.24 hours per response, including time for: reading instructions; processing, compiling, and reviewing the information for appropriateness; completing and submitting forms; and storing, filing, and maintaining the data.

ICR No. 1495.04

Title: FIFRA Reregistration Fees. ICR No. 1495.04, OMB No. 2070-0101. Expiration date: August 31, 1997.

Affected entities: Parties affected by this information collection are manufacturers of pesticide chemicals who have not previously paid reregistration fees.

Abstract: This reporting and recordkeeping activity is mandated by FIFRA which authorizes the collection of reregistration fees from pesticide registrants. These fees (with waivers and exemptions) apply to the pesticide active ingredients registered under FIFRA before November 1, 1984, which are subject to reregistration. The 1988 amendments to FIFRA established one-time reregistration fees and required EPA to apportion those fees on the basis of market share. Without information on market share, exempt status of registrants, and eligibility for small business waivers, the Agency would not be able to fully implement the statutory requirements of FIFRA or to collect the total amount of required fees, and thus could encounter a shortfall in budget projections.

A small portion of the registrant population (those maintaining registrations for certain biological pesticides) was granted reregistration fee deferrals extending the time for payment of reregistration fees to up to 5 years (1994-1999). These registrants will be involved only in the reregistration fee deferral information collection process. This renewal is for the few remaining biological pesticide cases only.

The data required under this information collection request will be generated through the use of three forms: the Reregistration Fee Apportionment Form, the Small Business Waiver Certification Form, and the Biological Active Ingredient Sales Reporting Form.

Burden Statement: This is a one-time collection activity. A Small Business Waiver Certification Form was developed out of a concern for the burden on small entities. Thus, eligible small entities will qualify for fee waivers. Additionally, the burden associated with billing and payment is minimal.

The annual respondent burden for this program is estimated to average 3.7 hours per response, including time for: reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

ICR No. 1214.04

Title: Pesticide Product Registration Maintenance Fees. ICR No. 1214.04. OMB No. 2070-0100. Expiration date: September 30, 1996.

Affected entities: Parties affected by this information collection are registrants of pesticide products holding currently active registrations under FIFRA section 3 and section 24(c).

Abstract: FIFRA as amended in 1988 makes provisions for registration maintenance fees under Section 4(I)(5). These fees apply to all products registered under section 3 and section 24(c) of FIFRA. The fees are to be paid annually for each product registered and are payable on January 15 of each year. The authority to collect fees under the 1988 amendments would have terminated on September 30, 1997; however, the Food Quality Protection Act of 1996 extended the authority to collect these fees for another 3 years, beginning in 1998.

The information collected is used by the Agency to ensure that the fees prescribed by FIFRA have been paid by each registrant. The information is also used to adjust OPP's computer files to reflect changes in the status of registrations resulting from registrant responses. For example, a registrant may choose not to pay the fee and allow a registration to be canceled.

In order to provide an efficient system to bill, collect, and account for registration maintenance fees, the Agency has used a filing form which is sent to all registrants of currently active products.

Burden Statement: This information is collected annually and is due to EPA every January 15. The needs of small businesses were of primary concern in designing the filing form; therefore, respondents are asked to provide only readily available information. The annual respondent burden for this program is estimated to average 0.94 hours per response, including time for: reading instructions, planning activities, reviewing information, completing paperwork, and filing information. The estimated burden per response has not changed since the previous ICR.

Any 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 contained in 40 CFR part 9.

II. Request for Comments

EPA solicits comments to:

(i) Evaluate whether the proposed collections of information described above are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the agency's estimates of the burdens of the proposed collections of information.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

Send comments regarding these matters, or any other aspect of these information collections, including suggestions for reducing the burdens, to the docket under ADDRESSES listed above.

III. Public Record

A record has been established for this notice under docket control number OPP–00476 (including comments and data submitted electronically as described below). A public version of the record, including printed, paper versions of electronic comments, which does not include any 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 Room 1132 of the Public Response and Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

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

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

List of Subjects

Environmental protection and Information collection requests.

Dated: April 8, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–9688 Filed 4–15–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5812–6]

Acid Rain Program: Draft Permits and Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permits and permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment draft Phase I Acid Rain permits and permit modifications including nitrogen oxides (NO_X) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, the permits and permit modifications are also being issued as a direct final action in the notice of permits and permit modifications published elsewhere in today's **Federal Register**.

DATES: Comments on the draft permits and permit modifications must be received no later than 30 days after the date of this notice or 30 days after the date of publication of a similar notice in a local newspaper, whichever is later.

ADDRESSES: *Administrative Records.* The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at the following locations: for plants in New York, EPA Region 2, 290 Broadway, New York, NY, 10007–1866; for plants in Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina and Tennessee, EPA Region 4, 100 Alabama St., NW, Atlanta, GA, 30303; for plants in Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin, EPA Region 5, 77 West Jackson Blvd., Chicago, IL, 60604; for plants in Colorado, Montana, North Dakota, Utah and Wyoming, EPA Region 8, 999 18th St., Denver, CO, 80202.

Comments. Send comments, requests for public hearings, and requests to receive notices of future actions to: for plants in New York, EPA Region 2, Division of Environmental Planning & Protection, Attn: Gerry DeGaetano (address above); for plants in Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina and Tennessee, EPA Region 4, Air, Pesticides and Toxics Management Division, Attn: Scott Davis (address above); for plants in Illinois, Indiana, and Ohio, EPA Region 5, Air and Radiation Division, Attn: Cecilia Mijares (address above); for plants in Michigan, Minnesota, and Wisconsin, EPA Region 5, Air and Radiation Division, Attn: Beth Valenziano (address above); for plants in Colorado, Montana, North Dakota, Utah and Wyoming, EPA Region 8, Air and Toxics Division, Attn: Mike Owens (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit or the permit modification.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a NO_X compliance plan.

FOR FURTHER INFORMATION CONTACT: For plants in New York, call Gerry DeGaetano, 212–637–4020; for plants in Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina and Tennessee, call Scott Davis, 404–562–9127; for plants in Illinois, Indiana, and Ohio, call Cecilia Mijares, 312–886–0968; for plants in Michigan, Minnesota, and Wisconsin, call Beth Valenziano, 312–886–2703; for plants in Colorado, Montana, North Dakota, Utah and Wyoming, call Mike Owens, 303–312–6440.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to these draft permits and draft permit modifications and the permits and permit modifications issued as a direct final action in the notice of permits and permit modifications published elsewhere in today's **Federal Register** will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any permit or permit modification, that permit or permit modification in the notice of permits and permit modifications will be withdrawn and public comment received on that permit or permit modification based on this notice of draft permits and permit modifications will be addressed in a subsequent notice of permit or permit modification. Because the Agency will not institute a second comment period on this notice of draft permits and permit modifications, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the permits and permit modifications, see the information provided in the notice of permits and permit modifications elsewhere in today's **Federal Register**.

Dated: April 10, 1997.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–9865 Filed 4–15–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5812–5]

Acid Rain Program: Permit and Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of permits and permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing, as a direct final action, Phase I Acid Rain permits and permit modifications including nitrogen oxides (NO_x) compliance plans in accordance with the Acid Rain Program regulations (40 CFR parts 72 and 76). Because the Agency does not anticipate receiving adverse comments, the exemptions are being issued as a direct final action.

DATES: The permits and permit modifications issued in this direct final action will be final on May 26, 1997 or 40 days after publication of a similar notice in a local publication, whichever is later, unless significant, adverse comments are received by May 16, 1997 or 30 days after publication of a similar notice in a local publication, whichever is later. If significant, adverse comments are timely received on any permit or permit modification in this direct final action, that permit or permit modification will be withdrawn through a notice in the **Federal Register**.

ADDRESSES: *Administrative Records.* The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at the following locations: for plants in New York, EPA Region 2, 290 Broadway, New York, NY, 10007–1866; for plants in Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina and Tennessee, EPA Region 4, 100 Alabama St., NW, Atlanta, GA, 30303; for plants in Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin, EPA Region 5, 77 West Jackson Blvd., Chicago, IL, 60604; for plants in Colorado, Montana, North Dakota, Utah and Wyoming, EPA Region 8, 999 18th St., Denver, CO, 80202.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to: for plants in New York, EPA Region 2, Division of Environmental Planning & Protection, Attn: Gerry DeGaetano (address above); for plants in Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina and Tennessee, EPA Region 4, Air, Pesticides and Toxics Management Division, Attn: Scott Davis (address above); for plants in Illinois, Indiana, and Ohio, EPA Region 5, Air and Radiation Division, Attn: Cecilia Mijares (address above); for plants in Michigan, Minnesota, and Wisconsin, EPA Region 5, Air and Radiation Division, Attn: Beth Valenziano (address above); for plants in Colorado, Montana, North Dakota, Utah and Wyoming, EPA Region 8, Air and Toxics Division, Attn: Mike Owens (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit or the permit modification.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting a NO_X compliance plan.

FOR FURTHER INFORMATION CONTACT: For plants in New York, call Gerry DeGaetano, 212–637–4020; for plants in Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina and Tennessee, call Scott Davis, 404–562–9127; for plants in Illinois, Indiana, and Ohio, call Cecilia Mijares, 312–886–0968; for plants in Michigan, Minnesota, and Wisconsin, call Beth Valenziano, 312–886–2703; for plants in Colorado, Montana, North Dakota, Utah and Wyoming, call Mike Owens, 303–312–6440.

SUPPLEMENTARY INFORMATION: Title IV of the Clean Air Act directs EPA to establish a program to reduce the adverse effects of acidic deposition by promulgating rules and issuing permits to emission sources subject to the program. In today's action, EPA is issuing permits and permit modifications that include approval of early election plans for NO_X. The units that are included in the early election plans will be required to meet an actual annual average emissions rate for NO_X of either 0.45 lbs/MMBtu for tangentially-fired boilers or 0.50 lbs/MMBtu for dry bottom wall-fired boilers beginning on January 1, 1997 through December 31, 2007, after which they will be required to meet the applicable emissions limitation under 40 CFR 76.7(a) of 0.40 lbs/MMBtu for tangentially-fired boilers or 0.46 lbs/MMBtu for dry bottom wall-fired boilers. The following is a list of units included in the permits or permit modifications and the limits that they are required to meet:

S A Carlson units 9, 10, 11, and 12 in New York: 0.50 lbs/MMBtu. The designated representative is R. James Gronquist.

Kintigh unit 1 in New York: 0.50 lbs/MMBtu. The designated representative is James Rettberg.

Charles R Lowman units 2 and 3 in Alabama: 0.50 lbs/MMBtu. The designated representative is John Howard.

C D McIntosh unit 3 in Florida: 0.50 lbs/MMBtu. The designated representative is Ronald Tomlin.

Crystal River units 2, 4, and 5 in Florida: 0.45 lbs/MMBtu for unit 2; 0.50 lbs/MMBtu for units 4 and 5. The designated representative is W. Jeffrey Pardue.

Deerhaven unit B2 in Florida: 0.50 lbs/MMBtu. The designated representative is John Hancock, Jr.

St. Johns River Power Park units 1 and 2 in Florida: 0.50 lbs/MMBtu. The designated representative is Brian Wirz.

Scherer unit 4 in Georgia: 0.45 lbs/MMBtu. The designated representative is R. Haubein, Jr.

D B Wilson unit W1 in Kentucky: 0.50 lbs/MMBtu. The designated representative is Gregory Black.

Cane Run units 4, 5, and 6 in Kentucky: 0.50 lbs/MMBtu for units 4 and 5; 0.45 lbs/MMBtu for unit 6. The designated representative is Chris Herman.

Mill Creek units 1, 2, 3, and 4 in Kentucky: 0.45 lbs/MMBtu for units 1 and 2; 0.50 lbs/MMBtu for units 3 and 4. The designated representative is Chris Herman.

Trimble County unit 1 in Kentucky: 0.45 lbs/MMBtu. The designated representative is Chris Herman.

Buck units 5, 6, 7, 8, and 9 in North Carolina: 0.45 lbs/MMBtu. The designated representative is T. McMeekin.

Cliffside units 1, 2, 3, 4, and 5 in North Carolina: 0.45 lbs/MMBtu. The

designated representative is T. McMeekin.
Dan River units 1, 2, and 3 in North Carolina: 0.45 lbs/MMBtu. The designated representative is T. McMeekin.
G G Allen units 1, 2, 3, 4, and 5 in North Carolina: 0.45 lbs/MMBtu. The designated representative is T. McMeekin.
Lee units 1, 2, and 3 in North Carolina: 0.45 lbs/MMBtu for unit 1; 0.50 lbs/MMBtu for units 2 and 3. The designated representative is Ronnie Coats.
Marshall units 1, 2, 3, and 4 in North Carolina: 0.45 lbs/MMBtu. The designated representative is T. McMeekin.
Riverbend units 7, 8, 9, and 10 in North Carolina: 0.45 lbs/MMBtu. The designated representative is T. McMeekin.
Cross units 1 and 2 in South Carolina: 0.50 lbs/MMBtu for unit 1; 0.45 lbs/MMBtu for unit 2. The designated representative is Maxie Chaplin.
Winyah units 2, 3, and 4 in South Carolina: 0.50 lbs/MMBtu. The designated representative is Maxie Chaplin.
John Sevier units 1, 2, 3, and 4 in Tennessee: 0.45 lbs/MMBtu. The designated representative is Joseph Dickey.
Dallman unit 33 in Illinois: 0.45 lbs/MMBtu. The designated representative is William Murray.
Crawford units 7 and 8 in Illinois: 0.45 lbs/MMBtu. The designated representative is Emerson Lacey.
Fisk unit 19 in Illinois: 0.45 lbs/MMBtu. The designated representative is Emerson Lacey.
Waukegan units 7 & 8 in Illinois: 0.45 lbs/MMBtu. The designated representative is Emerson Lacey.
Will County units 3 and 4 in Illinois: 0.45 lbs/MMBtu. The designated representative is Emerson Lacey.
State Line unit 3 in Indiana: 0.45 lbs/MMBtu. The designated representative is Emerson Lacey.
Merom units 1SG1 and 2SG1 in Indiana: 0.50 lbs/MMBtu. The designated representative is J. Steven Smith.
R M Schahfer units U15, U17, and U18 in Indiana: 0.50 lbs/MMBtu for unit U15; 0.45 lbs/MMBtu for units U17 and U18. The designated representative is Patrick Mulchay.
A B Brown units 1 and 2 in Indiana: 0.50 lbs/MMBtu. The designated representative is J. Gordon Hurst.
J B Sims unit 3 in Michigan: 0.50 lbs/MMBtu. The designated representative is Phil Trumpfheller.
B C Cobb units 4 and 5 in Michigan: 0.45 lbs/MMBtu. The designated representative is Robert Nicholson.
J R Whiting units 1 and 3 in Michigan: 0.50 lbs/MMBtu. The designated representative is Robert Nicholson.
Presque Isle units 7, 8, and 9 in Michigan: 0.50 lbs/MMBtu. The designated representative is Terry Coughlin.
Clay Boswell unit 3 in Minnesota: 0.45 lbs/MMBtu. The designated representative is Warren Candy.
Hoot Lake unit 2 in Minnesota: 0.45 lbs/MMBtu. The designated representative is Ward Uggerud.
W H Zimmer unit 1 in Ohio: 0.50 lbs/MMBtu. The designated representative is David Hoffman.
Blount Street units 8 and 9 in Wisconsin: 0.50 lbs/MMBtu. The designated representative is Steven Schultz.
Columbia units 1 and 2 in Wisconsin: 0.45 lbs/MMBtu. The designated representative is Daniel Doyle.
Edgewater unit 5 in Wisconsin: 0.50 lbs/MMBtu. The designated representative is Daniel Doyle.
Ray D Nixon unit 1 in Colorado: 0.50 lbs/MMBtu. The designated representative is James Zalmanek.
Rawhide unit 101 in Colorado: 0.45 lbs/MMBtu. The designated representative is Lloyd Greiner.
Cherokee units 3 and 4 in Colorado: 0.50 lbs/MMBtu for unit 3; 0.45 lbs/MMBtu for unit 4. The designated representative is Ralph Sargent.
Comanche units 1 and 2 in Colorado: 0.45 lbs/MMBtu for unit 1; 0.50 lbs/MMBtu for unit 2. The designated representative is Ralph Sargent.
Pawnee unit 1 in Colorado: 0.50 lbs/MMBtu. The designated representative is Ralph Sargent.
Valmont unit 5 in Colorado: 0.45 lbs/MMBtu. The designated representative is Ralph Sargent.
Craig units C1, C2, and C3 in Colorado: 0.50 lbs/MMBtu. The designated representative is Jerry Walker.
Colstrip units 1, 2, 3, and 4 in Montana: 0.45 lbs/MMBtu. The designated representative is Carlton Grimm.
Lewis & Clark unit B1 in Montana: 0.45 lbs/MMBtu. The designated representative is Bruce Imsdahl.
Antelope Valley units B1 and B2 in North Dakota: 0.45 lbs/MMBtu. The designated representative is Richard Fockler.
Leland Olds unit 1 North Dakota: 0.50 lbs/MMBtu. The designated representative is Richard Fockler.
Stanton unit 10 in North Dakota: 0.50 lbs/MMBtu. The designated representative is Gordon Westerlind.
Bonanza unit 1–1 in Utah: 0.50 lbs/MMBtu. The designated representative is F. Ward Elgin.
Intermountain units 1SGA and 2SGA in Utah: 0.50 lbs/MMBtu. The designated representative is Dennis Whitney.
Carbon units 1 and 2 in Utah: 0.45 lbs/MMBtu. The designated representative is William Brauer.
Hunter units 1 and 2 in Utah: 0.45 lbs/MMBtu. The designated representative is William Brauer.
Huntington unit 1 in Utah: 0.45 lbs/MMBtu. The designated representative is William Brauer.
Laramie River units 1, 2, and 3 in Wyoming: 0.50 lbs/MMBtu. The designated representative is Richard Fockler.
Dave Johnston units BW41 and BW42 in Wyoming: 0.50 lbs/MMBtu. The designated representative is William Brauer.
Jim Bridger unit BW74 in Wyoming: 0.45 lbs/MMBtu. The designated representative is William Brauer.

Dated: April 10, 1997.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 97–9866 Filed 4–12–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30381A; FRL–5599–9]

FMC Corporation; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by FMC Corporation, to conditionally register the pesticide products Sulfentrazone Technical, Authority 4F, Authority 75DF, Authority BL, and Authority Broadleaf containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of March 8, 1995 (60 FR 12765; FRL–4937–2), which announced that FMC Corp., 1735 Market St., Philadelphia, PA 19103, had submitted applications to register the pesticide products Sulfentrazone Technical, Sulfentrazone 4F, and Sulfentrazone 75DF (EPA File Symbols 279–GRUO, 279–GRUA, and 279–GRUI), containing the active ingredient sulfentrazone, *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide(methyl at 92.2, 39.6, and 75 percent respectively, active ingredients not included in any previously registered products.

EPA subsequently received applications from FMC Corp., to conditionally register the pesticide products Authority BL (File Symbol 279–GRTO) containing the active ingredients sulfentrazone *N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide 47% and metribuzin 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4*H*)-one 28.% and Authority Broadleaf (File Symbol 279–GRTL), containing the active ingredients sulfentrazone 46.9% and chlorimuron ethyl ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2-yl)amino] carbonyl]amino]sulfonyl]benzoate 9.4%. However, since the notice of receipt of application did not publish in **Federal Register**, as required by FIFRA, as amended, interested parties may submit written comments within 30 days from the date of publication of this notice. Comments and data may also be submitted electronically by sending electronic mail; e-mail: opp-docket@epamail.epa.gov. No Confidential Business Information (CBI) should be submitted through e-mail. More detailed information is found in all documents requesting comments as of May 1995.

The applications were approved on February 27, 1997, for one technical and four end-use products listed below:

1. Sulfentrazone Technical for manufacturing use only (EPA Registration Number 279–3149).

2. Authority 4F (formerly Sulfentrazone 4F) for preemergence and preplant incorporated weed control in soybeans (EPA Registration Number 279–3146).

3. Authority 75DF (formerly Sulfentrazone 75DF for preemergence and preplant incorporated weed control in soybeans (EPA Registration Number 279–3148)

4. Authority BL for use on soybeans in preemergency, preplant incorporated, no-till, and minimum till applications (EPA Registration Number 279–3175)

5. Authority Broadleaf for use on soybeans in preemergency, preplant incorporated, no-till, and minimum till applications (EPA Registration Number 279–3179).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of sulfentrazone, metribuzin, and chlorimuron ethyl ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2-yl)amino] carbonyl]amino]sulfonyl]benzoate, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of sulfentrazone, metribuzin, and chlorimuron ethyl ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2-yl)amino]carbonyl] amino]sulfonyl]benzoate during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

These products are conditionally registered in accordance with FIFRA section 3(c)(7)(C). If the conditions are not complied with the registrations will be subject to cancellation in accordance with FIFRA section 6(e).

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on sulfentrazone, metribuzin, and chlorimuron ethyl ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2-yl)amino] carbonyl]amino]sulfonyl]benzoate.

A copy of the fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: April 4, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–9689 Filed 4–15–97; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5810–6]

Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities That Are Classified as Associated With Industrial Activity (FLR100000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft NPDES general permit reissuance for storm water discharges from construction activities

that are classified as ''associated with industrial activity''.

SUMMARY: Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA) which requires the Environmental Protection Agency (EPA) to develop a phased approach to regulating storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on November 16, 1990, (55 FR 47990) establishing permit application requirements for storm water discharges associated with industrial activity and for discharges from municipal separate storm sewer systems serving a population of 100,000 or more. In the permit application regulations, EPA defined the term ''storm water discharge associated with industrial activity'' in a comprehensive manner to cover a wide variety of facilities. This definition greatly expanded the number of industrial facilities subject to the NPDES program.

EPA published a final NPDES general permit for storm water discharges from construction activities that are classified as ''associated with industrial activity'' on September 25, 1992, (57 FR 44412). The general permit established Notice of Intent (NOI) requirements, special conditions, requirements to develop and implement storm water pollution prevention plans, and requirements to conduct site inspections for facilities with discharges authorized by the permit. Today's notice requests comments on the draft reissuance of the above referenced general permit for discharges of storm water from construction activities ''associated with industrial activity'' in the State of Florida.

ADDRESSES: Persons wishing to comment upon or object to any aspects of this permit reissuance or wishing to request a public hearing, are invited to submit the same in writing within sixty (60) days of this notice to the Office of Environmental Assessment, United States Environmental Protection Agency, Region 4, Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, GA 30303–3104, Attention: Ms. Lena Scott.

DATES: Comments relative to this draft permit are not required; however, if you wish to submit comments, the comments must be received by June 16, 1997.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Floyd Wellborn, telephone number (404) 562–9296, or Mr. Michael Mitchell, telephone number (404) 562–9303, or at the following address: United States Environmental Protection Agency, Region 4, Water Management Division, Surface Water Permits Section, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, GA 30303.

SUPPLEMENTARY INFORMATION:

Procedures for Reaching a Final Permit Decision

Pursuant to 40 CFR 124.13, any person who believes any condition of the permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments in full, supporting their position, by the close of the comment period. All comments on the proposed NPDES general permit received within the 60-day period will be considered in the formulation of final determinations regarding the permit reissuance.

After consideration of all written comments and the requirements and policies in the Act and appropriate regulations, the EPA Regional administrator will make determinations regarding the general permit reissuance. If the determinations are substantially unchanged from those announced by this notice, the Administrator will so notify all persons submitting written comments. If the determinations are substantially changed, the Administrator will issue a public notice indicating the revised determinations.

A formal hearing is available to challenge any NPDES permit issued according to the regulations at 40 CFR 124.15 except for a general permit as cited by 40 CFR 124.71. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21 as authorized at 40 CFR 122.28, and then request a formal hearing on the issuance or denial of an individual permit.

Administrative Record

The proposed NPDES general permit, fact sheet and other relevant documents are on file and may be inspected any time between 9:00 a.m. and 4:00 p.m., Monday through Friday at the address shown below. Copies of the draft NPDES general permit, fact sheet or other relevant documents may be obtained by writing the United States Environmental Protection Agency, Region 4, Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, GA 30303–3104, Attention: Ms. Lena Scott, or calling (404) 562–9607.

Draft NPDES Permits for Storm Water Discharges from Construction Activities that are Classified as ''Associated with Industrial Activity''

Table of Contents

PREFACE

The CWA provides that storm water discharges associated with industrial activity from a point source (including discharges through a municipal separate storm sewer system) to waters of the United States are unlawful, unless authorized by an National Pollutant Discharge Elimination System (NPDES)

permit. The terms ''storm water discharge associated with industrial activity'', ''point source'' and ''waters of the United States'' are critical to determining whether a facility is subject to this requirement. Complete definitions of these terms are found in the definition section (Part X) of this permit.

Part I. Coverage Under this Permit

A. Permit Area

The permit covers all areas administered by Region 4 in the State of Florida.

B. Eligibility

1. This permit may authorize all discharges identified in the pollution prevention plan of storm water associated with industrial activity from construction sites, (those sites or common plans of development or sale, including unpaved roads, that will result in the disturbance of five or more acres total land area),[1] (henceforth referred to as storm water discharges from construction activities) occurring after the effective date of this permit (including discharges occurring after the effective date of this permit where the construction activity was initiated before the effective date of this permit), except for discharges identified under paragraph I.B.3.

2. This permit may authorize storm water discharges from construction sites that are mixed with storm water discharges associated with industrial activity from industrial sources other than construction, where:

a. the industrial source other than construction is located on the same site as the construction activity;

b. storm water discharges associated with industrial activity from the areas of the site where construction activities are occurring are in compliance with the terms of this permit; and

c. storm water discharges associated with industrial activity from the areas of the site where industrial activity other than construction are occurring (including storm water discharges from dedicated asphalt plants and dedicated concrete plants) are in compliance with the terms, including applicable NOI or application requirements, of a different NPDES general permit or individual permit authorizing such discharges.

3. Limitations on Coverage. The following storm water discharges from construction sites are not authorized by this permit:

a. storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization;

b. discharges that are mixed with sources of non-storm water, other than discharges identified in Part III.A of this permit which are in compliance with Part V.D.5 (non-storm water discharges) of this permit;

c. storm water discharges associated with industrial activity that are subject to an existing NPDES individual or general permit or which are issued a permit in accordance with paragraph VI.L (requiring an individual permit or an alternative general permit) of this permit. Such discharges may be authorized under this permit after an existing permit expires, provided the existing permit did not establish numeric limitations for such discharges;

d. storm water discharges from construction sites that the Director (EPA) has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard;

e. storm water discharges from construction sites if the discharges may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat (see Appendix C);

f. discharges of storm water associated with industrial activity from construction sites not specifically identified in the pollution prevention plan in accordance with Part V of this permit. Such discharges not identified in the plan are subject to the upset and bypass rules in Part VII of this permit.

C. Authorization

1. A discharger must submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit, using an NOI form provided by the Director (or a photocopy thereof), in order for storm water discharges from construction sites to be authorized to discharge under this general permit.[2]

2. Where a new operator is selected after the submittal of an NOI under Part II, a new NOI must be submitted by the operator in accordance with Part II, using an NOI form provided by the Director (or a photocopy thereof).

3. Unless notified by the Director to the contrary, dischargers who submit an NOI in accordance with the requirements of this permit are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days after the date that the NOI is postmarked. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information (see Part VII.L of this permit).

Part II. Notice of Intent Requirements

A. Deadlines for Notification

1. Except as provided in paragraphs II.A.2, II.A.3, and II.A.4, individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site (where disturbances associated with the construction project commence before October 1, 1997), including unpaved rural roads, shall submit a Notice of Intent (NOI) in accordance with the requirements of this Part by December 31, 1997;

2. Individuals who intend to obtain coverage under this general permit for storm water discharges from a construction site, including unpaved rural roads, where disturbances associated with the construction project commence after October 1, 1997, shall submit an NOI in accordance with the requirements of this Part, at least 2 days prior to the commencement of construction activities (e.g. the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities). Prior to submitting this NOI, the owner of a storm water management system must receive a State of Florida storm water permit from either the Florida Department of Environmental Protection (FDEP) or a Florida Water Management District (FWMD);

3. For storm water discharges from construction sites, including unpaved rural roads, where the operator changes (including projects where an operator is selected after an NOI has been submitted under Parts II.A.1 or II.A.2), an NOI in accordance with the requirements of this Part shall be submitted at least 2 days prior to when the operator commences work at the site; and

4. EPA will accept an NOI in accordance with the requirements of this Part after the dates provided in Parts II.A.1, 2 or 3 of this permit. In such instances, EPA may bring appropriate enforcement actions.

B. Contents of Notice of Intent

The Notice(s) of Intent shall be signed in accordance with Part VII.G of this permit by all of the entities identified in Part II.B.2 and shall include the following information:

1. The mailing address, and location (including the county) of the

[1] On June 4, 1992, the United State Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking. (Nos. 90–70671 and 91–70200).

[2] A copy of the approved NOI form is provided in Appendix A of this notice.

construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address and telephone number of the operator(s) with day to day operational control that have been identified at the time of the NOI submittal, and operator status as a Federal, State, private, public or other entity. Where multiple operators have been selected at the time of the initial NOI submittal, NOIs must be attached and submitted in the same envelope. When an additional operator submits an NOI for a site with a existing NPDES permit, the NOI for the additional operators must indicate the number for the existing NPDES permit;

3. The location of the first outfall in latitude and longitude to the nearest 15 seconds and the name of the receiving water(s) into which that outfall discharges, or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s). (All other outfalls must be listed in the pollution prevention plan as required by Part V.);

4. The permit number of any NPDES permit(s) for any discharge(s) (including any storm water discharges or non-storm water discharges) from the site;

5. An indication of whether the owner or operator has existing quantitative data which describes the concentration of pollutants in storm water discharges (existing data should not be included as part of the NOI); and

6. An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and a certification that a storm water pollution prevention plan has been prepared for the site in accordance with Part V of this permit. (A copy of the plans or permits should not be included with the NOI submission). The applicant shall submit a narrative statement certifying that the storm water pollution prevention plan for the facility provides compliance with approved State of Florida issued permits, erosion and sediment control plans and storm water management plans. The applicant shall also submit a copy of the cover page of the State permit issued by FDEP or a FWMD to the facility for the storm water associated with construction activity.

C. Where to Submit

1. Facilities which discharge storm water associated with industrial activity must use a NOI form provided by the Director (or photocopy thereof). The form in the **Federal Register** notice in which this permit was published may be photocopied and used. Forms are also available by calling (404) 562–9296. NOIs must be signed in accordance with Part VII.G of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address: Storm Water Notice of Intent (4203), 401 M Street, S.W., Washington, DC 20460.

2. A copy of the NOI or other indication that storm water discharges from the site are covered under an NPDES permit, and a brief description of the project shall be posted at the construction site in a prominent place for public viewing (such as alongside a building permit).

D. Additional Notification

Facilities which are operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans shall also submit signed copies of the Notice of Intent to the State or local agency approving such plans in accordance with the deadlines in Part II.A of this permit (or sooner where required by State or local rules). Facilities which discharge storm water associated with construction activities to a municipal separate storm water system within Broward, Dade, Duval, Escambia, Hillsborough, Orange, Palm Beach, Pinellas, Polk or Sarasota Counties shall submit a copy of the NOI to the operator of the municipal separate storm sewer system. Included within these counties, the Florida Department of Transportation (FDOT), incorporated municipalities, and Chapter 298 Special Districts shall also be notified where they own or operate a municipal separate storm sewer system receiving storm water discharges associated with construction activity covered by this permit.

E. Renotification

Upon issuance of a new general permit, the permittee is required to notify the Director of his intent to be covered by the new general permit.

Part III. Special Conditions, Management Practices, and other Non-Numeric Limitations

A. Prohibition on Non-Storm Water Discharges

1. Except as provided in paragraph I.B.2 and III.A.2, all discharges covered by this permit shall be composed entirely of storm water.

2. a. Except as provided in paragraph III.A.2.(b), discharges of material other than storm water must be in compliance with a NPDES permit (other than this permit) issued for the discharge.

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph V.D.5 and the storm water management system is designed to accept these discharges and provide treatment of the non-storm water component sufficient to meet Florida water quality standards: discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with Part V.D.2.c.(2); potable water sources including waterline flushings; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; and foundation or footing drains where flows are not contaminated with process materials such as solvents. Discharges resulting from ground water dewatering activities at construction sites are not covered by this permit. The applicant may seek coverage for these discharges under NPDES General Permit No. FLG830000, published on July 17, 1989. (54 FR 29986) and modified on August 29, 1991 (56 FR 42736).

B. Releases in Excess of Reportable Quantities

1. The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 and 40 CFR part 302. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 or 40 CFR 302, occurs during a 24 hour period:

a. The permittee is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC metropolitan area 202–426–2675) in accordance with the requirements of 40 CFR 117 and 40 CFR 302 as soon as he or she has knowledge of the discharge;

b. The permittee shall submit within 14 calendar days of knowledge of the

release a written description of: the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with Part III.B.3 of this permit to EPA Region 4 Office at the address provided in Part VI.C (addresses) of this permit; and

c. The storm water pollution prevention plan required under Part V of this permit must be modified within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. Spills. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

Part IV. Unpaved Rural Roads

A. Applicability

The provisions of this part are applicable to the construction of roads, except roads constructed for silviculture and agricultural uses, that disturb five (5) acres or more and will remain unpaved after construction is complete.

B. Construction

Construction of unpaved rural roads where the possibility of a point source discharge to surface waters exists, must comply with all applicable portions of this permit and the document *Silviculture Best Management Practices,* 1993 Florida Department of Agriculture & Consumer Services, or most current version or revisions of this document. In addition, the following conditions apply:

1. Water turnouts, drainage systems designed to reduce the volume and velocity of ditch flow, shall be constructed in conjunction with the roadside drainage ditches in accordance with Appendix 7 of the above referenced document.

2. All water turnouts must direct diverted flow onto vegetated areas where it can be adequately dispersed. The turnouts shall not direct diverted flow or road runoff into waters of the United States.

C. Notice of Termination

Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated (see Part IX.A.5. for the definition of eliminated), or where the operator of all storm water discharges at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VII.G of this permit.

Part V. Storm Water Pollution Prevention Plans

A storm water pollution prevention plan shall be developed for each construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with industrial activity at the construction site and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance

The plan shall:

1. Be completed (including certifications required under Part V.E) prior to the submittal of an NOI to be covered under this permit and updated as appropriate;

2. The plan shall provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.

B. Signature and Plan Review

1. The plan shall be signed in accordance with Part VII.G, and be retained on-site at the facility which generates the storm water discharge in accordance with Part V (retention of records) of this permit.

2. The permittee shall submit plans to the State agency which issued the storm water permit referenced in Part II.B.6. and shall make plans available upon request to the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.

3. The Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this part. Within 7 days of such notification from the Director, (or as otherwise provided by the Director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

C. Keeping Plans Current

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States, including the addition of or change in location of storm water discharge points, and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part V.D.2 of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan (see Part V.E). Amendments to the plan shall be prepared, dated, and kept as separate documents from the original plan. The amendments to the plan may be reviewed by EPA in the same manner as Part V.B above. Amendments to the plan must be submitted to the State agency which issued the State storm water permit.

D. Contents of Plan

The storm water pollution prevention plan shall include the following items:

1. *Site Description.* Each plan shall provide a description of pollutant sources and other information as indicated:

a. A description of the nature of the construction activity;

b. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g. grubbing, excavation, grading);

c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities;

d. An estimate of the runoff coefficient of the site before, during and

after construction activities are completed using ''C'' from the Rational Method, and existing data describing the soil or the quality of any discharge from the site and an estimate of the size of the drainage area for each outfall;

e. A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, an outline of areas which may not be disturbed, the location of major structural and nonstructural controls identified in the plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water is discharged to a surface water; and

f. The location in terms of latitude and longitude, to the nearest 15 seconds, of each outfall, the name of the receiving water(s) for each outfall and the amount of wetland acreage at the site.

2. *Controls.* Each plan shall include a description of appropriate controls and measures that will be implemented at the construction site. The plan will clearly describe for each major activity identified in Part V.D.1.b appropriate control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be removed after final stabilization). All controls shall be consistent with the requirements set forth in the State Water Policy of Florida (Chapter 62–40, Florida Administrative Code), the applicable storm water permitting requirements of the FDEP or appropriate FWMD, and the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDEP, 1988) and any subsequent amendments. The description and implementation of controls shall address the following minimum components:

a. Erosion and Sediment Controls.

(1) Performance Standards. (a) The erosion and sediment controls must be capable of removing 80% of the Settleable Solids (SS) in storm water discharges from the site to Class III waters.

(b) The erosion and sediment controls must be capable of removing 95% of the SS in storm water discharges from the site to sensitive waters such as potable water sources (class I waters), shellfish harvesting waters (Class II waters) and outstanding Florida waters.

(2) Stabilization Practices. A description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site and when stabilization measures are initiated shall be included in the plan. Stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased.

(3) Structural Practices. A description of structural practices, to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site in accordance with the requirements set forth in Section 62–40, 420, FAC, and the applicable storm water regulations of the FDEP or appropriate FWMD. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be placed on upland soils unless a State of Florida wetland resource management permit issued pursuant to Chapters 373 or 403, FS, and applicable regulations of the FDEP or FWMD authorize otherwise. The installation of these devices may be subject to Section 404 of the CWA.

(a) For common drainage locations that serve an area with more than 10 disturbed acres at one time, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. For drainage locations which serve more than 10 disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

(b) For drainage locations serving less than 10 acres, sediment basins and/or sediment traps should be used. At a minimum, silt fences or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area unless a sediment basin providing storage for 3,600 cubic feet of storage per acre drained is provided.

b. Storm Water Management. A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. The description of controls shall be consistent with the requirements set forth in the State Water Policy of Florida (Chapter 62–40, FAC), the applicable storm water permitting regulations of the guidelines contained in the Florida Development Manual: A Guide to Sound Land and Water Management (FDEP, 1988), and any subsequent amendments. Structural measures should be placed on upland soils unless a State of Florida wetland resource management permit issued pursuant to Chapters 373 or 403, FS, and applicable regulations of the FDEP or FWMD authorize otherwise. The installation of these devices may be subject to Section 404 of the CWA. This NPDES permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site. However, all storm water management systems shall be operated and maintained in perpetuity after final stabilization in accordance with the requirements set forth in the State of Florida storm water permit issued for the site.

(1) Such practices may include: storm water detention structures (including

wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). Pursuant to the requirements of section 62–40, 420, FAC, the storm water management system shall be designed to remove at least 80 percent of the average annual load of pollutants which cause or contribute to violations of water quality standards (95 percent if the system discharges to an Outstanding Florida Water). The pollution prevention plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

(2) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel for the purpose of providing a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g. no significant changes in the hydrological regime of the receiving water). Equalization of the predevelopment and post-development storm water peak discharge rate and volume shall be a goal in the design of the post-development storm water management system.

c. Other Controls.

(1) Waste Disposal. No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a Section 404 permit and by a State of Florida wetland resource management permit issued pursuant to chapters 373 or 403, FS, and the applicable regulations of the FDEP or FWMD.

(2) Off-site vehicle tracking of sediments and the generation of dust shall be minimized.

(3) The plan shall ensure and demonstrate compliance with applicable State and/or local waste disposal, sanitary sewer or septic system regulations.

(4) The plan shall address the proper application rates and methods for the use of fertilizers and pesticides at the construction site and set forth how these procedures will be implemented and enforced.

d. Approved State or Local Plans.

(1) Facilities which discharge storm water associated with industrial activity from construction activities must include in their storm water pollution prevention plan procedures and requirements specified in applicable sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials. Permittees shall provide a certification in their storm water pollution prevention plan that their storm water pollution prevention plan reflects requirements applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials. Permittees shall comply with any such requirements during the term of the permit. This provision does not apply to provisions of master plans, comprehensive plans, non-enforceable guidelines or technical guidance documents that are not identified in a specific plan or permit that is issued for the construction site.

(2) Storm water pollution prevention plans must be amended to reflect any change applicable to protecting surface water resources in sediment and erosion site plans or site permits, or storm water management site plans or site permits approved by State or local officials for which the permittee receives written notice. Where the permittee receives such written notice of a change, the permittee shall provide a recertification in the storm water pollution plan that the storm water pollution prevention plan has been modified to address such changes.

(3) Dischargers seeking alternative permit requirements shall submit an individual permit application in accordance with Part VII.L of the permit at the address indicated in Part V.C of this permit for the appropriate Regional Office, along with a description of why requirements in approved State or local plans or permits, or changes to such plans or permits should not be applicable as a condition of an NPDES permit.

3. *Maintenance.* A description of procedures to ensure the timely maintenance of vegetation, erosion and sediment control measures and other protective measures identified in the site plan in good and effective operating conditions.

4. *Inspections.* Qualified personnel (provided by the discharger) shall inspect all points of discharge into waters of the United States or to a municipal separate storm sewer system and all disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.25 inches or greater. Where sites have been finally stabilized, or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0–10 inches) and semi-arid areas (areas with an average annual rainfall of 10–20 inches) such inspection shall be conducted at least once every month.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the storm water system. The storm water management system and erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in meeting the performance standards set forth in State Water Policy (chapter 62–40, FAC) and the applicable storm water permitting regulations of the FDEP or appropriate FWMD. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the site description identified in the plan in accordance with paragraph V.D.1 of this permit and pollution prevention measures identified in the plan in accordance with paragraph V.D.2 of this permit shall be revised as appropriate, but in no case later than 7 calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph V.D.4.b of the permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. Such reports shall identify any incidents of non-compliance. Where a report does not identify any incidents of non-compliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G of this permit.

5. *Non-Storm Water Discharges*—Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2 of this permit that are combined with storm water discharges associated with industrial

activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

E. Contractors

1. The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement in Part V.E.2 of this permit in accordance with Part VII.G of this permit. All certifications must be included in the storm water pollution prevention plan.

2. *Certification Statement.* All contractors and subcontractors identified in a storm water pollution prevention plan in accordance with Part V.E.1 of this permit shall sign a copy of the following certification statement before conducting any professional service identified in the storm water pollution prevention plan:

''I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification.''

The certification must include the name and title of the person providing the signature in accordance with Part VII.G of this permit; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

Part VI. Retention of Records

A. The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the Director at any time.

B. The permittee shall retain a copy of the storm water pollution prevention plan required by this permit at the construction site from the date of project initiation to the date of final stabilization.

C. Addresses. Except for the submittal of NOIs (see Part II.C of this permit), all written correspondence directed to the U.S. Environmental Protection Agency concerning discharges in any State, Indian land or from any Federal Facility covered under this permit, including the submittal of individual permit applications, shall be sent to the address listed below: U.S. EPA, Region 4, Water Management Division, Storm Water Staff, Atlanta Federal Center, 61 Forsyth St., SW, Atlanta, GA 30303.

Part VII. Standard Permit Conditions

A. Duty to Comply

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions.

a. *Criminal.* (1) Negligent Violations. The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing Violations. The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 year, or both.

(3) Knowing Endangerment. The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 year, or both.

(4) False Statement. The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act).

b. *Civil Penalties*—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

c. *Administrative Penalties*—The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1) Class I penalty. Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

(2) Class II penalty. Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

B. Continuation of the Expired General Permit

This permit expires at midnight on October 1, 2002. However, an expired general permit continues in force and effect until a new general permit or an individual permit is issued. Permittees must submit a new NOI in accordance with the requirements of Part II of this permit, using an NOI form provided by the Director (or photocopy thereof) between August 1, 2002 and October 1, 2002 to remain covered under the continued permit after October 1, 2002. Facilities that have not obtain coverage under the permit by October 1, 2002 cannot become authorized to discharge under the continued permit.

C. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty to Provide Information

The permittee shall furnish within a reasonable time to the Director; an authorized representative of the Director; a State or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with

industrial activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system, any information which is requested to determine compliance with this permit or other information.

F. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she shall promptly submit such facts or information.

G. Signatory Requirements

All Notices of Intent, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed as follows:

1. All Notices of Intent shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

2. All reports required by the permit and other information requested by the Director or authorized representative of the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. Changes to authorization. If an authorization under paragraph II.B.3. is no longer accurate because a different operator has responsibility for the overall operation of the construction site, a new notice of intent satisfying the requirements of paragraph II.B. must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. Certification. Any person signing documents under paragraph VI.G shall make the following certification:

''I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.''

H. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

I. Penalties for Falsification of Monitoring Systems

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

M. Transfers

Coverage under this permit is not transferable to any person except after notice to the Director. The Director may require termination of permit coverage by the current permittee in accordance with Part IX of this permit; and the subsequent submission of a Notice of Intent to receive coverage under the permit by the new applicant in accordance with Part II of this permit.

N. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. Where the Director requires a discharger authorized to discharge under this permit to apply for an individual NPDES permit, the Director shall notify the discharger in writing that a permit application is required. This notification shall include a brief statement of the reasons for this decision, an application form, a

statement setting a deadline for the discharger to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Applications shall be submitted to the appropriate Regional Office indicated in Part V.C of this permit. The Director may grant additional time to submit the application upon request of the applicant. If a discharger fails to submit in a timely manner an individual NPDES permit application as required by the Director under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified by the Director for application submittal.

2. Any discharger authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, the permittee shall submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the address for the appropriate Regional Office indicated in Part V.C of this permit. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by the permittee are adequate to support the request.

3. When an individual NPDES permit is issued to a discharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

O. State/Environmental Laws

1. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

2. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

P. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

Q. Inspection and Entry

The permittee shall allow the Director or an authorized representative of EPA, the State, or, in the case of a construction site which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment); and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameter at any location on the site.

R. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

S. Planned Changes

The permittee shall amend the pollution prevention plan as soon as possible identifying any planned physical alterations or additions to the permitted facility.

T. Twenty-Four Hour Reporting

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause: the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

U. Bypass

(1) *Definitions.*

(i) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) Severe property damage means substantial physical damage to property which causes them to become inoperable or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs S(3) and S(4).

(3) *Notice.*

(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph R. of this section (24-hour notice).

(4) Prohibition of bypass.

(i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) the permittee submitted notices as required under paragraph S(3) of this section.

(ii) The Director may approve an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph S(4)(i) of this section.

Part VIII. Reopener Clause

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the discharger may be required to obtain individual permit or an alternative general permit in accordance with Part I.C of this permit or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

C. This permit may be modified, or alternatively, revoked and reissued, to comply with any applicable provisions of the Phase II storm water regulations once they are issued.

Part IX. Termination of Coverage

A. Notice of Termination

Where a site has been finally stabilized and all storm water discharges from construction sites that are authorized by this permit are eliminated (see Part IX.A.5. for the definition of eliminated), or where the operator of all storm water discharges at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VII.G of this permit. The Notice of Termination shall include the following information:

1. The mailing address, and location of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location can be described in terms of the latitude and longitude of the approximate center of the facility to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. The name, address, and telephone number of the operator seeking termination of permit coverage;

3. The NPDES permit number for the storm water discharge identified by this Notice of Termination;

4. An identification of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and

5. The following certification signed in accordance with Part VII.G (signatory requirements) of this permit:

''I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by a NPDES general permit have otherwise been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity by the general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act.''

For the purposes of this certification, elimination of storm water discharges associated with industrial activity means that all disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with construction activities from the identified site that are authorized by a NPDES general permit have otherwise been eliminated.

B. All Notices of Termination are to be sent, using the form provided by the Director (or a photocopy thereof)[3], to the following address: Storm Water Notice of Termination, Surface Water Permits & Facilities Branch, 100 Alabama St., SW, Atlanta, GA 30303.

C. Additional Notification

A copy of the Notice of Termination shall be sent to the State agency which issued the State storm water permit for the site and, if the storm water management system discharges to a municipal separate storm sewer system within Broward, Dade, Duval, Escambia, Hillsborough, Lee, Leon, Manatee, Orange, Palm Beach, Pasco, Pinellas, Polk, Sarasota or Seminole Counties, to the owner of that system. Included within these counties, the Florida Department of Transportation (FDOT), incorporated municipalities, and chapter 298 Special Districts also shall be notified where they own or operate a municipal separate storm sewer system receiving storm water discharges associated with construction activity covered by this permit.

Part X. Definitions

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Commencement of Construction—The initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

CWA means Clean Water Act or the Federal Water Pollution Control Act

Dedicated portable asphalt plant—A portable asphalt plant that is located on or contiguous to a construction site and that provides asphalt only to the construction site that the plant is located on or adjacent to. The term dedicated portable asphalt plant does not include facilities that are subject to the asphalt emulsion effluent limitation guideline at 40 CFR 443.

Dedicated portable concrete plant—A portable concrete plant that is located on or contiguous to a construction site and that provides concrete only to the construction site that the plant is located on or adjacent to.

Director means the Regional Administrator of the Environmental Protection Agency or an authorized representative.

Final Stabilization means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures has been established or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Flow-weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

Large and Medium municipal separate storm sewer system means all

[3] A copy of the approved NOT form is provided in Appendix A of this notice.

municipal separate storm sewers that are either: (i) located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR Part 122); or (ii) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR Part 122); or (iii) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

NOI means notice of intent to be covered by this permit (see Part II of this permit.)

NOT means notice of termination (see Part IX of this permit).

Point Source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Runoff coefficient means the fraction of total rainfall that will appear at the conveyance as runoff.

Storm Water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm Water Associated with Industrial Activity means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in paragraphs (i) through (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all areas (except access roads and rail lines) listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally or municipally owned or operated that meet the description of the facilities listed in this paragraph (i)–(xi) of this definition) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in ''industrial activity'' for purposes of this subsection:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)–(vii) or (ix)–(xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (i)–(x)).[4]

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate ''wetlands'';

(c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the United States.

Robert F. McGhee,

Director, Water Management Division.

Draft NPDES Permits for Storm Water Discharges from Construction Activities that are Classified as ''Associated with Industrial Activity''; Fact Sheet

DATES: These general permits shall be effective on April 16, 1997. Deadlines for submittal of Notices of Intent to be authorized to discharge under these permits are as follows:

(1) On or before October 1, 1992, for storm water discharges associated with industrial activity from construction sites where disturbances associated with a construction project occur on or before October 1, 1992, and final stabilization is completed after October 1, 1992;

(2) For storm water discharges associated with industrial activity from construction sites where disturbances associated with a construction project do not occur until after October 1, 1992, at least 2 days prior to the commencement of construction; and

(3) For storm water discharges associated with industrial activity from construction sites where the original permittee at the site changes or an additional operator submits an NOI for coverage as a copermittee, a new NOI shall be submitted at least 2 days prior to when the new operator commences work at the site.

The final general permits provide additional dates for compliance with the terms of the permit.

Table of Contents

I. Introduction

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act (CWA)) was amended to provide that the discharge of any pollutants to waters of the Untied States from any point source is unlawful, except if the discharge is in compliance with a National Pollutant Discharge Elimination System (NDPES) permit. In 1987, § 402(p) was added to the CWA to establish a comprehensive framework for addressing storm water discharges under the NPDES program. Section 402(p)(4) of the CWA clarifies the requirements for EPA to issue NPDES permits for storm water discharges associated with industrial activity. On November 16, 1990 (55 FR 47990), EPA published final regulations which define the term ''storm water discharge associated with industrial activity''.

In 1992, EPA issued a general permit for discharges of storm water from construction activities ''associated with industrial activity'' to reduce the administrative burden of issuing an individual NDPES permit to each construction activity.

II. Coverage of General Permits

Section 402(p) of the Clean Water Act (CWA) clarifies that storm water discharges associated with industrial activity to waters of the United States must be authorized by an NPDES permit. On November 16, 1990, EPA published regulations under the NPDES program which defined the term ''storm water discharge associated with industrial activity'' to include storm water discharges from construction activities (including clearing, grading, and excavation activities) that result in the disturbance of five or more acres of total land area, including areas that are part of a larger common plan of development or sale (40 CFR 122.26(b)(14)(x)).[5] The term ''storm water discharge from construction activities'' will be used in this document to refer to storm water discharges from construction sites that meet the definition of a storm water discharge associated with industrial activity.

This draft general permit may authorize storm water discharges from existing construction sites (facilities where construction activities began before October 1, 1997, and final stabilization is to occur after October 1, 1997) and new construction sites. New construction sites are those facilities where disturbances associated construction activities commence after October 1, 1997. To obtain authorization under today's permits, a discharger must submit a complete NOI and comply with the terms of the permit. The terms of the permit, including the requirements for submitting an NOI, are discussed in more detail below.

The following discharges are not authorized by these final general permits:

- Storm water discharges associated with industrial activity that originate

[4] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exclusion for manufacturing facilities in category (xi) which do not have materials or activities exposed to storm water to the EPA for further rulemaking. (Nos. 90–70671 and 91–70200).

[5] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exemption for construction sites of less than five acres to the EPA for further rulemaking (*Natural Resources Defense Council v. EPA*, Nos. 90–70671 and 91–70200, slip op. at 6217 (9th Cir. June 4, 1992).

from the site after construction activities have been completed and the site has undergone final stabilization;

- Non-storm water discharges (except certain non-storm water discharges specifically listed in today's general permits). However, today's permits can authorize storm water discharges from construction activities where such discharges are mixed with non-storm water discharges that are authorized by a different NPDES permit;
- Storm water discharges from construction sites that are covered by an existing NPDES individual or general permit. However, storm water discharges associated with industrial activity from a construction site that are authorized by an existing permit may be authorized by today's general permit after the existing permit expires, provided the expired permit did not establish numeric limitations for such discharges;
- Storm water discharges from construction sites that the Director has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard; and
- Storm water discharges from construction sites if the discharges are likely to adversely affect a listed endangered or threatened species or a species that is proposed to be listed as endangered or threatened or its critical habitat.

III. Summary of Options for Controlling Pollutants

Most controls for construction activities can be categorized into two groups: 1) sediment and erosion controls; and 2) storm water management measures. Sediment and erosion controls generally address pollutants in storm water generated from the site during the time when construction activities are occurring. Storm water management measures generally are installed during and before competition of the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Additional measures include housekeeping best management practices.

A. Sediment and Erosion Controls.

Erosion controls provide the first line of defense in preventing offsite sediment movement and are designed to prevent erosion through protection and preservation of soils. Sediment controls are designed to remove sediment from runoff before the runoff is discharged from the site. Sediment and erosion controls can be further divided into two major classes of controls: stabilization practices and structural practices. Major types of sediment and erosion practices are summarized below. A more complete description of these practices is given in ''Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices'', U.S. EPA, 1992.

1. *Sediment and Erosion Controls: Stabilization Practices.* Stabilization, as discussed here, refers to covering or maintaining an existing cover over soils. The cover may be vegetation, such as grass, trees, vines, or shrubs. Stabilization measures can also include nonvegetative controls such as geotextiles, riprap, or gabions (wire mesh boxes filed with rock). Mulches, such as straw or bark, are most effective when used in conjunction with establishing vegetation, but can be used without vegetation. Stabilization of exposed and denuded soils is one of the most important factors in minimizing erosion while construction activities occur. A vegetation cover reduces the erosion potential of a site by absorbing the kinetic energy of raindrops that would otherwise disturb unprotected soil; intercepting water so that it infiltrates into the ground instead of running off the surface; and slowing the velocity of runoff, thereby promoting deposition of sediment in the runoff. Stabilization measures are often the most important measures taken to prevent offsite sediment movement and can provide large reductions suspended sediment levels in discharges and receiving waters.[6] Examples of stabilization measures are summarized below.

a. Temporary Seeding. Temporary seeding provides for temporary stabilization by establishing vegetation at areas of the site where activities will temporarily cease until later in the construction project. Without temporary stabilization, soils at these areas are exposed to precipitation for an extended time period, even though work is not occurring on these areas. Temporary seeding practices have been found to be up to 95 percent effective in reducing erosion.[7]

b. Permanent Seeding. Permanent seeding involves establishing a sustainable ground cover at a site. Permanent seeding stabilizes the soil to reduce sediment in runoff from the site by controlling erosion and is typically required at most sites for aesthetic reasons.

c. Mulching. Mulching is typically conducted as part of permanent and temporary seeding practices. Where temporary and permanent seeding is not feasible, exposed soils can be stabilized by applying plant residues or other suitable materials to the soil surface. Although generally not as effective as seeding practices, mulching by itself, does provide some erosion control. Mulching in conjunction with seeding provides erosion protection prior to the onset of vegetation growth. In addition, mulching protects seeding activities, providing a higher likelihood of successful establishment of vegetation. To maintain optimum effectiveness, mulches must be anchored to resist wind displacement.

d. Sod Stabilization. Sod stabilization involves establishing long-term stands of grass with sod on exposed surfaces. When installed and maintained properly, sodding can be more than 99 percent effective in reducing erosion[8], making it the most effective vegetation practice available. The cost of sod stabilization (relative to other vegetative controls) typically limits its use to exposed soils where a quick vegetative cover is desired and sites which can be maintained with ground equipment. In addition, sod is sensitive to climate and may require intensive watering and fertilization.

e. Vegetative Buffer Strips. Vegetative buffer strips are preserved or planted strips of vegetation at the top and bottom of a slope, outlining property boundaries, or adjacent to receiving waters such as streams or wetlands. Vegetative buffer strips can slow runoff flows at critical areas, decreasing erosion and allowing sediment deposition.

f. Protection of Trees. This practice involves preserving and protecting selected trees that exist on the site prior to development. Mature trees provide extensive canopy and root systems which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple measures such as installing tree fencing around the drip line and installing tree armoring, to more complex measures such as building retaining walls and tree wells.

2. *Sediment and Erosion Controls: Structural Practices.* Structural practices involve the installation of devices to

[6] ''Performance of Current Sediment Control Measures at Maryland Construction Sites'', January 1990, Metropolitan Washington Council of Governments.

[7] ''Guides for Erosion and Sediment Control in California,'' USDA, Soil Conservation Service, Davis CA, Revised 1985.

[8] ''Guides for Erosion and Sediment Control in California'', USDA—Soil Conservation Service, Davis CA, Revised 1985.

divert flow, store flow, or limit runoff. Structural practices have several objectives. First, structural practices can be designed to prevent water from crossing disturbed areas where sediment may be removed. This involves diverting runoff from undisturbed upslope areas through use of earth dikes, temporary swales, perimeter dike/swales, or diversions to stable areas. A second objective of structural practices can be to remove sediment from site runoff before the runoff leaves the site. Approaches to removing sediment from site runoff include diverting flows to a trapping or storage device or filtering diffuse flow through silt fences before it leaves the site. All structural practices require proper maintenance (removal of sediment) to remain functional.

a. Earth Dike. Earth dikes are temporary berms or ridges of compacted soil that channel water to a desired location. Earth dikes should be stabilized with vegetation.

b. Silt Fence. Silt fences are a barrier of geotextile fabric (filter cloth) used to intercept sediment in diffuse runoff. They must be carefully maintained to ensure structural stability and to remove excess sediment.

c. Drainage Swales. A drainage swale is a drainage channel lined with grass, riprap, asphalt, concrete, or other materials. Drainage swales are installed to convey runoff without causing erosion.

d. Sediment Traps. Sediment traps can be installed in a drainage way, at a storm drain inlet, or other points of discharge from a disturbed area.

e. Check Dams. Check dams are small temporary dams constructed across a swale or drainage ditch to reduce the velocity of runoff flows, thereby reducing erosion of the swale or ditch. Check dams should not be used in a live stream. Check dams reduce the need for more stringent erosion control practices in the swale due to the decreased velocity and energy of runoff.

f. Level Spreader. Level spreaders are outlets for dikes and diversions consisting of an excavated depression constructed at zero grade across a slope. Level spreaders convert concentrated runoff into diffuse runoff and release it onto areas stabilized by existing vegetation.

g. Subsurface Drain. Subsurface drains transport water to an area where the water can be managed effectively. Drains can be made of tile, pipe, or tubing.

h. Pipe Slope Drain. A pipe slope drain is a temporary structure placed from the top of a slope to the bottom of a slope to convey surface runoff down slopes without causing erosion.

i. Temporary Storm Drain Diversion. Temporary storm drain diversions are used to re-direct flow in a storm drain to discharge into a sediment trapping device.

j. Storm Drain Inlet Protection. Storm drain inlet protection can be provided by a sediment filter or an excavated impounding area around a storm drain inlet. These devices prevent sediment from entering storm drainage systems prior to permanent stabilization of the disturbed area.

k. Rock Outlet Protection. Rock protection placed at the outlet end of culverts or channels can reduce the depth, velocity, and energy of water so that the flow will not erode the receiving downstream reach.

l. Other Controls. Other controls include temporary sediment basins, sump pits, entrance stabilization measures, waterway crossings, and wind breaks.

B. *Storm Water Management Measures.*

Storm water management measures are installed during and prior to completion of the construction process, but primarily result in reductions of pollutants in storm water discharged from the site after the construction has been completed. Construction activities often result in significant changes in land use. Such changes typically involve an increase in the overall imperviousness of the site, which can result in dramatic changes to the runoff patterns of a site. As the amount within a drainage area increases, the amount of pollutants carried by the runoff increases. In addition, activities such as automobile travel on roads can result in higher pollutant concentrations in runoff compared to preconstruction levels. Traditional storm water management controls attempt to limit the increases in the amount of runoff and the amount of pollutants discharged from a site associated with the change in land use.

Major classes of storm water management measures include infiltration of runoff onsite; flow attenuation by vegetation or natural depressions; outfall velocity dissipation devices; storm water retention structures and artificial wetlands; and storm water detention structures. For many sites, a combination of these controls may be appropriate. A summary of storm water management controls is provided below. A more complete description of storm water management controls is found in ''Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices'', U.S. EPA, 1992, and ''A Current Assessment of Urban Best Management Practices'' Metropolitan Washington Council of Governments, March 1992.

1. *Onsite Infiltration.* A variety of infiltration technologies, including infiltration trenches and infiltration basins, can reduce the volume and pollutant loadings of storm water discharges from a site. Infiltration devices tend to mitigate changes to predevelopment hydrologic conditions. Properly designed and installed infiltration devices can reduce peak discharges, provide ground water recharge, augment low flow conditions of receiving streams, reduce storm water discharge volumes and pollutant loads, and protect downstream channels from erosion. Infiltration devices are a feasible option where soils are permeable and the water table and bedrock are well below the surface. Infiltration basins can also be used as sediment basins during construction.[9] Infiltration trenches can be more easily placed into under-utilized areas of a development and can be used for small sites and infill developments. However, trenches may require regular maintenance to prevent clogs, particularly where grass inlets or other pollutant removing inlets are not used. In some situations, such as low density areas of parking lots, porous pavement can provide for infiltration.

2. *Flow Attenuation by Vegetation or Natural Depressions.* Flow attenuation provided by vegetation or natural depressions can provide pollutant removal and infiltration and can lower the erosive potential of flows.[10] In addition, these practices can enhance habitat values and the appearance of a site. Vegetative flow attenuation devices include grass swales and filter strips as well as trees that are either preserved or planted during construction.

Typically the costs of vegetative controls are less than other storm water practices. The use of check dams incorporated into flow paths can provide additional infiltration and flow attenuation.[11] Given the limited capacity to accept large volumes of runoff, and potential erosion problems associated with large concentrated flows, vegetative controls should

[9] ''Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs'', July, 1987, Metropolitan Washington Council of Governments.

[10] ''Urban Targeting and BMP Selection'', United States EPA, Region V, November 1990.

[11] ''Standards and Specifications for Infiltration Practices'', 1984, Maryland Water Resources Administration.

usually be used in combination with other storm water devices.

Grass swales are typically used in areas such as low or medium density residential development and highway medians as an alternative to curb and gutter drainage systems.[12]

3. *Outfall Velocity Dissipation Devices.* Outfall velocity dissipation devices include riprap and stone or concrete flow spreaders. Outfall velocity dissipation devices slow the flow of water discharged from a site to lessen erosion caused by the discharge.

4. *Retention Structures/Artificial Wetlands.* Retention structures include ponds and artificial wetlands that are designed to maintain a permanent pool of water. Properly installed and maintained retention structures (also known as wet ponds) and artificial wetlands [13] can achieve a high removal rate of sediment, BOD, organic nutrients and metals, and are most cost-effective when used to control runoff from larger, intensively developed sites.[14] These devices rely on settling and biological processes to remove pollutants. Retention ponds and artificial wetlands can also create wildlife habitat, recreation, and landscape amenities, as well as corresponding higher property values.

5. *Water Quality Detention Structures.* Storm water detention structures include extended detention ponds, which control the rate at which the pond drains after a storm event. Extended detention ponds are usually designed to completely drain in about 24 to 40 hours, and will remain dry at other times. They can provide pollutant removal efficiencies that are similar to those of retention ponds.[15] Extended detention systems are typically designed to provide both water quality and water quantity (flood control) benefits.[16]

C. Housekeeping BMPs

Pollutants that may enter storm water from construction sites because of poor housekeeping include oils, grease, paints, gasoline, concrete truck washdown, raw materials used in the manufacture of concrete (e.g., sand, aggregate, and cement), solvents, litter, debris, and sanitary wastes. Construction site management plans can address the following to prevent the discharge of these pollutants:

- Designate areas for equipment maintenance and repair;
- Provide waste receptacles at convenient locations and provide regular collection of wastes;
- Locate equipment washdown areas on site, and provide appropriate control of washwaters;
- Provide protected storage areas for chemicals, paints, solvents, fertilizers, and other potentially toxic materials; and
- Provide adequately maintained sanitary facilities.

IV. Summary of Permit Conditions

These general permits contain Notice of Intent requirements, a prohibition on discharging sources of non-storm water, requirements for releases of hazardous substances or oil in excess of reporting quantities, requirements for developing and implementing storm water pollution prevention plans, and requirements for site inspections.

A. Notice of Intent Requirements

NPDES general permits for storm water discharges associated with industrial activity require that dischargers submit a Notice of Intent (NOI) to be covered by the permit prior to the authorization of their discharges under such permit (see 40 CFR 122.28(b)(2)). Consistent with these regulatory requirements, today's draft permit proposes NOI requirements. These requirements are consistent with the previously issued general permit. Dischargers that submit a complete NOI are not required to submit an individual permit application for such discharge, unless the Director specifically notifies the discharger that an individual permit application must be submitted.

Dischargers who want to obtain coverage under these permits must submit NOIs using the form provided by EPA (or a photocopy thereof). The NOI form is provided in Appendix A of this notice and can be photocopied for use in submittals. NOI forms are also available from the EPA Region 4 Office (see the **ADDRESSES** section of today's notice). Completed NOI forms must be submitted to the following address: Storm Water Notices of Intent(4203), 401 M Street, S.W., Washington, DC 20460

Dischargers operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans, must, in addition to filing copies of the NOI with EPA, submit signed copies of the NOI to the State or local agency approving such plans by the deadlines stated below.

1. Deadlines for Submitting NOIs

Deadlines for submittal of NOIs to be authorized to discharge under these permits are as follows:

- On or before October 1, 1997, for storm water discharges from construction sites where disturbances associated with a construction project occur on or before October 1, 1997, and final stabilization [17] is completed at the site after October 1, 1997;
- At least 2 days prior to the commencement of construction activities (e.g., the initial disturbance of soils associated with clearing, grading, excavation activities, or other construction activities), where such activities commence after October 1, 1997; and
- For storm water discharges from construction sites where the operator changes, (including projects where an operator is selected after an NOI has been submitted), an NOI shall be submitted at least 2 days prior to when the operator commences work at the site.

EPA will accept an NOI at a later date. However, in such instances, EPA may bring appropriate enforcement actions.

2. *Authorization.* Dischargers who submit a complete NOI in accordance with the requirements of these permits are authorized to discharge storm water from construction sites under the terms and conditions of this permit 2 days after the date that the NOI is postmarked, unless notified by EPA.

EPA may deny coverage under this permit and require submittal of an individual NPDES permit application based on a review of the completeness and/or content of the NOI or other information (e.g., water quality information, compliance history, etc.). Where EPA requires a discharger authorized under the general permit to apply for an individual NPDES permit or an alternative general permit, EPA will notify the discharger in writing that a permit application is required. Coverage under this general permit will automatically terminate if the discharger fails to submit the required permit application in a timely manner. Where the discharger does submit a requested permit application, coverage under this general permit will automatically terminate on the effective date of the issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee.

3. *Contents of the NOI.* A photocopy of the NOI in Appendix A of today's notice may be completed and submitted

[12] ''Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs'', Metropolitan Washington Council of Governments, July 1987.

[13] See ''Wetland basins for Storm Water Treatment: Discussion and Background'', Maryland Sediment and Storm water Division, 1987 and ''The Value of Wetlands for Non-point Source Control—Literature Summary'', Strecker, E., et al., 1990.

[14] ''Controlling Urban Runoff, A Practical Manual for Planning and Designing Urban BMPs'', Metropolitan Washington Council of Governments, 1987.

[15] ''Urban Targeting and BMP Selection'', United States EPA, Region V, November 1990.

[16] ''Urban Surface Water Management'', Walesh, S.G., Wiley, 1989.

[17] The term ''final stabilization'' is defined in today's permits and is discussed in more detail in the Notice of Termination section of today's fact sheet.

to EPA's central address to obtain authorization to discharge under today's permits. The NOI form requires the following information:

- The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township, and range to the nearest quarter;
- The site owner's name, address, and telephone number;
- The name, address, and telephone number of the operator(s) with day-to-day operational control who have been identified at the time of the NOI submittal, and their status as a Federal, State, private, public, or other entity. Where multiple operators have been selected at the time of the initial NOI submittal, NOIs must be attached and submitted in the same envelope. When an additional operator submits an NOI for a site with a preexisting NPDES permit, the NOI of the additional operator must indicate the preexisting NPDES permit number for discharge(s) from the site;
- The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s);
- The permit number of any NPDES permit(s) for any other discharge(s) (including any other storm water discharges or any non-storm water discharges) from the site;
- An indication of whether the operator has existing sampling data that describe the concentration of pollutants in storm water discharges. Existing data should not be included as part of the NOI and should not be submitted unless and until requested by EPA; and
- An estimate of project start date and completion dates, estimates of the number of acres of the site on which soil will be disturbed, and a certification that a storm water pollution prevention plan has been prepared for the site in accordance with the permit and that such plan complies with approved State and/or local sediment and erosion plans or permits and/or storm water management plans or permits. A copy of the plans or permits should not be included with the NOI submission, and should not be submitted unless and until requested by EPA.

The NOI must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements is provided in the instructions accompanying the NOI (see Appendix A).

4. *Additional Notification*. In addition to submitting the NOI to EPA, facilities operating under approved State or local sediment and erosion plans, grading plans, or storm water management plans are required to submit signed copies of the NOI to the State or local agency approving such plans by the deadlines stated above. Failure to do so constitutes a violation of the permit.

B. Special Conditions

1. *Prohibition on Non-Storm Water Discharges.* Today's draft permit do not authorize non-storm water discharges that are mixed with storm water except for specific classes of non-storm water discharges specified in the permits. Non-storm water discharges that can be authorized under today's draft permit include discharges from firefighting activities; fire hydrant flushings; waters used to wash vehicles or control dust in accordance with permit requirements; potable water sources including waterline flushings; irrigation drainage; routine external building washdown that does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; and foundation or footing drains where flows are not contaminated with process materials such as solvents.[18]

To be authorized under the final issued permit, sources of non-storm water (except flows from firefighting activities) must be specifically identified in the storm water pollution prevention plan prepared for the facility. (Plan requirements are discussed in more detail below). Where such discharges occur, the plan must also identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water components of the discharge. For example, to reduce pollutants in irrigation drainage, a plan could identify low maintenance lawn areas that do not require the use of fertilizers or biocides; for higher maintenance lawn areas, a plan could identify measures such as limiting fertilizer use based on seasonal and agronomic considerations, decreasing biocide use with an integrated pest management program, introducing natural vegetation or more hearty species, and reducing water use (thereby reducing the volume of irrigation drainage).

This permit will not require pollution prevention measures to be identified and implemented for non-storm water flows from firefighting activities since these flows will usually occur as unplanned emergency situations where it is necessary to take immediate action to protect the public.

[18] These discharges are consistent with the allowable classes of non-storm water discharges to municipal separate storm sewer systems (40 CFR 122.26(d)(iv)(D)).

The general prohibition on non-storm water discharges in today's draft permit ensures that non-storm water discharges (except for those classes of non-storm water discharges that are conditionally authorized) are not inadvertently authorized by these permits. Where a storm water discharge is mixed with process wastewaters or other sources of non-storm water prior to discharge, and the discharge is currently not authorized by an NPDES permit, the discharge cannot be covered by today's permits and the discharger should (1) submit the appropriate application forms (Forms 1 and 2C) to obtain permit coverage or (2) discontinue the discharge.

2. *Releases of Reportable Quantities of Hazardous Substances and Oil.* Today's draft permit provides that the discharge of hazardous substances or oil from a facility must be eliminated or minimized in accordance with the storm water pollution plan developed for the facility. Where a permitted storm water discharge contains a hazardous substance or oil in an amount equal to or in excess of a reporting quantity established under 40 CFR 110, 40 CFR 117, or 40 CFR 302, during a 24-hour period, today's permits require the following actions:

- The permittee must notify the National Response Center (NRC) (800–424–8802; in the Washington, D.C. metropolitan area 202–426–2675) in accordance with the requirements of 40 CFR 110, 40 CFR 117, and 40 CFR 302, as soon as they have knowledge of the discharge;
- The permittee must modify the storm water pollution prevention plan for the facility within 14 calendar days of knowledge of the release to provide (1) A description of the release, (2) the date of the release, and (3) the circumstances leading to the release. In addition, the permittee must modify the plan, as appropriate, to identify measures to prevent the reoccurrence of such releases and to respond to such releases.
- Within 14 calendar days of the knowledge of the release, the permittee must submit to EPA (1) A written description of the release (including the type and estimated amount of material released), (2) the date that such release occurred, (3) the circumstances leading to the release, and (4) any steps to be taken to modify the storm water pollution prevention plan for the facility.

Where a discharge of a hazardous substance or oil in excess of reporting quantities is caused by a non-storm water discharge (e.g., a spill of oil into a separate storm sewer), the spill is not authorized by this permit. The discharger must report the spill as required under 40 CFR 110. In the event of a spill, the requirements of Section 311 of the CWA and otherwise applicable provisions of Sections 301 and 402 of the CWA continue to apply.

This approach is consistent with the requirements for reporting releases of hazardous substances and oil-requirements that make a clear distinction between hazardous substances typically found in storm water discharges and those associated with spills that are not considered part of a normal storm water discharge (see 40 CFR 117.12(d)(2)(i)).

C. Unpaved Rural Roads

Part IV of the permit and its conditions are intended to eliminate, prevent or minimize the discharge of pollutants to waters of the U.S. from the construction of unpaved roads. EPA believes that the discharge of storm water runoff from the construction of unpaved roads could be a significant source of pollutants to waters of the United States. Therefore, the discharge of storm water from the construction of unpaved roads greater than five (5) acres is not exempt from the requirements of 40 CFR § 122.26(a)(1)(ii) and (b)(14)(x) under the Intermodal Surface Transportation Efficiency Act of 1991. This action is in accordance with § 402(p)(2)(E) of the Clean Water Act (1987, as amended). If five (5) acres equals 217,800 ft^2 and area equals length times width, then the approximate length of road equal to five (5) acres would be 217,800 ft^2 divided by the road width. For example, assuming a road construction area width of 25 feet, five (5) acres of road would be approximately 1.65 miles.

The principle component of the Part IV requirements is the construction of drainage systems, water turn-outs, in accordance with the document, *Silviculture Best Management Practices*, 1993 Florida Department of Agriculture & Consumer Services, to reduce the volume and velocity of roadside ditch flow. The construction of the drainage systems in conjunction with the final cover conditions of the road constitute final stabilization under Part IX.A. of the permit. In addition, the turn-outs should be maintained to continue eliminating, preventing and/or minimizing the discharge of pollutants to waters of the U.S. All relevant portions of the pollution prevention plan requirements of Part V of the permit shall be applied to discharges of storm water from unpaved roads.

D. Storm Water Pollution Prevention Plan Requirements

The pollution prevention plans required by today's draft permit focuses on two major tasks: (1) Providing a site description that identifies sources of pollution to storm water discharges associated with industrial activity from the facility and (2) identifying and implementing appropriate measures to reduce pollutants in storm water discharges to ensure compliance with the terms and conditions of these permits.

In developing these permits, the Agency reviewed a significant number of existing State and local sediment and erosion control and storm water management requirements. State and local data were reviewed for a wide range of climates and varying types of construction activities.

1. Contents of the Plan

Storm water pollution prevention plans must include a site description; a description of controls that will be used at the site (e.g., erosion and sediment controls, storm water management measures); a description of maintenance and inspection procedures; and a description of pollution prevention measures for any non-storm water discharges that exist.

a. Site Description. Storm water pollution prevention plans must be based on an accurate understanding of the pollution potential of the site. The first part of the plan requires an evaluation of the sources of pollution at a specific construction site. The plan must identify potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the source identification components for pollution prevention plans must provide a description of the site and the construction activities. This information is intended to provide a better understanding of site runoff and major pollutant sources. At a minimum, plans must include the following:

- A description of the nature of the construction activity. This would typically include a description of the ultimate use of the project (e.g., low-density residential, shopping mall, highway).
- A description of the intended sequence of major activities that disturb soils for major portions of the site (e.g., grubbing, excavation, grading).
- Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities. Where the construction activity is to be staged, it may be appropriate to describe areas of the site that will be disturbed at different stages of the construction process.
- Estimates of the runoff coefficient of the site after construction activities are completed as well as existing data describing the quality of any discharge from the site or the soil. The runoff coefficient is defined as the fraction of total rainfall that will appear at the conveyance as runoff. Runoff coefficients can be estimated from site plan maps, which provide estimates of the area of impervious structures planned for the site and estimates of areas where vegetation will be precluded or incorporated. Runoff coefficients are one tool for evaluating the volume of runoff that will occur from a site when construction is completed. These coefficients assist in evaluating pollutant loadings, potential hydraulic impacts to receiving waters, and flooding impacts. They are also used for sizing of post-construction storm water management measures.
- A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance; an outline of areas that will not be disturbed; the location of major structural and nonstructural controls identified in the plan; the location of areas where stabilization practices are expected to occur; the location of surface waters (including wetlands); and locations where storm water is discharged to a surface water. Site maps should also include other major features and potential pollutant sources, such as the location of impervious structures and the location of soil piles during the construction process.
- The name of the receiving water(s), and areal extent of wetland acreage at the site.

b. Controls to Reduce Pollutants. The storm water pollution prevention plan must describe and ensure the implementation of practices that will be used to reduce the pollutants in storm water discharges from the site and assure compliance with the terms and conditions of the permit. Permittees are required to develop a description of four classes of controls appropriate for inclusion in the facility's plan, and implement controls identified in the plan in accordance with the plan. The description of controls must address (1) Erosion and sediment controls, (2) storm water management, (3) a specified set of other controls, and (4) any applicable procedures and requirements of State and local sediment and erosion plans or storm water management plans.

The pollution prevention plan must clearly describe the intended sequence of major activities and when, in relation to the construction process, the control will be implemented. Good site planning and preservation of mature vegetation are primary control techniques for controlling sediment in storm water discharges during construction activities as well as for developing a strategy for storm water management that controls pollutants in storm water discharges after the completion of construction activities. Properly staging major earth disturbing activities can also dramatically decrease the costs of sediment and erosion controls. The description of the intended sequence of major activities will typically describe the intended staging of activities on different parts of the site.

Permittees must develop and implement four classes of controls in the pollution prevention plan, each of which is discussed below.

i. Erosion and Sediment Controls. The requirements for erosion and sediment controls for construction activities in this permit have three goals: (1) to divert upslope water around disturbed areas of the site; (2) to limit the exposure of disturbed areas to the shortest duration possible; and (3) to remove sediment from storm water before it leaves the site. Erosion and sediment controls include both stabilization practices and structural practices.

Performance Standards

The erosion and sediment control practices must at a minimum:

(a) remove 80% of the Settleable Solids (SS) in storm water discharges from the site to Class III waters;

(b) remove 95% of the SS in storm water discharges from the site to sensitive waters such as potable water sources (class I waters), shellfish harvesting waters (Class II waters) and outstanding Florida waters.

The performance standards, as listed in Part V of the permit, are based on the Florida Water Policy established in the document, *Florida Section 6217 Informal Threshold Review,* September 14, 1994. These performance standards are intended to preserve the beneficial use of waters and to establish a relationship between the SWPPP requirements and Florida's Water Quality Standards.

Stabilization Practices. Pollution prevention plans must include a description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. The plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized as quickly as possible. Stabilization practices are the first line of defense for preventing erosion; they include temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetative buffer strips, and other appropriate measures. Temporary stabilization practices are often cited as the single most important factor in reducing erosion at construction sites.[19]

Stabilization also involves preserving and protecting selected trees that were on the site prior to development. Mature trees have extensive canopy and root systems, which help to hold soil in place. Shade trees also keep soil from drying rapidly and becoming susceptible to erosion. Measures taken to protect trees can vary significantly, from simple measures such as installing tree fencing around the drip line and installing tree armoring, to more complex measures such as building retaining walls and tree wells.

Since stabilization practices play such an important role in preventing erosion, it is critical that they are rapidly employed in appropriate areas. These permits provide that, except in three situations, stabilization measures be initiated on disturbed areas as soon as practicable, but no more than 14 days after construction activity on a particular portion of the site has temporarily or permanently ceased. The three exceptions to this requirement are the following:

- Where construction activities will resume on a portion of the site within 21 days from when the construction activities ceased.
- Where the initiation of stabilization measures is precluded by snow cover, in which case, stabilization measures must be initiated as soon as practicable.
- In arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid area (areas with an average annual rainfall of 10 to 20 inches), where the initiation of stabilization measures is precluded by seasonal arid conditions, in which case, stabilization measures must be initiated as soon as practicable.

Structural Practices. The pollution prevention plan must include a description of structural practices to the degree economically attainable, to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Structural controls are necessary because vegetative controls cannot be employed at areas of the site that are continually disturbed and because a finite time period is required before vegetative practices are fully effective. Options for such controls include silt fences, earth dikes, drainage swales, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, sediment traps, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural measures should be placed on upland soils to the degree possible.

For sites with more than 10 disturbed acres at one time that are served by a common drainage location, a temporary or permanent sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures (such as suitably sized dry wells or infiltration structures), must be provided where economically attainable until final stabilization of the site has been accomplished. Flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization may be diverted around both the sediment basin and the disturbed area. The requirement to provide 3,600 cubic feet of storage area per acre drained does not apply to such diverted flows.

For the drainage locations which serve more than 10 disturbed acres at one time and where a sediment basin providing storage or equivalent controls for 3,600 cubic feet per acre drained is not economically attainable, smaller sediment basins or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area. Diversion structures should be used on upland boundaries of disturbed areas to prevent runon from entering disturbed areas.

For drainage locations serving 10 or less acres, smaller sediment basins or sediment traps should be used and at a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area. Alternatively, the permittee may provide a sediment basin providing storage for 3,600 cubic feet of storage per acre drained. Diversion structures should be used on upland boundaries of disturbed areas to prevent runon from entering disturbed areas.

ii. Storm Water Management. The plan must include a description of ''storm water management'' measures[20]. These permits address only the installation of storm water management measures and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are responsible only for the installation and maintenance of storm water management measures prior to final stabilization of the site and are not responsible for maintenance after storm water discharges associated with construction activities have been eliminated from the site.

Land development can significantly increase storm water discharge volumes and peak velocities where appropriate

[19] ''New York Guidelines for Urban Erosion and Sediment Control'', USDA, Soil Conservation Service, March 1988.

[20] For the purpose of the special requirements for construction activities, the term ''storm water management'' measures refers to controls that will primarily reduce the discharge of pollutants in storm water from sites *after* completion of construction activities.

storm water management measures are not implemented. In addition, storm water discharges will typically contain higher levels of pollutants, including total suspended solids (TSS), heavy metals, nutrients, and oxygen demanding constituents [21].

Storm water management measures that are installed during the construction process can control the volume of storm water discharged and peak discharge velocities, as well as reduce the amount of pollutants discharged after the construction operations have been completed. Reductions in peak discharge velocities and volumes can also reduce pollutant loads, as well as reduce physical impacts such as stream bank erosion and stream bed scour. Storm water management measures that mitigate changes to predevelopment runoff characteristics assist in protecting and maintaining the physical and biological characteristics of receiving streams and wetlands.

Structural measures should be placed on upland soils to the degree attainable. The installation of such devices may be subject to Section 404 of the CWA if the devices are placed in wetlands (or other waters of the United States).

Options for storm water management measures that are to be evaluated in the development of plans include infiltration of runoff on site; flow attenuation by use of open vegetated swales and natural depressions; storm water retention structures and storm water detention structures (including wet ponds); and sequential systems that combine several practices.

The pollution prevention plan must include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels. The explanation of the technical basis for selecting practices should address how a number of factors were evaluated, including the pollutant removal efficiencies of the measures, the costs of the measure, site specific factors that will affect the application of the measures, the economic achievability of the measure at a particular site, and other relevant factors.

EPA anticipates that storm water management measures at many sites will be able to provide for the removal of at least 80 percent of total suspended solids (TSS) [22]. A number of storm water management measures can be used to achieve this level of control, including properly designed and installed wet ponds, infiltration trenches, infiltration basins, sand filter system, manmade storm water wetlands, and multiple pond systems. The pollutant removal efficiencies of various storm water management measures can be estimated from a number of sources, including ''Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices,'' U.S. EPA, 1992, and ''A Current Assessment of Urban Best Management Practice,'' prepared for U.S. EPA by Metropolitan Washington Council of Governments, March 1992. Proper selection of a technology depends on site factors and other conditions.

In selecting storm water management measures, the permittee should consider the impacts of each method on other water resources, such as ground water. Although storm water pollution prevention plans primarily focus on storm water management, EPA encourages facilities to avoid creating ground water pollution problems. For example, if the water table is unusually high in an area or soils are especially sandy and porous, an infiltration pond may contaminate a ground water source unless special preventive measures are taken. Under EPA's July 1991 Ground Water Protection Strategy, States are encouraged to develop Comprehensive State Ground Water Protection Programs (CSGWPPs). Efforts to control storm water should be compatible with State ground water objectives as reflected in CSGWPPs.

The evaluation of whether the pollutant loadings and the hydrologic conditions (the volume of discharge) of flows exceed predevelopment levels can be based on hydrologic models which consider conditions such as the natural vegetation which is typical for the area.

Increased discharge velocities can greatly accelerate erosion near the outlet of onsite structural measures. To mitigate these effects, these permits require that velocity dissipation devices be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course. Velocity dissipation devices maintain and protect the natural physical and biological characteristics and functions of the watercourse, e.g., hydrologic conditions, such as the hydroperiod and hydrodynamics, that were present prior to the initiation of construction activities.

iii. Other Controls. Other controls to be addressed in storm water pollution prevention plans for construction activities require that no non-storm water solid materials, including building material wastes, shall be discharged at the site, except as authorized by a Section 404 permit.

These final permits require that offsite vehicle tracking of sediments and the generation of dust be minimized. This can be accomplished by measures such as providing gravel or paving at access entrance and exit drives, parking areas, and unpaved roads on the site carrying significant amounts of traffic (e.g., more than 25 vehicles per day); providing entrance wash racks or stations for trucks; and/or providing street sweeping.

In addition, these permits require that the plan shall ensure and demonstrate compliance with applicable State and/or local sanitary sewer, septic system, and waste disposal regulations.[23]

iv. State and Local Controls. Many municipalities and States have developed sediment and erosion control requirements for construction activities. A significant number of municipalities and States have also developed storm water management controls. These general permits require that storm water pollution prevention plans for facilities that discharge storm water associated with industrial activity from construction activities include procedures and requirements of State and local sediment and erosion control plans or storm water management plans. Permittees are required to provide a certification that their storm water pollution prevention plan reflects requirements related to protecting water resources that are specified in State or local sediment and erosion plans or storm water management plans.[24]In

[21] See ''Nationwide Urban Runoff Program'', EPA, 1984.

[22] TSS can be used as an indicator parameter to characterize the control of other pollutants, including heavy metals, oxygen demanding pollutants, and nutrients, commonly found in storm water discharges.

[23] In rural and suburban areas that are served by septic systems, malfunctioning septic systems can contribute pollutants to storm water discharges. Malfunctioning septic tanks may be a more significant surface runoff pollution problem than a ground water problem. This is because a malfunctioning septic system is less likely to cause ground water contamination where a bacterial mat in the soil retards the downward movement of wastewater. Surface malfunctions are caused by clogged or impermeable soils, or when stopped up or collapsed pipes force untreated wastewater to the surface. Surface malfunctions can vary in degree from occasional damp patches on the surface to constant pooling or runoff of wastewater. These discharges have high bacteria, nitrate, and nutrient levels and can contain a variety of household chemicals. This permit does not establish new criteria for septic systems, but rather addresses existing State or local criteria.

[24] Operators of storm water discharges from construction activities which, based on an evaluation of site specific conditions, believe that State and local plans do not adequately represent BAT and BCT requirements for the facility may request to be excluded from the coverage of the general permit by submitting to the Director an individual application with a detailed explanation

addition, permittees are required to amend their storm water pollution prevention plans to reflect any change in a sediment and erosion site plan or site permit or storm water management site plan or site permit approved by State or local officials for which the permittee receives written notice. Where such amendments are made, the permittee must provide a recertification that the storm water pollution prevention plan has been modified. This provision does not apply to provisions of master plans, comprehensive plans, nonenforceable guidelines, or technical guidance documents, but rather to site-specific State or local permits or plans.

c. Maintenance

Erosion and sediment controls can become ineffective if they are damaged or not properly maintained. Maintenance of controls has been identified as a major part of effective erosion and sediment programs. Plans must contain a description of prompt and timely maintenance and repair procedures addressing all erosion and sediment control measures (e.g., sediment basins, traps, silt fences), vegetation, and other measures identified in the site plan to ensure that such measures are kept in good and effective operating condition.

d. Inspections

Procedures in a plan must provide that specified areas on the site are inspected by qualified personnel provided by the discharger a minimum of once every seven calendar days and within 24 hours after any storm event of greater than 0.5 inches. Areas of the site that must be observed during such inspections include disturbed areas, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site. Where sites have been temporarily or finally stabilized, or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semi-arid areas (with an average annual rainfall of 10 to 20 inches) the inspection must be conducted at least once every month.

Disturbed areas and areas used for storage of materials that are exposed to precipitation must be inspected for evidence of, or the potential for, pollutants entering the runoff from the site. Erosion and sediment control measures identified in the plan must be observed to ensure that they are operating correctly. Observations can be made during wet or dry weather conditions. Where discharge locations or points are accessible, they must be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. This can be done by inspecting receiving waters to see whether any signs of erosion or sediment are associated with the discharge location. Locations where vehicles enter or exit the site must be inspected for evidence of offsite sediment tracking.

Based on the results of the inspection, the site description and the pollution prevention measures identified in the plan must be revised as soon as possible after an inspection that reveals inadequacies. The inspection and plan review process must provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

An inspection report that summarizes the scope of the inspection, name(s) and qualifications of personnel conducting the inspection, the dates of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken must be retained as part of the storm water pollution prevention plan for at least three years after the date of inspection. The report must be signed in accordance with the signatory requirements in the Standard Conditions section of this draft permit.

Diligent inspections are necessary to ensure adequate implementation of onsite sediment and erosion controls, particularly in the later stages of construction when the volume of runoff is greatest and the storage capacity of the sediment basins has been reduced.[25]

e. Non-Storm Water Discharges

The final issued permit may authorize storm water discharges from construction activities that are mixed with discharges from firefighting activities, fire hydrant flushings, waters used to wash vehicles or control dust in accordance with efforts to minimize offsite sediment tracking, potable water sources including waterline flushings, irrigation drainage from watering vegetation, routine exterior building washdown that does not use detergents, pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used, air conditioning condensate, springs, and foundation or footing drains where flows are not contaminated with process materials such as solvents, provided the non-storm water component of the discharge is specifically identified in the pollution prevention plan. In addition, the plan must identify and ensure the implementation of appropriate pollution prevention measures for each of the non-storm water component(s) of the discharge.[26]

EPA believes that where these classes of non-storm water discharges are identified in a pollution prevention plan and where appropriate pollution prevention measures are evaluated, identified, and implemented, they generally pose low risks to the environment. The Agency also notes that it can request individual permit applications for such discharges where appropriate. The Agency is not requiring that flows from fire-fighting activities be identified in plans because of the emergency nature of such discharges coupled with their low probability and the unpredictability of their occurrence.

2. Deadlines for Plan Preparation and Compliance

The final issued permit will establish the following deadlines for storm water pollution prevention plan development and compliance:

- The plan must be completed prior to the submittal of an NOI to be covered under this permit and updated as appropriate.
- For construction activities that have begun on or before October 1, 1997, except the plan shall provide for compliance with the terms and schedule of the plan beginning on October 1, 1997.
- For construction activities that have begun after October 1, 1997, the plan must provide for compliance with the terms and schedule of the plan beginning with the initiation of construction activities.

3. Signature and Plan Review

Signature and plan review requirements are as follows:

- The plan must be signed by all permittees for a site in accordance with the signatory requirements in the Standard Permit Conditions section of the permit, and must be retained on site at the facility that generates the storm water discharge.
- The permittee must make plans available, upon request, to EPA, and

of the reasons supporting the request, including any supporting documentation showing that certain permit conditions are not appropriate.

[25] ''Performance of Current Sediment Control Measures at Maryland Construction Sites'', January 1990, Metropolitan Washington Council of Governments.

[26] This is consistent with the allowable types of non-storm water discharges to municipal separate storm sewer systems (40 CFR 122.26(d)(2)(iv)(A)).

State or local agency approved sediment and erosion plans, grading plans, or storm water management plans. In the case of a storm water discharge associated with industrial activity that discharges through a municipal separate storm sewer system with an NPDES permit, permittees must make plans available to the municipal operator of the system upon request.

- EPA may notify the permittee at any time that the plan does not meet one or more of the minimum requirements. Within 7 days of such notification from EPA (or as otherwise requested by EPA), the permittee must make the required changes to the plan and submit to EPA a written certification that the requested changes have been made.

4. Keeping Plans Current

The permittee must amend the plan whenever there is a change in design, construction, operation, or maintenance, that has a significant effect on the potential for the discharge of pollutants to waters of the United States or to municipal separate storm sewer systems. The plan must also be amended if it proves to be ineffective in eliminating or significantly minimizing pollutants in the storm water discharges from the construction activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the storm water pollution prevention plan. Amendments to the plan will be reviewed by EPA as described above.

5. Additional Requirements

These permits authorize a storm water discharge associated with industrial activity from a construction site that is mixed with a storm water discharge from an industrial source other than construction, only under the following conditions:

- The industrial source other than construction is located on the same site as the construction activity; and
- Storm water discharges from where the construction activities are occurring are in compliance with the terms of this permit.

6. Contractors

The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement presented below before conducting any professional service at the site identified in the pollution prevention plan:

''I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification.''

All certifications must be included in the storm water pollution prevention plan.

E. Retention of Records

The permittee is required to retain records or copies of all reports required by this permit, including storm water pollution prevention plans and records of all data used to complete the NOI to be covered by the permit, for a period of at least three years from the date of final stabilization. This period may be extended by request of the Director.

F. Notice of Termination

A discharger may submit a Notice of Termination (NOT) to EPA in two sets of circumstances: 1) after a site has undergone final stabilization and the facility no longer discharges storm water associated with industrial activity from a construction site and 2) when the permittee has transferred operational control to another permittee and is no longer an operator for the site. NOTs must be submitted using the form provided by the Director (or a photocopy thereof). A copy of the NOT form is in Appendix B and can be photocopied for use. NOTs will assist EPA in tracking the status of the discharger.

Today's draft permit defines final stabilization for the purpose of submitting an NOT as occurring when all soil disturbing activities are completed and a uniform perennial vegetative cover with a density of 70 percent for the unpaved areas and areas not covered by permanent structures has been established or equivalent stabilization measures have been employed. Equivalent stabilization measures include permanent measures other than establishing vegetation, such as the use of rip-rap, gabions, and/or geotextiles.

A copy of the NOT, and instructions for completing the NOT, are provided in Appendix B of today's notice. The NOT form requires the following information:

- The mailing address of the construction site for which the notification is submitted. Where a mailing address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township, and range to the nearest quarter.
- The site owner's name, address, and telephone number.
- The name, address, and telephone number of the operator addressed by the NOT, and operator status as a Federal, State, private, public, or other entity.
- The NPDES permit for the storm water discharge identified by the NOT.
- The following certification:

''I certify under penalty of law that disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with construction activities from the identified site that are authorized by an NPDES general permit have been eliminated or that I am no longer the operator of the construction activity. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water by the general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit.''

Notices of Termination are to be sent to the following address: Storm Water Notice of Intent (4203), 401 M Street, S.W., Washington, DC 20460.

The NOT must be signed by the appropriate individual in accordance with the signatory requirements of 40 CFR 122.22. A description of these signatory requirements is provided in the instructions accompanying the NOT (see Appendix B).

Submittal of a NOT, by itself, does not relieve permittees from the obligations of the permit, such as the requirement to stabilize the site. Appropriate enforcement actions may still be taken for permit violations where a permittee submits a NOT but the permittee has not transferred operational control to another permittee or the site has not undergone final stabilization.

G. Regional Offices

Notices of Intent to be authorized to discharge under these permits should be sent to: Storm Water Notice of Intent (4203), 401 M Street, S.W., Washington, DC 20460

Other submittals of information required under these permits or individual permit applications should be sent to the appropriate EPA Regional Office: *AL (Indian lands), FL, GA (Indian lands), KY (Indian lands), MS (Indian lands), NC (Indian lands), SC (Indian lands), TN (Indian lands),* United States EPA, Region IV, Water Management Division, (SWPFB–15), Storm Water Staff, 100 Alabama Street,

S.W., Atlanta, GA 30303–3104, Contact: Floyd Wellborn, (404) 562–9296.

H. Special Conditions in Specified States

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the CWA.

V. Cost Estimates

The two major costs associated with pollution prevention plans for construction activities include the costs of sediment and erosion controls (see Table 1) and the costs of storm water management measures (see Table 2). Today's permits provide flexibility in developing controls for construction activities. Typically, most construction sites will employ several types of sediment and erosion controls and storm water management controls, but not all the controls listed in Tables 1 and 2. In general, sites that disturb a large area will incur higher pollution prevention costs.

TABLE 1.—SEDIMENT AND EROSION CONTROL COSTS

Temporary seeding ...	$1.00 per square foot.
Permanent seeding ...	$1.00 per square foot.
Mulching	$1.25 per square foot.
Sod stabilization	$4.00 per square foot.
Vegetative buffer strips.	$1.00 per square foot.
Protection of trees	$30.00 to $200.00 per tree set.
Earth dikes	$5.50 per linear foot.
Silt fences	$6.00 per linear foot.
Drainage swales-grass.	$3.00 per square yard.
Drainage swales-sod	$4.00 per square yard.
Drainage swales-asphalt.	$35.00 per square yard.
Drainage swales-concrete.	$65.00 per square yard.
Check dams-rock	$100 per dam.
Check dams-covered straw bales.	$50 per dam.
Level spreader-earthen.	$4.00 per square yard.
Level spreader-concrete.	$65.00 per square yard.
Subsurface drain	$2.25 per linear foot.
Pipe slope drain	$5.00 per linear foot.
Temporary storm drain diversion.	variable.
Storm drain inlet protection.	$300 per inlet.
Rock outlet protection	$45 per square yard.
Sediment traps	$500 to $7,000 per trap.
Temporary sediment basins.	$5,000 to $50,000 per basin.
Sump pit	$500 to $7,000.
Entrance stabilization	$1,500 to $5,000 per entrance.
Entrance wash rack ..	$2,000 per rack.
Temporary waterway crossing.	$500 to $1,500.
Wind breaks	$2.50 per linear foot.

Practices such as sod stabilization and tree protection increase property values and satisfy consumer aesthetic needs.

Sources: ''Means Site Work Cost Data'', 9th edition, 1990, R.S. Means Company. ''Sediment and Erosion Control, An Inventory of Current Practices'', prepared by Kamber Engineering for U.S. EPA, April 1990.

TABLE 2.—ANNUALIZED COSTS OF SEVERAL STORM WATER MANAGEMENT OPTIONS FOR CONSTRUCTION SITES

Option	Annualized cost for 9-acre developed area	Annualized cost for 20-acre developed area
Wet Ponds	$5,872	$9,820.
Dry Ponds	3,240	5,907.
Dry Ponds with Extended Detention	3,110	5,413
Infiltration Trenches	4,134	6,359.

Estimates based on methodology presented in ''Cost of Urban Runoff Quality Controls'', Wiegand, C., Schueler, T., Chittenden, W., and Jellick, D., Urban Runoff Quality-Impact and Quality Enhancement Technology, Proceedings of an Engineering Foundation Conference, ASCE, 1986, edited by B. Urbonas and L.A. Roesner.

Costs are presented in 1992 dollars and were reviewed by the Office of Management and Budget during the previous issuance of this permit, September 25, 1992. Annualized costs are based on a 10 year period and 10 percent discount rate. Estimates include a contingency cost of 25 percent of the construction cost and operation and maintenance costs of 5 percent of the construction cost. Land costs are not included.

VI. Economic Impact (Executive Order 12291)

EPA has submitted this notice to the Office of Management and Budget for review under Executive Order 12291.

VII. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in these final general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et.seq. EPA did not prepare an Information Collection Request (ICR) document for today's permits because the information collection requirements in these permits have already been approved by the Office of Management and Budget (OMB) in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, U.S.C. 601 et. seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's draft permit provides small entities with an application option that is less burdensome than individual applications or participating in a group application. The other requirements have been designed to minimize significant economic impacts of the rule on small entities and does not have a significant impact on industry. In addition, the permits reduce significant administrative burdens on regulated sources. Accordingly, I hereby certify pursuant to the provisions of the Regulatory Flexibility Act, that these permits will not have a significant impact on a substantial number of small entities.

Appendix A

Notice of Intent (NOI) Form (an NOI will not appear in today's proposed permit but will be included in the final issuance).

Appendix B

Notice of Termination (NOT) Form (an NOT will not appear in today's proposed permit but will be included in the final issuance).

Appendix C—Endangered Species Guidance

I. Instructions

A list of species that EPA has determined may be affected by the activities covered by the construction general permit will be included in the final issued permit. These species will be listed by county. In order to get construction general permit coverage, applicants must:

- Indicate in box provided on the NOI whether any species listed in this Addendum are in proximity to the facility, and
- Certify pursuant to Section I.B.3.e. of the construction general permit that their storm

water discharges, and BMPs constructed to control storm water runoff, are not likely, and will not be likely to adversely affect species identified in Addendum H of this permit.

To do this, please follow steps 1 through 4 below.

Step 1: Review the County Species List to Determine if any Species are Located in the Discharging Facility County

If no species are listed in a facility's county or if a facility's county is not found on the list, an applicant is eligible for construction general permit coverage and may indicate in the NOI that no species are found in proximity and provide the necessary certification. If species are located in the county, follow step 2 below. Where a facility is located in more than one county, the lists for all counties should be reviewed.

Step 2: Determine if any Species may be Found ''in Proximity'' to the Facility

A species is in proximity to a facility's storm water discharge when the species is:

- Located in the path or immediate area through which or over which contaminated point source storm water flows from industrial activities to the point of discharge into the receiving water.
- Located in the immediate vicinity of, or nearby, the point of discharge into receiving waters.
- Located in the area of a site where storm water BMPs are planned or are to be constructed.

The area in proximity to be searched/surveyed for listed species will vary with the size of the facility, the nature and quantity of the storm water discharges, and the type of receiving waters. Given the number of facilities potentially covered by the construction general permit, no specific method to determine whether species are in proximity is required for permit coverage under the construction general permit. Instead, applicants should use the method or methods which best allow them to determine to the best of their knowledge whether species are in proximity to their particular facility. These methods may include:

- *Conducting visual inspections:* This method may be particularly suitable for facilities that are smaller in size, facilities located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no nature habitat; and facilities that discharge directly into municipal storm water collection systems. For other facilities, a visual survey of the facility site and storm water drainage areas may be insufficient to determine whether species are likely to be located in proximity to the discharge.
- *Contacting the nearest State Wildlife Agency or U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) offices.* Many endangered and threatened species are found in well-defined areas or habitats. That information is frequently known to state or federal wildlife agencies. FWS has offices in every state. NMFS has regional offices in: Gloucester, Massachusetts; St. Petersburg, Florida; Long Beach, California; Portland, Oregon; and Juneau, Alaska.
- *Contacting local/regional conservation groups.* These groups inventory species and their locations and maintain lists of sightings and habitats.
- *Conducting a formal biological survey.* Larger facilities with extensive storm water discharges may choose to conduct biological surveys as the most effective way to assess whether species are located in proximity and whether there are likely adverse effects.

If no species are in proximity, an applicant is eligible for construction general permit coverage and may indicate that in the NOI and provide the necessary certification. *If listed species are found in proximity to a facility, applicants must follow step 3 below.*

Step 3: Determine If Species Could Be Adversely Affected by the Facility's Storm Water Discharges or by BMPS To Control Those Discharges.

Scope of Adverse Effects: Potential adverse effects from storm water include:

- *Hydrological.* Storm water may cause siltation, sedimentation or induce other changes in the receiving waters such as temperature, salinity or pH. These effects will vary with the amount of storm water discharged and the volume and condition of the receiving water. Where a storm water discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely.
- *Habitat.* Storm water may drain or inundate listed species habitat.
- *Toxicity.* In some cases, pollutants in storm water may have toxic effects on listed species.

The scope of effects to consider will vary with each site. Applicants must also consider the likelihood of adverse effects on species from any BMPs to control storm water. Most adverse impacts from BMPs are likely to occur from the construction activities.

Using earlier ESA authorizations for construction general permit eligibility: In some cases, a facility may be eligible for construction general permit coverage because actual or potential adverse affects were addressed or discounted through an earlier ESA authorization. Examples of such authorization include:

- An earlier ESA section 7 consultation for that facility.
- A section 10(a) permit issued for the facility.
- An area-wide Habitat Conservation Plan applicable to that facility.
- A clearance letter from the Services (which discounts the possibility of an adverse impacts from the facility).

In order for applicants to use an earlier ESA authorization to meet eligibility requirements: (1) The authorization must adequately address impacts for storm water discharges and BMPs from the facility on endangered and threatened species, (2) It must be current because there have been no subsequent changes in facility operations or circumstances which might impact species in ways not considered in the earlier authorization, and (3) The applicant must comply with any requirements from those authorizations to avoid or mitigate adverse effects to species. Applicants who wish to pursue this approach should carefully review documentation for those authorizations ensure that the above conditions are met.

If adverse effects are not likely, an applicant is eligible for construction general permit coverage and may indicate in the NOI that species are found in proximity and provide the necessary certification. If adverse effects are likely, follow step 4 below.

Step 4: Determine If Measures Can Be Implemented To Avoid Any Adverse Effects

If an applicant determines that adverse effects are likely, it can receive coverage if appropriate measures are undertaken to avoid or eliminate any actual or potential adverse affects prior to applying for permit coverage. These measures may involve relatively simple changes to facility operations such as re-routing a storm water discharge to bypass an area where species are located.

At this stage, applicants may wish to contact the FWS and/or NMFS to see what appropriate measures might be suitable to avoid or eliminate adverse impacts to species.

If applicants adopt these measures, they must continue to abide by them during the course of permit coverage.

If appropriate measures are not available, the applicant is not eligible at that time for coverage under the construction general permit. Applicants should contact the appropriate EPA regional office about either:

- Entering into Section 7 consultation in order to obtain construction general permit coverage, or
- Obtaining an individual NPDES storm water permit.

[FR Doc. 97–9695 Filed 4–15–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

April 8, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. 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 control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0736.

Expiration Date: 03/31/2000.

Title: Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96–149.

Form No.: N/A.

Estimated Annual Burden: 5 respondents; 24.6 hours per response (avg.); 123 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Description: OMB approved the collections of information contained in the Further Notice of Proposed Rulemaking (FNPRM) issued in CC Docket No. 96–149. In CC Docket 96–149, the Commission proposed that Bell Operating Companies (BOCs) make certain information disclosures publicly available. The disclosure includes the amount of time, measured in percentages and averages, that it takes a BOC to respond to its section 272 affiliates requests for service. The FNPRM tentatively concluded that BOCs must submit an annual affidavit to the Commission certifying, *inter alia*, that they are maintaining the information according to the required format. All of the collections would be used to ensure that BOCs comply with the nondiscrimination requirement of section 272(e)(1) under the Telecommunications Act of 1996. The collected information would be made publicly available.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to the Records Management Branch, Washington, D.C. 20554.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 97–9727 Filed 4–15–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Frank J. Ciofalo, 122 Resolute Lane, Port Ludlow, WA 98365, Sole Proprietor

Reefco Logistics, Inc., 5301 Quail Meadows Drive, Raleigh, NC 27609, Officer: Ernest H. Beauregard

Dated: April 11, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–9796 Filed 4–15–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 30, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Dixie Mahurin, Bowling Green, Kentucky; to acquire an additional 15.95 percent, for a total of 27.97 percent, and Petter and Dixie Mahurin, Bowling Green, Kentucky, acting in concert, to acquire an additional 21.27 percent, for a total of 26.92 percent, of the voting shares of First Cecilian Bancorp, Inc., Cecilia, Kentucky, and thereby indirectly acquire Cecilian Bank, Cecilia, Kentucky.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Walter L. Cox, Sr., Naples, Texas; to acquire an additional 40.8 percent, for a total of 47.1 percent, of the voting shares of Morris County Bankshares, Incorporated, Naples, Texas, and thereby indirectly acquire Morris County National Bank, Naples, Texas.

Board of Governors of the Federal Reserve System, April 10, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–9788 Filed 4–15–97; 8:45 am]

BILLING CODE 6210–01–F

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. 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 May 9, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of The First National Bankshares, Inc., Tucumcari, New Mexico, and thereby indirectly acquire The First National Bank of Tucumcari, Tucumcari, New Mexico.

Board of Governors of the Federal Reserve System, April 10, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–9789 Filed 4–15–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, April 21, 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: April 11, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–9889 Filed 4–11–97; 4:15 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Notice of Policy of Disclosing Investigations of Announced Mergers

AGENCY: Federal Trade Commission.

ACTION: Notice of revised policy.

SUMMARY: The Federal Trade Commission is revising its policy concerning disclosure of investigations. The Commission's policy is to conduct its investigations on a nonpublic basis. In the past, the Commission has established some narrow exceptions to that policy. The Commission is now establishing an additional exception for circumstances in which a party to a merger or other transaction has publicly disclosed the existence of a transaction or proposed transaction in a press release or in a public filing with a government body. In those limited circumstances, the Commission authorizes public disclosure of whether the agency is investigating the transaction or proposal under Section 7 and 11 of the Clayton Act. Inquires seeking disclosure under this authority should be addressed to the Commission's Office of Public Affairs.

This change of policy will more closely conform the Commission's practice in such matters with that of the Antitrust Division of the Department of Justice. The change of policy does not alter the Commission's confidentiality policies or practices with respect to documents and information submitted to or developed by the agency in connection with such investigations, or with respect to information concerning the course of such investigations. The change of policy also does not affect the Commission's confidentiality policies or practices regarding any other type of investigations.

EFFECTIVE DATE: April 16, 1997.

FOR FURTHER INFORMATION CONTACT: Victoria A. Streitfeld, Office of Public Affairs, 202–326–2718, or Stephen Calkins, General Counsel, 202–326–2481.

SUPPLEMENTARY INFORMATION: The Commission's policy is to hold confidential the existence and targets of law enforcement investigations, until either the Commission issues or authorizes a complaint or the matter is closed. *See* 42 FR 64135, Dec. 22, 1977. The Commission believes generally that public disclosure of pending investigations and identification of targets before the Commission has had an opportunity to weight the evidence may unjustifiably harm the companies investigated and interfere with the conduct and successful resolution of such matters. The laws applicable to the Commission do not, however, require confidential treatment of the existence of investigations, and the Commission's policy has long included narrow exceptions for disclosure of ''industrywide investigation'' (where particular targets are not identified), and of particular investigations that involve significant risk of economic harm or risk of public health or safety.

The Commission is now establishing a further exception, permitting disclosure of whether the agency is investigating a proposed or consummated merger or other transaction under Sections 7 and 11 of the Clayton Act, 15 U.S.C. 18, 21, where a party to the transaction has issued a press release or made a public filing with the governmental body that discloses the existence of the transaction. The Commission considers the concerns underlying the general policy of nondisclosure to have little application in these instances. Furthermore, while the Hart-Scott-Rodino (''HSR'') Act prohibits the Commission from making public (except in specified circumstances) ''information or documentary material filed with the . . . Commission pursuant to'' that Act, 15 U.S.C. 18a(h), nothing in the HSR Act prevents the Commission from publicly disclosing information that has already been made available to the public by a party, even if that information is also included in an HSR filing. Accordingly, where a party has issued a press release or made a public filing with a government body that discloses the existence of a transaction or proposed transaction, the Commission authorizes public disclosure of whether the agency is investigating the matter. This approach confirms closely with that of the Antitrust Division of the Department of Justice, with which the Commission shares enforcement of the Clayton Act.

Regardless of whether a transaction or proposed transaction is reported by the media, however, the agency will disclose an investigation under this authority only after the Office of Public Affairs (or another designated office) has confirmed that a party has in fact disclosed the existence of the transaction or proposal in the manner stated. Inquires seeking disclosure under this authority should be addressed to the Office of Public Affairs.

The Commission is not changing its treatment of any other information relating to mergers or similar transactions. Thus, the authority granted here to disclose the existence of certain investigations does not include authority to disclosure any details about those investigations. In particular, because the Commission considers the HSR Act to restrict disclosure of whether a party to proposed transaction has filed a notification under that Act, the agency will not, except as permitted by that law, reveal whether a filing under HSR has been made. The Commission will continue to keep confidential, as appropriate under its existing laws and policies, documents and information submitted pursuant to the HSR Act to relating to an investigation under that Act. The policy revision also does not affect the confidentiality treatment of other types of investigation under the Commission's antitrust or consumer protection authority.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga; Concurring in Part and Dissenting in Part on Decision To Authorize Public Disclosure of Certain Merger Investigations

The policy the Commission announces today in most, perhaps all, respects comports with common sense and is long overdue. The policy enables the Commission to confirm certain otherwise nonpublic information after it has been confirmed (reliably, as defined

in the policy) by third parties. The policy also enables the commission to confirm certain nonpublic information that has not been confirmed by third parties. Under the new policy, the Commission will confirm the fact that it is investigating a transaction after the transaction itself has been made public and regardless of whether the fact of the investigation has been made public by third parties.

The Commission long has followed a policy of declining to confirm the existence of its investigations until it issues or authorizes filing of a complaint, or until the matter is closed.[1] This policy is based on the premise that public disclosure of pending investigations and identification of targets can interfere with the conduct and successful resolution of such matters.[2] The Commission concluded in the 1977 Policy Statement that ''disclosure of the identities of businesses under investigation would cause those businesses severe economic injury even before the Commission determines whether there is reason to believe the law has been violated.''

I have been informed that the business community will have no objection to having the Commission confirm the fact that it is investigating a transaction even if the parties have not confirmed the fact of the investigation. I do not know the basis for this information. Assuming the information is correct, I support the new policy in its entity because the policy presumably would not result in the harm the Commission identified in 1977.[3] Nevertheless, I would have preferred to seek comment on this aspect of the new policy before adopting it. Good reasons support the Commission's long standing policy not to confirm or deny the existence of a nonpublic investigation, and the Commission has been able to live with that policy for many years. It seems appropriate and not unduly burdensome for the Commission to seek public comment on this aspect of the proposal for thirty days before adopting it. To the extent that the Commission has chosen not to seek public comment, I dissent.

[FR Doc. 97–9820 Filed 4–15–97; 8:45 am]

BILLING CODE 6750–01–M

[1] In 1977, the Commission reaffirmed its then-current policy of maintaining the confidentiality of most nonpublic investigations. *See* FTC Policy statement, 42 Fed. Reg. 64,135 (Dec. 22, 1977) (''1977 Policy Statement''). This Policy Statement sets forth exceptions for industrywide investigations and investigations involving ''significant risk of economic harm or risk to public health or safety.'' In addition, certain investigations may become public by operation of law or the Commission's Rules, for example, on filing of a petition to quash compulsory process, 16 C.F.R. § 4.9(b)(4), on filing of an application for clearance, 16 C.F.R. § 4.9(10(ii), or on publication in the **Federal Register** of a notice of early termination under the Clayton Act, 15 U.S.C. § 18a(b)(2).

[2] *Id. See also* Exemption 7A to the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. § 552(b)(7)(A); and Exemption 7A to the open meeting requirements of the Government in the Sunshine Act, 5 U.S.C. § 552b(c)(7)(A).

[3] See note 1.

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Policy Division, FAR Secretariat; Cancellation of Standard Forms

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Since 48 CFR 52.215–41 and 42 give agencies more flexible procedures in requesting exceptions for submitting certified cost and pricing data, the following Standard Forms are canceled:

SF 1412, Request For Exemption From Submission Of Certified Cost Or Pricing Data.

SF 1412A, Request For Exemption From Submission Of Certified Cost Or Pricing Data—Continuation.

DATES: Effective April 16, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: March 19, 1997.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 97–9754 Filed 4–15–97; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Revision of SF 93, Medical Record—Report of Medical History

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/ICMR is revising the SF 93, Medical Record—Report of Medical History to update the information collected on the patient. You can obtain the updated form in three ways:

From the ''U.S. Government Management Policy CD–ROM'';

On the internet. Address: http://www.gsa.gov/forms, or;

Through the Federal Supply Service using National Stock Number 7540–00–181–8368 (revision 6–96).

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

DATES: Effective April 16, 1997.

Dated: March 20, 1997.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 97–9753 Filed 4–15–97; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

Real Estate Management; Cancellation of a Standard Form

AGENCY: Public Building Service, General Services Administration.

ACTION: Notice.

SUMMARY: This notice announces the General Services Administration's intent to cancel the following Standard form because of low user demand: SF 2B, U.S. Government Lease for Real Property (Short Form).

This form was replaced with GSA Form 3626, U.S. Government Lease for Real Property (Short Form). You can get copies of this form from the contact person mentioned below or from the following internet address: http://www.gsa/gov/pbs/pe/standcla/standcla.htm.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Roberts, Real Estate Management Division, Office of Property Acquisition and Realty Services, (202) 501–0407.

DATES: Effective April 16, 1997.

Dated: March 7, 1997.

Theodore D. Freed,

Standard and Optional Forms Management Officer.

[FR Doc. 97–9755 Filed 4–15–97; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Manoj Misra, Ph.D., Dartmouth College: Based upon the Office of Research Integrity's (ORI) review of a report forwarded to ORI by Dartmouth

College, Dr. Misra's admission of certain facts in that report, and ORI's own analysis, ORI found that Dr. Misra, a former postdoctoral research associate, Department of Chemistry, Dartmouth College, engaged in scientific misconduct by intentionally altering laboratory notebook data entries for research supported by a grant from the National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

Specifically, Dr. Misra altered laboratory notebook data entries in two instances in an effort to conceal prior manipulations of that data without disclosure or explanation to the principal investigator or anyone else. The experiment at issue involved an assay of the chemical activity of a carcinogen, and Dr. Misra's change in the readings of the ''control'' experiment, in which no carcinogen was present, changed the results.

Dr. Misra has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed, for the three (3) year period beginning April 7, 1997:

(1) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which Dr. Misra's participation is proposed or which uses him in any capacity on PHS supported research must concurrently submit a plan for supervision of his duties. The supervisory plan must be designed to ensure the scientific integrity of Dr. Misra's research contribution. The institution must submit a copy of the supervisory plan to ORI.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 97–9733 Filed 4–15–97; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee (NVAC), Subcommittee on Vaccine Safety, Subcommittee on Immunization Coverage, Subcommittee on Future Vaccines, and the Advisory Commission on Childhood Vaccines (ACCV) Subcommittee on Vaccine Safety: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and dates: 8:45 a.m.–12:15 p.m., May 1, 1997. 8:30 a.m.–1:15 p.m., May 2, 1997.

Place: Hubert H. Humphrey Building, Room 703A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 and 8:30 a.m. or 12:30 and 1 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters to be discussed: Agenda items will include a National Vaccine Program Office (NVPO) update; a discussion on review of the Department of Health and Human Services' Adult Immunization Plan; a discussion on the survey on practices of non-traditional providers; a report of meeting on simian-virus-40—next steps; AIDS vaccine, the progress in vaccine development and organizational approach; the national vaccine plan focusing on priorities; tuberculosis vaccines, barriers and opportunites; the National Institutes of Health (NIH) will discuss their program on tuberculosis and vaccine options; discussion from the Advisory Council on the Elimination of Tuberculosis; improving immunization coverage report from the Sabin Foundation; report from the Subcommittee on Immunization Coverage; report from the Subcommittee on Future Vaccines; report from the Subcommittee on Vaccine Safety; and status of the Work Group on philosophical exemptions.

Agenda items are subject to change as priorities dictate.

Name: Subcommittee on Vaccine Safety and the Advisory Commission on Childhood Vaccines, Subcommittee on Vaccine Safety.

Time and date: 1:15 p.m.–5 p.m., May 1, 1997.

Place: Hubert H. Humphrey Building, Room 425A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This joint NVAC/ACCV subcommittee will review issues relevant to vaccine safety and adverse reactions to vaccines.

Matters to be discussed: This subcommittee will discuss the update on the Public Health Service vaccine safety activities; vaccine safety surveillance overview; vaccine safety funding; and agenda items for next meeting.

Name: Subcommittee on Immunization Coverage.

Time and date: 1:15 p.m.–5 p.m., May 1, 1997.

Place: Hubert H. Humphrey Building, Room 423A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

Matters to be discussed: This subcommittee will discuss the review of recommendations from the document ''Strategies to Sustain Immunization Coverage'; and a discussion and finalization of the recommendations.

Name: Subcommittee on Future Vaccines.

Time and date: 1:15 p.m.–5 p.m., May 1, 1997.

Place: Hubert H. Humphrey Building, Room 405A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee on Future Vaccines will develop policy options and guide national activities which will lead to accelerated development, licensure, and best use of new vaccines in the simplest possible immunization schedules.

Matters to be discussed: This subcommittee will discuss an update on vaccine procurement strategies and case studies in vaccine development.

Contact person for more information: Felecia D. Pearson, Committee Management Specialist, NVPO, CDC, 1600 Clifton Road, NE, M/S D50, Atlanta, Georgia 30333, telephone 404/639–7250.

Dated: April 11, 1997.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–9902 Filed 4–15–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Low Income Home Energy Assistance Program (LIHEAP) Household Report.

OMB No.: 0970–0060.

Description: The report is an annual activity which is required by law of LIHEAP grantees for receipt of federal LIHEAP block grant funds. Statistics are to be reported for the previous federal fiscal year on the number and income levels of LIHEAP applicants and assisted households, and the number of LIHEAP assisted households with at least one member who is elderly, disabled, or a young child. The information is being collected for the Department's annual LIHEAP report to Congress and is used to provide information about the need for and use of LIHEAP funds. The information may also be used as performance measures under the Government Performance Results Act of 1993.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Assisted Long Form	52	1	25	1,300
LIHEAP Assisted Short Form	131	1	1	131
LIHEAP Application Household Report	52	1	13	676

Estimated Total Annual Burden Hours: 2,107.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: April 11, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–9823 Filed 4–15–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93631–97–01]

Developmental Disabilities: Request for Public Comments on Proposed Developmental Disabilities Funding Priorities for Projects of National Significance for Fiscal Year 1997

AGENCY: Administration on Developmental Disabilities (ADD), Administration for Children and Families (ACF).

ACTION: Notice of request for public comments on developmental disabilities tentative funding priority for Projects of National Significance for Fiscal Year 1997.

SUMMARY: The Administration on Developmental Disabilities, Administration for Children and Families, announced that public comments are being requested on tentative funding priorities for Fiscal Year 1997 Projects of National Significance prior to being announced in its final form.

We welcome specific comments and suggestions on this proposed announcement and funding priority which will assist in bringing about the increased independence, productivity, integration, and inclusion into the community of individuals with developmental disabilities.

DATES: The closing date for submission of public comments is June 16, 1997.

ADDRESSES: Comments should be sent to: Bob Williams, Commissioner, Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services, Room 329–D, HHH Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Adele Gorelick, Program Development Division, Administration on Developmental Disabilities, 202/690–5982.

SUPPLEMENTARY INFORMATION:

Part I

Background

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities is located within the Administration for Children and Families, Department of Health and Human Services (DHHS). Although different from the other ACF program administrations in the specific constituency it serves, ADD shares a common set of goals that promote the economic and social well-being of families, children, individuals and communities. Through national leadership, we see:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned and integrated to improve client access; and

• A strong commitment to working with Native Americans, individuals with developmental disabilities, refugees and migrants to address their needs, strengths and abilities.

Emphasis on these goals and progress toward them will help more individuals, including those with developmental disabilities, to live productive and independent lives integrated into their communities. The Projects of National Significance Program is one means through which ADD promotes the achievement of these goals.

Two issues are of particular concern with these projects. First, there is a pressing need for networking and cooperation among specialized and categorical programs, particularly at the service delivery level, to ensure continuation of coordinated services to people with developmental disabilities. Second, project findings and successful innovative models of projects need to be made available nationally to policy makers as well as to direct service providers.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities is the lead agency within ACF and DHHS responsible for planning and administering programs which promote the self-sufficiency and protect the rights of individuals with developmental disabilities.

The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 *et seq.*) (the Act), as amended provides assistance to States and public and private nonprofit agencies and organizations to assure that individuals with developmental disabilities and their families participate in designing, and have access to, culturally competent services, supports and other assistance and opportunities that promote independence, productivity and integration and inclusion into the community.

The Act points out that:

• Disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to enjoy the opportunity for independence, productivity and inclusion into the community;

• Individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely;

• Individuals with developmental disabilities often require lifelong specialized services and assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families;

The Act further finds that:

• Individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, and integration and inclusion into the community, and often require the provision of services, supports and other assistance to achieve such;

• Individuals with developmental disabilities have competencies, capabilities and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities and capabilities of the individual;

• Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive and play decision-making roles in policies and programs that affect the lives of such individuals and their families; and

• It is in the nation's interest for individuals with developmental disabilities to be employed, and to live conventional and independent lives in families and communities.

Toward these ends, ADD seeks: to enhance the capabilities of families in assisting individuals with developmental disabilities to achieve their maximum potential; to support the increasing ability of individuals with developmental disabilities to exercise greater choice and self-determination and to engage in leadership activities in their communities; and to ensure the protection of legal and human rights of persons with developmental disabilities.

Programs funded under the Act are:

• Federal assistance to State developmental disabilities councils;

• State system for the protection and advocacy of individual rights;

• Grants to university affiliated programs for interdisciplinary training, community services, technical assistance, and information dissemination; and

• Grants for Projects of National Significance.

• Technical assistance to enhance the quality of State development disabilities councils, protection and advocacy systems, and university affiliated programs; and

• Other projects of sufficient size and scope that hold promise to expand or improve opportunities for individuals with developmental disabilities, including:

—technical assistance for developing information and referral systems;
—educating policy makers;
—Federal interagency initiatives;
—enhancing participation of racial and ethnic minorities in public and private sector initiatives in developmental disabilities;
—transition of youth with developmental disabilities from school to adult life; and
—special pilots and evaluation studies to explore the expansion of programs under part B (State developmental disabilities councils) to individuals with severe disabilities other than developmental disabilities.

Section 162(d) of the Act requires that ADD publish in the **Federal Register** proposed priorities for grants and contracts to carry out Projects of National Significance. The Act also requires a 60-day period for public comment on proposed priorities. After analyzing and considering such comments, ADD must publish in the **Federal Register** final priorities and solicit applications for funding based on the final priorities selected.

The following section presents the proposed priority areas for Fiscal Year 1997 Projects of National Significance. We welcome specific comments and suggestions. We would also like to receive suggestions on timely topics related to specific needs in the development disabilities field.

Please be aware that the development of the final funding priority is based on the public comment response to this notice, current agency and Departmental priorities, needs in the field of developmental disabilities and the developmental disabilities network, etc., and the availability of funds for this fiscal year.

Part II

Fiscal Year 1997 Proposed Priority Areas for Projects of National Significance

ADD is interested in all comments and recommendations which address areas of existing or evolving national significance related to the field of developmental disabilities.

ADD also solicits recommendations for project activities which will advocate for public policy change and community acceptance of all individuals with developmental disabilities and families so that such individuals receive the culturally competent services, supports, and other

assistance and opportunities necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community.

ADD is also interested in activities which promote the inclusion of all individuals with developmental disabilities, including individuals with the most severe disabilities, in community life; which promote the interdependent activity of all individuals with developmental disabilities and individuals who are not disabled; and which recognize the contributions of these individuals (whether they have a disability or not), as such individuals share their talents at home, school, and work, and in recreation and leisure time.

No proposals, concept papers or other forms of applications should be submitted at this time. Any such submission will be discarded.

ADD will not respond to individual comment letters. However, all comments will be considered in preparing the final funding solicitation announcement and will be acknowledged and addressed in that announcement.

Please be reminded that, because of possible funding limitations, the proposed priority areas listed below may not be published in a final funding solicitation for this fiscal year.

Comments should be addressed to: Bob Williams, Commissioner, Administration on Developmental Disabilities, Department of Health and Human Services, Room 329–D HHH Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Proposed Fiscal Year 1997 Priority Area 1: Managed Care and Disability

The delivery systems and financing through which health care is provided to the nation's population have undergone monumental changes over the past three decades. For the majority of its history, the health care system in the United States has utilized a fee-for-service model; services are provided and then the bill is paid based on what was done (retrospective payment system). We are now moving toward a prospective or prepayment based approach where a provider is paid a set fee based on the number of patients to be served and services are rendered only as needed. This system is synonymous with managed care which promises to control costs and improve access to a coordinated continuum of services. To the public and private sectors it presents a solution to uncontrollable expenditures. For children and adults with developmental disabilities and their families, the trend towards managed care presents a mix of risks, challenges and opportunities.

If the managed care system of health delivery is to meet the expectations of the public and private sectors and provide appropriate quality acute health care and long-term services to people with developmental disabilities and their families, a number of challenges and fundamental questions must be addressed:

- How can community long-term services and supports that are consumer responsive and non-medical be integrated in acute health care under a managed care plan?

How can managed care avoid imposing a medical model of care that is inconsistent with extensive, inclusive, consumer responsive, community long-term services and supports?

- How will the core values of disability policy (non-discrimination, inclusion/participation, consumer choice) be incorporated into managed care if it is to provide quality, appropriate acute and long-term services and supports?
- How can States and others best ensure the meaningful involvement of people with developmental disabilities and their families throughout the process of designing and planning a managed care system?
- What are the elements of a managed care system that is cost-effective, outcomes-oriented, and consumer-sensitive to the segment of the population with developmental disabilities?
- What is ''state-of-the-art managed care'' for this special health care group?
- How do we ensure the practices under managed care (i.e., gatekeepers, restrictive definitions of medical necessity, biased utilization review criteria) when applied to individuals with developmental disabilities who may need more, or different, health care services to maintain their health and function effectively is non-discriminatory?

To support our goal of independence, productivity, and integration, ADD is interested in ideas to empower individuals with developmental disabilities and their families to take a leadership role in their States on managed care, welfare reform, and other emerging concerns. This could be accomplished through a national center to provide technical assistance in leadership development to enable the people most affected to be effective players in their communities and States. This center should be directed from a consumer perspective yet represent a consortium of the developmental disabilities network, independent living, self-advocates, parents, and organizations representing minority communities. This consortium should be replicated at the State level in a collaboration to develop and implement strategies to foster/facilitate disability and parent leadership in managed care, welfare reform, and other significant areas.

Leadership development requires not only skills but knowledge. This center must acquire state-of-the-art general and technical information and numerous aspects and issues that individuals with developmental disabilities and parents of children with developmental disabilities will need to participate in State-level activities and processes. It will be necessary to have a resource pool of consultants that can be utilized as needed.

PNS projects on leadership development and individuals of color with developmental disabilities, cultural competency of the DD network, and personal assistance service have developed training materials, curricula, strategies, linkages, legislative proposals, policies, and more. The center should build upon these projects.

This is one idea that ADD has concerning this topic but it is also interested in any proposed priorities and approaches addressing this area.

Proposed Fiscal Year 1997 Priority Area 2: Technical Assistance and Knowledge Transfer on Welfare Reform and Individuals with Developmental Disabilities and their Families

Over a million children and adults with disabilities and their families will be directly affected by the implementation of all aspects of the Personal Responsibility and Work Opportunity Reconciliation Act. Such individuals and families should have an equal opportunity to realize the full promise of Welfare Reform, including the chance to work their way out of poverty, while keeping their families health, safe and intact.

Significant research, best practices and lessons learned exist in regard to assisting children and adults with the full range of disabilities to live, work and become contributing members of their families, communities and nation. States, communities, businesses, disability constituencies and others can benefit from technical assistance aimed at assisting them to transfer, adapt and apply such knowledge and practice to Welfare Reform activities.

Such technical assistance should seek to better equip these major stakeholders with the skills, knowledge and expertise

necessary to apply what is already known to work for persons with developmental disabilities and their families to the Welfare Reform context in respect to:

(1) Assuring the basic civil rights of, and equal opportunity for, individuals with developmental disabilities and their families on the Temporary Assistance for Needy Families (TANF) Program;

(2) Making work pay for low-income parents with developmental disabilities and parents of children with developmental disabilities on TANF;

(3) Encouraging job/business creation by and for low-income families and individuals with developmental disabilities;

(4) Increasing the access and responsiveness of Head Start and Child Care Programs to families of children with developmental disabilities and parents with developmental disabilities;

(5) Supporting and strengthening poor families experiencing developmental disabilities;

(6) Promoting the healthy and safe development of children with developmental disabilities and their families;

(7) Making welfare reform work for teen parents and other at-risk young people with developmental disabilities;

(8) Making tribal welfare reform work for Native Americans with developmental disabilities and their families;

(9) Making welfare reform work for refugees and legal immigrants with developmental disabilities and their families; and

(10) Enhancing child support enforcement.

ADD proposes to fund a national technical assistance and knowledge transfer center on effective Welfare Reform for people with developmental disabilities and their families. The mission of such a center would be to work with States, the disability community, businesses and others to enhance the likelihood that adults and children with developmental disabilities as well as their families on TANF would have an opportunity to benefit from all aspects of Welfare Reform. Specifically, the center would work with all relevant stakeholders to:

- Track and report on trends and practices in welfare reform affecting children and adults with developmental disabilities;
- Convene working conferences to develop and share strategies for responding to opportunities and risks in Welfare Reform for such individuals and families;
- Conduct, sponsor, assist in and disseminate relevant research findings pertaining to: (i) the effects of Welfare Reform on persons with developmental disabilities and their families; and, (ii) relationships between disability, poverty, gender, ethnicity and dependency on Aid to Families with Dependent Children (AFDC) and TANF;
- Function as a clearinghouse on all relevant information, emerging knowledge, policy, best practices and research;
- Broker technical assistance, especially peer-to-peer consultations, designed to assist such stakeholders to work together to apply to Welfare Reform research and best practices regarding what works for persons with developmental disabilities and their families;
- Assist researchers conducting large-scale evaluations of Welfare Reform to assure that such studies are designed and carried out with sensitivity to a wide range of disability policy concerns;
- Track, synthesize, disseminate, facilitate the adaptation and/or replication of best or promising approaches, as well as lessons learned, especially those supported by investments of ADD in DD Councils, Protection and Advocacy Systems, University Affiliated Programs, Projects of National Significance and other Federal or State agencies or foundations;
- Expand leadership development opportunities among individuals and families experiencing developmental disabilities in economically disadvantaged communities; and,
- Sponsor forums, on-line conferences and other ongoing exchanges to facilitate a greater understanding of the impacts of Welfare Reform on individuals with developmental disabilities and their families on the part of States, the disability community, foundations, researchers and others.

Proposed Fiscal Year 1997 Priority Area 3: Technical Assistance and Knowledge Transfer on Self-Determination and Responsible Leadership by and for Individuals with Developmental Disabilities and Families of Children with Developmental Disabilities

All Americans, including people with developmental and other disabilities, should experience opportunities and a sense of community and responsibility in their lives. In fact, one of the central tasks facing us is to devise ways we as individuals, families, communities and a nation can actively promote the responsibility people with disabilities have for their own and our collective lives and futures. Federal legislation such as the Developmental Disabilities Act, the Individuals with Disabilities Education Act and the Americans with Disabilities Act are all grounded in the fundamental principle that persons with disabilities and their families have a critical need, and as a matter of right ought, to be primary decision-makers in any decision affecting their lives and futures.

The majority of the progress we have made as a society in this regard in the past quarter century has shown us that responsible leadership for and by people with developmental and other disabilities and their families is a prerequisite to increasing independence, productivity, integration and inclusion of such individuals and their families. ADD and individual DD Councils, Protection and Advocacy Systems and University Affiliated Programs have found that developing, nurturing and sustaining strategic, creative and responsible leadership on the part of individuals with developmental and other disabilities and their families have been among the most high-yielding long-term investments made.

Through Projects of National Significance, in particular, ADD has assisted its grantees to develop and replicate a variety of innovative, successful approaches to develop leadership and self-determination among people with developmental disabilities and their families. Most notably, this has taken the form of early and formative support of such endeavors as Partners in Policy, the active participation of families of children with developmental disabilities in designing and implementing of State family support policies and programs, the Home of Your Own initiative, personal assistance system change projects, and targeted leadership efforts among people of color with developmental disabilities.

Now more than ever, the States, the disability community and others require support and assistance in strategically working through the cumulative effects Welfare Reform, SSI changes, managed care and Medicaid restructuring might have on adults and children with developmental disabilities as well as their families. Responsible leadership by people with developmental and other disabilities and their families, is value driven and recognizes the new and emerging realities facing State and local governments today. Such leadership is critical to finding responsible and cost effective ways to strengthen the abilities and opportunities of individuals with developmental disabilities and families of children with developmental

disabilities to exercise choice and self-determination throughout their daily lives. This is true in respect to most people with developmental disabilities and families of children with developmental disabilities, but is particularly the case in regard to those living in poverty.

To address this set of challenges and opportunities, ADD proposes to fund a national technical assistance and knowledge transfer center on self-determination and 21st Century leadership development. The mission of such a center would be to work with all relevant stakeholders to expand and sustain responsible leadership by and for people with developmental disabilities and families of children with developmental disabilities in shaping and guiding the implementation of policies, practices and approaches which enhance their own self-determination and self-efficacy.

Specifically, the center would seek to strengthen and expand leadership for the 21st Century by and for people with developmental disabilities and families of children with developmental disabilities through:

- Building, expanding and strengthening what works in this regard.
- Brokering technical assistance, especially peer-to-peer consultations, designed to assist such stakeholders to work together to apply research and best practices to enhance the self-determination and self-efficacy of persons with developmental disabilities and families of children with developmental disabilities (especially in States and communities that have not taken part in similar initiatives relating to Partners in Policy, family support, home ownership, personal assistance, self-determination, etc.).
- Expanding self-determination opportunities and roles for young people with and without developmental disabilities (ages 12–25) as well as individuals with significant developmental disabilities and families of children with developmental disabilities from economically disadvantaged communities.
- Convening working conferences to develop and share strategies for enhancing self-determination in the context of the changing roles of the State and Federal Governments, governmental reinvention activities, a heightened focus on achieving results and cost effectiveness, welfare reform, changes in SSI, managed care and proposals for Medicaid restructuring.
- Conducting, sponsoring, assisting in and disseminating relevant research findings pertaining to the prospects for enhancing self-determination and influencing policy in the changing Federal and State context described above.
- Functioning as a clearinghouse on all relevant information, emerging knowledge, policy, best practices and research.
- Tracking, synthesizing, disseminating, facilitating the adaptation and/or replication of best or promising approaches, and lessons learned, especially those supported by investments of ADD in DD Councils, Protection and Advocacy Systems University Affiliated Programs, Projects of National Significance and other Federal or State agencies or foundations.
- Sponsoring forums, on-line conferences and other ongoing exchanges to facilitate a greater understanding of the impacts of welfare reform on individuals with developmental disabilities and their families on the part of States, the disability community, foundations, researchers and others.

Proposed Fiscal Year 1997 Priority Area 4: The National Center for the Analysis of Major Trends and Outcomes Data Regarding Individuals with Developmental Disabilities and Their Families

ADD together with Developmental Disabilities Councils, Protection and Advocacy Systems, University Affiliated Programs and Projects of National Significance are responsible for helping to bring about the increased independence, productivity, integration and inclusion of all individuals with developmental disabilities in every aspect of American life. In enacting Federal legislation such as the Developmental Disabilities Act, the Individuals with Disabilities Education Act and the Americans with Disabilities Act, the Congress also has found that persons with disabilities and their families have a critical need and as a matter of right should be primary decision-makers in any decision affecting their lives and futures. ADD and its grantees, therefore, have significant roles in strengthening the capabilities and expanding the opportunities of individuals with developmental disabilities and families of children with developmental disabilities to exercise choice and self-determination throughout their daily lives. It is critical to recognize that a variety of other broad governmental, economic and social forces influence much more directly the achievement of these vital national aims.

Accurately measuring, tracking and reporting on the extent to which our society is progressing toward these goals is crucial to assessing both the overall effectiveness of the ADD programs and that of the Nation as a whole in carrying on this endeavor.

ADD has supported a number of initiatives particularly through PNS, and ongoing projects designed to strengthen, expand and sustain our collective understanding of the changing status of Americans with developmental disabilities. This has taken the form of both the formative and ongoing support for such endeavors as:

- The three national data collection and dissemination projects;
- The development of the ADD Management Information System;
- The Data Trends Conference cosponsored with NIDRR;
- The AAUAP data collection project; and
- The disability supplement to the National Health Interview Survey.

To build on these and other efforts and to further foster the pursuit of excellence through its leadership and that of its programs, ADD proposes to fund a National Center for the Analysis of Major Trends and Outcomes Data Regarding Individuals with Developmental Disabilities and Their Families. The mission of such a center would be to work with all relevant stakeholders around a number of tasks that could include the following:

(1) Build and expand upon all current and past efforts undertaken by ADD and all others in this area;

(2) Identify, synthesize, and report on major data sources on major trends affecting the lives, well being and futures of all Americans, including those with developmental and other disabilities as well as their families;

(3) Identify, synthesize, and report on major data sources on major trends specific to the lives, well-being and futures of individuals with developmental disabilities and their prospects for their increased independence, productivity, integration and inclusion and greater choice and self-determination throughout their everyday lives;

(4) Develop, continually improve, and work with ADD, its programs and all other relevant Federal, State and private entities to infuse outcome measures and other indicators accurately reflecting the status of persons with developmental disabilities and the families of children with developmental disabilities into major surveys and studies;

(5) Develop in close consultation and collaboration with individuals with developmental disabilities and families of children with developmental disabilities a prototypical survey

instrument to assess the extent to which such individuals and families believe they have opportunities to exercise meaningful choice and self-determination and to carry out personal responsibilities in life; and

(6) Develop a prototypical public opinion survey instrument which can be reliably and cost effectively administered to a representative national sample of the general public at least once every five years.

(Federal Catalog of Domestic Assistance Number 93.631—Developmental Disabilities—Projects of National Significance)

Dated: April 10, 1997.

Bob Williams,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 97–9801 Filed 4–15–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0139]

Genzyme Corp.; Premarket Approval of Seprafilm™ Bioresorbable Membrane

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Genzyme Corp., Cambridge, MA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Seprafilm™ Bioresorbable Membrane. After reviewing the recommendation of the General and Plastic Surgery Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 12, 1996, of the approval of the application.

DATES: Petitions for administrative review by May 16, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Stephen P. Rhodes, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION: On October 27, 1995, Genzyme Corp., Cambridge, MA 02139–1562, submitted to CDRH an application for premarket approval of Seprafilm™ Bioresorbable Membrane. The device is an absorbable adhesion barrier and is indicated for use in patients undergoing abdominal or pelvic laparotomy as an adjunct intended to reduce the incidence, extent, and severity of postoperative adhesions between the abdominal wall and the underlying viscera such as omentum, small bowel, bladder, and stomach, and between the uterus and surrounding structures such as tubes and ovaries, large bowel and bladder.

On March 25, 1996, the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On August 12, 1996, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 15, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 17, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–9726 Filed 4–15–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2552, HCFA–R–88]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Hospital and Hospital Health Care Complex Cost Report, 42 CFR 413.20 and 413.24; *Form No.:* HCFA–2552–96; *Use:* This form is

required by statute and regulation for participation in the Medicare program. The information is used to determine final payment for Medicare. Hospitals and related complexes are the main users. *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for profit institutions, and State, Local or Tribal government; *Number of Respondents:* 7,000; *Total Annual Responses:* 7,000; *Total Annual Hours Requested:* 4,599,000.

2. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Information Collection Requirements in HCFA Pub 14–3 Section 2120.1–2125 and Section 4115 of the Carriers Manual (HCFA–R–88); *Use:* Verification of ambulance compliance with State and Local requirements is necessary to determine whether the ambulance qualifies for reimbursement under Medicare. Carriers require ambulances providing service to Medicare beneficiaries to submit documentation showing that they have the required equipment. *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 100; *Total Annual Hours:* 25.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 7, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97–9721 Filed 4–15–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1514]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of currently approved collection; *Title of Information Collection:* Hospital Request for Certification in the Medicare/Medicaid Programs; *Form No.:* HCFA–1514; *Use:* Section 1861 of the Social Security Act and 42 CFR part 482 requires hospitals to be certified to participate in the Medicare/Medicaid programs. As part of the certification process, providers must complete form HCFA–1514. This certification form is a facility identification and screening form used to initiate the certification process and to determine if the provider has sufficient personnel to participate in the Medicare/Medicaid programs. *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 2,500; *Total Annual Responses:* 2,500; *Total Annual Hours:* 625.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web Site Address at http://www.hcfa.gov/regs/prdact95.htm, or to obtain supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance 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: April 8, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–9708 Filed 4–15–97; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for the National Health Service Corps Loan Repayment Program

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Extension of deadline date.

SUMMARY: The Health Resources and Services Administration (HRSA) published a document in the **Federal Register** of March 28, 1997, concerning availability of funds for the National Health Service Corps (NHSC) Loan Repayment Program (LRP). The deadline date needs to be extended.

In the **Federal Register** issue of Friday, March 28, 1997, in FR Doc. 97–7838, on page 14925, in the second column, correct the ''Dates'' caption to read:

DATES: The deadline for applications is August 31, 1997, or until all appropriated funds have been obligated, whichever occurs first. Due to limited funding, it is anticipated that all appropriated funds will be obligated prior to August 31, 1997. The volume of applications is historically three times greater than the number of contracts that can be awarded. Therefore, to receive consideration for funding, health professionals must submit an application and proof of a job offer at an approved NHSC LRP Service Site.

Dated: April 9, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–9725 Filed 4–15–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1997:

Name: National Advisory Council on Migrant Health.

Date and Time: Starts: Wednesday, May 14, 1997 at 9 a.m. Ends: Thursday, May 15, 1997 at 5 p.m..

Place: Hyatt Regency Alicante Hotel, Harbor & Chapman, PO Box 4669, Anaheim, California 92803, 714/750–1234.

The meeting is open to the public.

Agenda: This will be a meeting of the Council. The agenda includes an overview of general Council business activities and priorities. Topics of discussion will include Workers Compensation, farmworker housing, Worker Protection Standards, and the health component of the Migrant Education Program. In addition, the Council will review and discuss the 1996 NACMH Recommendations. The Council meeting is being held in conjunction with the National Association of Community Health Centers (NACHC), 1997 National Farmworker Health Conference.

Anyone requiring information regarding the subject Council should contact Susan Hagler, Migrant Health Program, Staff Support to the National Advisory Council on Migrant Health, Bureau of Primary Care, Health Resources and Services Administration, 4350 East West Highway, Room 7–A51, Bethesda, Maryland 20814, Telephone (301) 594–4302.

Agenda Items are subject to change as priorities dictate.

Dated: April 9, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–9723 Filed 4–15–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1997:

Name: National Advisory Committee on Rural Health.

Dates and Time: June 7—June 11, 1997.

Place: The Regal Alaskan Hotel, 4800 Spenard Road, Anchorage, Alaska 99517–3226, Phone: (800) 544–0553, FAX: (907) 243–8815.

The meeting is open to the public.

Agenda: On Saturday, June 7, the meeting will be convened at 6 p.m. with a call to order, introduction of Committee members, introduction of guests, and approval of the minutes of last meeting. The Executive Committee will report activities which have occurred since the last meeting, and the Acting Director, Office of Rural Health Policy will provide an Office update. The plenary session on Sunday, June 8, will convene at 8 a.m. and will provide an overview of the Alaskan health care delivery system and health status indicators. There will be a session for the Committee's two work groups to meet. Following lunch, presentations will be provided by representatives of several Alaskan health and health-related projects.

On Monday, June 9, the Committee will meet separate into four groups to participate in day-long site visits in different Alaskan rural areas. On Tuesday, June 10, the meeting will convene at 8 a.m. with reports of the four site visits, followed by a roundtable discussion of the site visits and implications for health policy. The balance of the meeting on Tuesday will provide time for Work Group meetings.

The final plenary session will be convened on Wednesday, June 11 at 8 a.m. During this session the Work Groups will report on their activities and information regarding the next agenda and future meeting dates and places will be discussed. The meeting will be adjourned at 12 Noon.

Anyone requiring information regarding the subject Committee should contact Dena S. Puskin, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson or Lilly Smetana, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443–0835.

Agenda Items are subject to change as priorities dictate.

Dated: April 9, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–9724 Filed 4–15–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the Center for Inherited Disease Research Access Review Committee.

The Center for Inherited Disease Research Access Review Committee will advise the Director, NIH, and the Board of Governors, The Center for Inherited Disease Research, on the scientific and technical merit of applications seeking to use the resources and facilities of the Center for Inherited Disease Research.

Duration of this committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: April 9, 1997.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 97–9742 Filed 4–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the Advisory Committee on Research on Minority Health.

This Board will advise the Director, NIH, and the Director, Office of Research on Minority Health, as to appropriate activities, including those to be undertaken by the national research institutes, with respect to research related to minority health; the inclusion of members of minority groups as subjects in clinical research; and the enhancement of minority participation in research and research training programs.

Unless renewed by appropriate action prior to its expiration, the charter for the Advisory Committee on Research on Minority Health will expire two years from the date of establishment.

Dated: April 9, 1997.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 97–9743 Filed 4–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Consortium Therapeutic Studies of Primary Central Nervous System Malignancies in Adults.

Date: May 5–6, 1997.

Time: 9 am—Adjournment.

Place: Marriott Suites—Bethesda, 6711 Democracy Boulevard, Bethesda, Maryland 20817.

Contact Person: Courtney Kerwin, Ph.D., M.P.H., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 609, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7405, Telephone: 301/496–7421.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated April 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–9766 Filed 4–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Small Grants for Therapeutics Clinical Trials of Malignancy.

Date: May 2, 1997.

Time: 8:30 am—Adjournment.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contract Person: John L. Meyer, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 611C, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7410, Telephone: 301/496–7721.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control).

Dated: April 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–9768 Filed 4–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Institute of General Medical Sciences meeting:

Committee Name: Minority Biomedical Research Support Special Emphasis Panel/ Teleconference.

Date: April 10, 1997.

Time: 11:00 a.m.

Place: Telephone Conference, 45 Center Drive, Bethesda, MD 20892–6200.

Contact Person: Helen R. Sunshine, Ph.D., Office of Scientific Review, Scientific Review Administrator, NIGMS, 45 Center Drive, Room 1AS–13, Bethesda, MD 20892–6200, 301–594–2881.

Purpose: To review institutional research training grant applications and proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.880, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS].)

Dated: April 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–9744 Filed 4–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: April 15, 1997.

Time: 2 p.m.

Place: Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: Jean G. Noronha, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282).

Dated: April 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–9746 Filed 4–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meetings:

Name of SEP: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.
Date: April 15, 1997.
Time: 11:30AM.
Place: Room 6as–25S, Natcher Building, NIH, (Telephone Conference Call).
Contact Person: Ned Feder, M.D., Scientific Review Administrator, Review Branch, NIDDK, Natcher Building, Room 6as–25S, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8890.
Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Mechanism: Nephrology Research Training.
Date: April 21, 1997.
Time: 3:00PM.
Place: Room 6as–37A, Natcher Building, NIH, (Telephone Conference Call).
Contact Person: William Elzinga, Ph.D., Scientific Review Administrator, Review Branch, NIDDK, Natcher Building, Room 6as–37A, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8895.
Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.).

Dated: April 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–9747 Filed 4–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meetings of the Deafness and Other Communication Disorders Programs Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the following meetings of the Deafness and Other Communication Disorders Programs Advisory Committee:

Place: 6120 Executive Blvd., Bethesda, MD 20892, (telephone conference calls).
Date: May 16, 1997.
Time: 11:30 am–1 pm.
Agenda: Discussion of future scientific initiatives regarding voice, speech, and language.

Date: May 16, 1997.
Time: 2–4 pm.
Agenda: Discussion of future scientific initiatives regarding smell and taste.

Date: May 20, 1997.
Time: 12 pm–2 pm.
Agenda: Discussion of future scientific initiatives regarding hearing and balance/vestibular.

Contact Person: Ralph F. Naunton, M.D., Director, Division of Human Communication, NIH/NIDCD, Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892, 301–496–1804.

The meetings will be open to the public, with attendance limited to space available. A summary of the meeting and a roster of the members may be obtained from Dr. Naunton's office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Naunton prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: April 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–9749 Filed 4–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: April 29, 1997.
Time: 4 p.m.
Place: Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Gloria B. Levin, Parklawn, Room 9C–18, 4600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: April 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–9769 Filed 4–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Trophic Factor-Mediated Rehabilitiation in the CNS (Teleconference).
Date: April 24, 1997.
Time: 1:30 p.m.—adjournment.
Place: 6100 Executive Boulevard, 6100 Building, Room 5E03, Rockville, Maryland 20852.
Contact Person: Anne Krey, Scientific Review Administrator, NICHD, 6100 Executive Boulevard, 6100 Building, Room 5E01, Rockville, Maryland 20852, Telephone: 301–496–1485.
Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set froth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: April 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–9770 Filed 4–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Extramural Research; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Peer Review Oversight Group (PROG) on May 5, 1997, from 8:30 a.m. to 5:00 p.m., at the National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892. The meeting is open to the public, with attendance limited to space available.

The discussions will focus on the integration of neuroscience reviews and the review of clinical research applications.

The meeting agenda and roster of committee members will be available on the World Wide Web via the NIH Home Page (http://www.nih.gov.grants/) or from Dr. Peggy McCardle, Executive Secretary, PROG, and Special Assistant to the Deputy Director for Extramural Research, OD, NIH, Building 1, Room 150, Bethesda, Maryland 20892, (301) 402–2246. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations, should contact Dr. McCardle by April 28, 1997.

Dated: April 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–9767 Filed 4–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.
Date: April 11, 1997.
Time: 12:30 p.m.
Place: NIH, Rockledge 2, Room 6172, Telephone Conference.
Contact Person: Dr. Cheryl Corsaro, Scientific Review Administrator, 6701 Rockledge Drive, Room 6172, Bethesda, Maryland 20892, (301) 435–1045.

Name of SEP: Biological and Physiological Sciences.
Date: April 17, 1997.
Time: 4:00 p.m.
Place: NIH, Rockledge 2, Room 6172, Telephone Conference.
Contact Person: Dr. Cheryl Corsaro, Scientific Review Administrator, 6701 Rockledge Drive, Room 6172, Bethesda, Maryland 20892, (301) 435–1045.

Name of SEP: Biological and Physiological Sciences.
Date: April 21, 1997.
Time: 12:00 p.m.
Place: NIH, Rockledge 2, Room 4142, Telephone Conference.
Contact Person: Dr. Ed Copeland, Scientific Review Administrator, 6701 Rockledge Drive, Room 4142, Bethesda, Maryland 20892, (301) 435–1715.

Name of SEP: Biological and Physiological Sciences.
Date: April 25, 1997.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Michael Micklin, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

Name of SEP: Behavioral and Neurosciences.
Date: April 25, 1997.
Time: 3:00 p.m.
Place: NIH, Rockledge 2, Room 5168, Telephone Conference.
Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435–1245.

Name of SEP: Biological and Physiological Sciences.
Date: April 28, 1997.
Time: 4:00 p.m.
Place: NIH, Rockledge 2, Room 5108, Telephone Conference.
Contact Person: Dr. Anthony Carter, Scientific Review Administrator, 6701 Rockledge Drive, Room 5108, Bethesda, Maryland 20892, (301) 435–1167.

Name of SEP: Biological and Physiological Sciences.
Date: April 29, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5200, Telephone Conference.
Contact Person: Dr. Bob Weller, Scientific Review Administrator, 6701 Rockledge Drive, Room 5200, Bethesda, Maryland 20892, (301) 435–1259.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 30, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4178, Telephone Conference.
Contact Person: Dr. Jean Hickman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4178, Bethesda, Maryland 20892, (301) 435–1146.

Name of SEP: Behavioral and Neurosciences.
Date: May 1, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 5172, Telephone Conference.
Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–9745 Filed 4–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 15, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4210, Telephone Conference.
Contact Person: Dr. Bruce Maurer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4210, Bethesda, Maryland 20892, (301) 435–1225.

Name of SEP: Microbiological and Immunological Sciences.
Date: April 17, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4210, Telephone Conference.

Contact Person: Dr. Bruce Maurer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4210, Bethesda, Maryland 20892, (301) 435–1225.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–9748 Filed 4–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Chemistry and Related Sciences.

Date: April 18, 1997.

Time: 8:30 a.m.

Place: Holiday Inn, Washington, DC.

Contact Person: Dr. Alec Liacouras, Scientific Review Administrator, 6701 Rockledge Drive, Room 5154, Bethesda, Maryland 20892, (301) 435–1740.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: May 8, 1997.

Time: 2:30 p.m.

Place: NIH, Rockledge 2, Room 5196, Telephone Conference.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20982, (301) 435–1257.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 10, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–9750 Filed 4–15–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Request for Extension Review for Public Comment

AGENCY: Fish and Wildlife Service.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service (Service) is planning to submit the collection of information requirement described below to the Office of Management and Budget (OMB) for extension approval under the provisions of the Paperwork Reduction Act. Copies of the collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. The Service is soliciting comment and suggestions on the requirement as described below.

DATES: Comments must be submitted on or before June 16, 1997.

ADDRESSES: Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Mail Stop 224–Arlington Square, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 703/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION:

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Title: Declaration for Importation or Exportation of Fish or Wildlife.

OMB Approval Number: 1018–0012.

Description: The Endangered Species Act of 1972, as amended, also known as Section 9(e), makes it unlawful for any person importing or exporting fish, wildlife or plants to fail to file any declaration or reports, as the Secretary deems necessary to facilitate enforcement of the Act or to meet the obligations of the Convention on International Trade in Endangered Species of Wild Flora and Flora (CITES). Importers and exporters exempt from the requirements of Section 9(e) are as follows: Persons importing or exporting shellfish and fishery products, which are not listed as endangered or threatened and are imported for the purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes. Generally these exemptions apply to persons importing or exporting wildlife products or manufactured articles, not intended for sale, as personal accompanying baggage or part of a shipment of household effects and to persons importing or exporting certain sport taken fish and wildlife.

The information collected is necessary for the Secretary to fulfill the statutory requirements set forth for the enforcement of the ESA, including compilation of an annual report on the import and export of fish and wildlife (a treaty obligation under CITES).

The information is used by the Service as an enforcement tool and management aid in monitoring the international wildlife market. The information is collected on the Service's Form Number 3–177, ''Declaration for the Importation or Exportation of Fish or Wildlife,'' which in the case of imports, must be filed with the Service at the time and place where clearance is requested. In certain cases, this form may be filed with Customs, acting on the behalf of the Service. The form must be filed with the Service prior to the export of any wildlife.

Service Form Number: 3–177.

Frequency: On occasion.

Description of Respondents: Individuals and Households; Federal, State and local Governments; Businesses, and Non-profit institutions.

Completion Time: The reporting burden is estimated to average 15 minutes per entry. The average number of responses would be 4 entries per respondent. Respondents of commercial shipments will take approximately 10

minutes to complete the information required. The non-commercial entries will be filed by persons less knowledgeable of the declaration form and would require approximately 15 minutes each to complete. Occasionally an entry is received that lists scientific specimens of various species of wildlife. These entries may be required to be submitted with multiple invoices, permits and other pertinent documents. This will have the effect of increasing the completion time to approximately 30 minutes. Entries filed by hunters would require less than ten minutes to complete as the Service will not, by policy, require the entry of scientific names for the species.

Annual Responses: It is estimated that 21,250 respondents will submit 4 responses for a total of 85,000 responses.

Annual Burden Hours: 21,250.

Dated: April 9, 1997.

Carolyn A. Bohan,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 97–9717 Filed 4–15–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the The People of La Junta (Jumano/Mescalero), 2111 Beverly, Odessa, Texas 79761, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on October 3, 1996, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.9(a) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 3427–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

Dated: April 7, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–9720 Filed 4–15–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–4210–01]

Extension of Approved Information Collection, OMB Number 1004–0157

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request renewal of existing approval to collect certain information from applicants who wish to acquire a right-of-way on public lands under the Federal Land Policy and Management Act (FLPMA) of 1976. The information collection requirements covered by this notice are necessary to making a determination as to the reasonable level of reimbursement costs and to determine who may be entitled to an off-set against reimbursements of cost.

DATES: Comments on the proposed information collection must be received by June 16, 1997 to be considered.

ADDRESSES: Comments may be mailed to: Director (420), Bureau of Land Management, 1849 C Street NW., Room 401LS, Washington, DC 20240.

Comments may be sent via Internet to: WoComment@WO140@attmail.com. Please include ''ATTN: 1004–0157'' and your name and return address in your Internet message.

Comments may be hand-delivered to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Carl C. Gammon, (202) 452–7777.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in a published current rule to solicit comments on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

BLM grants rights-of-way on public lands through the authority of Title V of FLPMA (90 Stat. 2776, 43 U.S.C. 1761). Section 304(b) of FLPMA authorizes the BLM to receive payment of reasonable cost to reimburse the government for the cost of processing rights-of-way. In determining reasonable costs, BLM must consider such things as actual cost (exclusive of management overhead), the portion of cost incurred that is for the benefit of the general public rather than for the exclusive benefit of the applicant, the public service provided, and other relevant factors, to determine who may be entitled to an off-set against reimbursement of costs. The information collection requirements found at 43 CFR 2808.3 are necessary to making a determination as to the reasonable level of reimbursement pursuant to Section 304 (b) of FLPMA.

The following is an explanation of specific items of information requested pursuant to 43 CFR 2808.3: Information on the monetary value of the rights and privileges sought by the applicant is needed to determine both eligibility and, if eligible, the reasonable level of

reimbursement. Such data consist of an estimate of the cost to construct the proposed project on public lands. If applicants believe that they are eligible for further reimbursement reductions for public benefit or service aspects of the proposed project, proof of such public benefit or service, consisting of the identification of any original study data developed, identification of tangible improvements, such as roads, trails, recreation facilities, etc., is needed. Where applicants believe they should be considered for additional reductions or a waiver of cost reimbursement requirements, a showing of information on the nature of a financial hardship, existence of an outstanding lease or permit, proof of full time residency, requirement for the relocation of an existing facility or the existence of other compelling public benefits or services are needed in accordance with 43 CFR 2808.5 to aid in determining whether they meet specific statutory requirements to obtain benefits. Failure to collect the necessary information would result in BLM's inability to develop defendable, reasonable reimbursement costs for applicants in accordance with statutory and regulatory requirements. The effect to the government would be insufficient payment received for services rendered or increased cost to the government relating to protest and appeal actions contesting the accuracy of the reimbursable cost determinations.

Based on BLM's experience administering the activities described above, there will be about 17 applications annually. The respondents are individuals or companies that seek an off-set against cost reimbursement. The public reporting burden for the information collected is estimated to average 50 hours per response. The frequency of response is once. The estimated total annual burden on new respondents is about 850 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: April 10, 1997.

Carole J. Smith,

Information Collection Officer.

[FR Doc. 97–9806 Filed 4–15–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–1430–01; CACA 35734–FD]

Opening of Lands; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: A parcel of land which was segregated for exchange CACA–35734 has dropped from the exchange. This order terminates the exchange segregation and opens the land.

EFFECTIVE DATE: April 16, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Alex, BLM California State Office (CA–931), 2135 Butano Drive, Sacramento, California, 95825–0451, (916) 979–2858.

OPENING: The segregation imposed by notation to the records of land described below is hereby terminated, and the lands are available, subject to other withdrawals and segregations of record, under the public land and mineral laws of the United States.

San Bernardino Meridian, California

T. 10 S., R. 13 E., sec. 10, E½NE¼., containing 80 acres in Imperial County.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 97–9813 Filed 4–15–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–7–1430–02]

Notice of Availability: Michigan Draft Resource Management Plan Amendment/Environmental Assessment

AGENCY: Bureau of Land Management.

ACTION: Notice of Availability.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Milwaukee District Office, has completed the Michigan Draft Resource Management Plan Amendment (RMPA) and Environmental Assessment (EA) for the Disposal of U.S. Coast Guard Lighthouse Properties. The purpose of the RMPA/EA is to assess the impacts of transferring seven tracts of public land to the State of Michigan, other Federal agencies and non-profit organizations.

This notice is issued pursuant to 43 CFR 1610.2(C).

In accordance with 43 CFR 1610.4–7, Selection of Preferred Alternative, the public is invited to comment on the draft RMPA/EA.

DATES: The comment period for the draft RMPA/EA commences with the publication of this notice. Comments must be postmarked no later than May 16, 1997.

ADDRESSES: Written comments should be addressed to the District Manager, Milwaukee District Office, P.O. Box 631, Milwaukee, Wisconsin 53201–0631.

FOR FURTHER INFORMATION CONTACT: Howard Levine, Planning and Environmental Coordinator, Milwaukee District, (414) 297–4463, or Larry Johnson, Realty Specialist, Milwaukee District, (414) 297–4413.

Dated: April 4, 1997.

James W. Dryden,

District Manager.

[FR Doc. 97–9196 Filed 4–15–97; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 20 N., R. 109 W., accepted April 4, 1997
T. 21 N., R. 109 W., accepted April 4, 1997
T. 22 N., R. 109 W., accepted April 4, 1997
T. 22 N., R. 110 W., accepted April 4, 1997

Wind River Meridian, Wyoming

T. 1 S., R. 1 E., accepted April 4, 1997
T. 2 N., R. 2 E., accepted April 4, 1997
T. 1 S., R. 4 E., accepted April 4, 1997

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment

of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: April 7, 1997.

John P. Lee,

Chief, Cadastral Survey Group.

[FR Doc. 97–9719 Filed 4–15–97; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Minerals Management Advisory Board; Outer Continental Shelf (OCS); Scientific Committee (SC); Announcement of Plenary Session

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A–63, Revised.

The Minerals Management Advisory Board OCS SC will meet in plenary session on Wednesday, May 21 and on Thursday, May 23, 1997, from 8:30 a.m. to 5 p.m. at Scripps Institution of Oceanography, Hubbs Hall Conference Room, La Jolla, California.

The OCS SC is an outside group of scientists which advises the Director, MMS, on the feasibility, appropriateness, and scientific merit of the MMS' OCS Environmental Studies Program (ESP) as related to information needed for informed OCS decisionmaking.

Discussions will focus on:

- Deepwater Development Issues
- Coastal Marine Institutes
- Moratoria Subcommittee Report
- Committee Business and Resolutions

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

A copy of the agenda may be requested from the MMS by writing Ms. Phyllis Clark at the address below or by electronic mail at Phyllis __ Clark @MMS.GOV. Other inquiries concerning the OCS SC meeting should be addressed to Dr. Ken Turgeon, Executive Secretary to the OCS Scientific Committee, Minerals Management Service, 381 Elden Street, Mail Stop 4041, Herndon, Virginia 20170–4817. He may be reached by telephone at (703) 787–1717, and by electronic mail at Ken __ Turgeon@MMS.GOV.

Dated: April 10, 1997.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 97–9782 Filed 4–15–97; 8:45 am]

BILLING CODE 4041–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations; Mining Operations; Music Valley Claim Group; Joshua Tree National Park, San Bernardino County, CA

Notice is hereby given in accordance with Section 9.17 (a) of Title 36 of the Code of Federal Regulations, Part 9, Subpart A, that the National Park Service has received from Byron Walls, of Yorba Linda California, a Plan of Operations to conduct exploratory mining operations on the Music #4, #5 and the J & B #1 claims in the Music Valley area, in Joshua Tree National Park, located within Riverside County, California.

The Plan of Operations is available for public review and comment for a period of 30 days from the publication date of this notice. Analysis of the proposal will not be completed until a validity examination has been conducted in accordance with 36 CFR 9A and NPS policy. The document can be viewed during normal business hours at the Office of the Superintendent, Joshua Tree National Park, 74485 National Park Drive, Twenty-nine Palm, California. 92277.

Dated: March 27, 1997.

Frank Buond,

Superintendent, Joshua Tree National Park.

[FR Doc. 97–9798 Filed 4–15–97; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the National Park Service, Big Cypress National Preserve, Ochopee, FL

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 National Park Service, Big Cypress National Preserve, Ochopee, FL.

A detailed assessment of the human remains and associated funerary objects was made by National Park Service professional staff in consultation with representatives of the Miccosukee Tribe of Indians of Florida, Seminole Nation of Oklahoma, and Mr. Bobby C. Billie, a spiritual leader of the Independent Traditional Seminole Nation of Florida, a non-federally recognized Indian group. Good faith efforts to consult with representatives of the Seminole Tribe of Florida have been unsuccessful.

In 1977, human remains representing a minimum of one individual were collected from Turner River #5, a burial island site located within park boundaries. No known individuals were identified. One fragment of glazed earthenware and one blue glass bead were recovered in association with the remains. One the basis of these funerary objects and the state of preservation of the human remains, the site is dated to ca. 1840 AD at the earliest.

On February 28, 1996, a Federal Register notice was published regarding the completion of Big Cypress National Preserve's inventory. The Turner River #5 site was identified by Miccosukee representatives as being occupied by Seminole people during the middle to the last half of the 19th century. Information brought to the park's attention by Mr. Bobby C. Billie shows that the Turner River #5 site was occupied and utilized by his ancestors, Ingraham and Josie Billie, during the same time period. Documents from representatives of the Miccosukee Tribe of Indians of Florida support this claim.

Based on the above-mentioned information, officials of the National Park Service have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent

the physical remains of at least one individual of Native American ancestry. Officials of the national Park Service have also determined that, pursuant to 25 U.S.C. 3001(3)(A), the two objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the National Park Service have also determined that, pursuant to 25 U.S.C. 3005(a)(5)(A) Mr. Billie can trace his ancestry directly and without interruption by means of the traditional kinship system of the Independent Seminole Nation of Florida to the individual whose remains and funerary objects are being claimed.

This notice has been sent to Mr.. Bobby C. Billie, the Miccosukee Tribe of Indians of Florida, the Seminole Nation of Oklahoma, and the Seminole Tribe of Florida. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Wallace Hibbard, Superintendent, Big Cypress National Preserve, HCR 61, Box 110, Ochopee, FL 34141; telephone: (941) 695–2000 ext. 10, before May 16, 1997. Repatriation of the human remains and associated funerary objects to Mr. Bobby C. Billie may begin after that date if no additional claimants come forward.

Dated: April 3, 1997.

Muriel Crespi,

Acting Departmental Consulting Archaeologist, Archeology and Ethnography Program.

[FR Doc. 97–9837 Filed 4–15–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Missouri and Montana in the Possession of the Missouri Historical Society, St. Louis, MO

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 from Missouri and Montana in the possession of the Missouri Historical Society, St. Louis, MO.

A detailed assessment of the human remains was made by Missouri Historical Society professional staff in consultation with representatives of the Arapaho Tribe, Cheyenne-Arapaho Tribe of Oklahoma, Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Devil's Lake Sioux Tribe, Flandreau Santee Sioux Tribe, Fort Peck Assiniboine and Sioux Tribes, Lower Brule Sioux Tribe, Northern Cheyenne Tribe, Oglala Sioux Tribe, Otoe-Missouria Tribe of Oklahoma, Rosebud Sioux Tribe, Sisseton-Wahpeton Dakota Nation, Standing Rock Sioux Tribe, and Yankton Sioux Tribe.

During 1906–1907, human remains representing one individual was recovered from the Utz site, Saline County, MO, during an American Bureau of Ethnology survey. Mr. Gerard Fowke, project director of the survey, donated these remains to the Missouri Historical Society during this time. No known individuals were identified. No associated funerary objects are present.

The Utz site has been identified as a Missouria village occupied between 1450–1712 AD based on continuous occupation, continuity of material culture, and historical documents.

Based on the above mentioned information, officials of the Missouri 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 Missouri Historical Society 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 Native American human remains and the Otoe-Missouria Tribe of Oklahoma.

In 1911, human remains representing one individual were donated to the Missouri Historical Society by Mrs. Louis Tesson of St. Louis, MO. No known individual was identified. No associated funerary objects are present.

According to accession documents, Dr. Louis Tesson made a riding quirt from the radius of a ''Sioux Indian'' whose body lay on the Little Big Horn Battlefield at an unspecified time following the battle. U.S. Army records indicate Dr. Tesson was in the field with the 5th Infantry at Cantonment, Tongue River, WY during the summer of 1876, and was posted at Fort Custer, MT near the site of the Little Bighorn Battlefield from April 1877 to April 1880. Morphological evidence indicates this is a human radius.

Based on the above mentioned information, officials of the Missouri 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 Missouri Historical Society 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 Native American human remains and the Arapaho Tribe, Cheyenne-Arapaho Tribe of Oklahoma, Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Devil's Lake Sioux Tribe, Flandreau Santee Sioux Tribe, Fort Peck Assiniboine and Sioux Tribes, Lower Brule Sioux Tribe, Northern Cheyenne Tribe, Oglala Sioux Tribe, Rosebud Sioux Tribe, Sisseton-Wahpeton Dakota Nation, Standing Rock Sioux Tribe, and Yankton Sioux Tribe.

This notice has been sent to officials of the Arapaho Tribe, Cheyenne-Arapaho Tribe of Oklahoma, Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Devil's Lake Sioux Tribe, Flandreau Santee Sioux Tribe, Fort Peck Assiniboine and Sioux Tribes, Lower Brule Sioux Tribe, Northern Cheyenne Tribe, Oglala Sioux Tribe, Otoe-Missouria Tribe of Oklahoma, Rosebud Sioux Tribe, Sisseton-Wahpeton Dakota Nation, Standing Rock Sioux Tribe, and Yankton Sioux Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Patti Wright, Associate Curator of Native American Ethnology, Missouri Historical Society, 225 S. Skinker, P.O. Box 11940, St. Louis, MO 63112–0040; telephone: (314) 746–4537, before May 16, 1997. Repatriation of the human remains to the Otoe-Missouria Tribe of Oklahoma; and Arapaho Tribe, Cheyenne-Arapaho Tribe of Oklahoma, Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Devil's Lake Sioux Tribe, Flandreau Santee Sioux Tribe, Fort Peck Assiniboine and Sioux Tribes, Lower Brule Sioux Tribe, Northern Cheyenne Tribe, Oglala Sioux Tribe, Rosebud Sioux Tribe, Sisseton-Wahpeton Dakota Nation, Standing Rock Sioux Tribe, and Yankton Sioux Tribe may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: April 9, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–9834 Filed 4–15–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from Arizona in the Possession of the Laboratory of Anthropology, Museum of Indian Arts and Culture, Museum of New Mexico, Santa Fe, NM

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 Laboratory of Anthropology, Museum of Indian Arts and Culture, Museum of New Mexico, Santa Fe, NM, which meet the definition of ''sacred objects'' under Section 2 of the Act.

The five cultural items are Hopi Katsina Spirit Friends (masks), including Nimu, Hemis, Tasap, Tassop-mu' Kwaama, and Mastop.

Between 1900–1901, Stanley McCormick led an ethnographic and archeological collection project to Arizona and New Mexico for the Field Museum, Chicago, IL, during which Mr. H.R. Voth collected or secured these five masks through Charles Owen. These masks were then accessioned into the collections of the Field Museum. In 1932 and 1933, these masks were purchased by the Laboratory of Anthropology, which became part of the Museum of New Mexico in 1947.

Accession records of the Field Museum and the Museum of New Mexico clearly indicate these Spirit Friends are of Hopi origin from Hopi villages in Northern Arizona. Consultation evidence presented by representatives of the Hopi tribe and Hopi traditional religious leaders identified these Katsina Friends as objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Consultation with representatives of the Hopi Tribe further indicate that the Katsinmomngwit (Hopi traditional religious leaders) are the only rightful custodians of the Katsina Friends.

Based on the above-mentioned information, officials of the Museum of New Mexico have determined that, pursuant to 25 U.S.C. 3001 (3)(C), these five 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. Lastly, officials of the Museum of New Mexico have 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 Dr. Bruce Bernstein, Director, Museum of Indian Arts and Culture, Museum of New Mexico, P.O. Box 2087, Santa Fe, NM 87504–2087; telephone (505) 827–6344 before May 16, 1997. Repatriation of these objects to the Hopi Tribe may begin after that date if no additional claimants come forward.

Dated: April 9, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–9835 Filed 4–15–97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Control of the Southwest Museum, Los Angeles, CA

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 a cultural item in the control of the Southwest Museum, Los Angeles, CA, which meets the definition of ''sacred object'' and ''object of cultural patrimony'' under Section 2 of the Act.

The cultural item is a carved wooden figure standing 32–1/4 inches tall.

At an unknown date, this figure was purchased from an unknown source by the Southwest Museum. Accession records indicate this figure was ''probably'' removed from a cave shrine near Thunder Mountain, NM. There is no other information regarding the purchase or original acquisition of this figure.

Consultation with representatives of the Pueblo of Zuni indicates this figure is a Ahaya:da, or Zuni War God. Representatives of the Pueblo of Zuni state that this Ahaya:da is needed by Zuni traditional religious leaders for the practice of traditional Zuni religion by present-day adherents. Representatives of the Pueblo of Zuni also state that this Ahaya:da has ongoing historical, traditional, and cultural importance central to the Pueblo of Zuni, and could not have been alienated by any individual.

Based on the above-mentioned information, officials of the Southwest Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(C), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Southwest Museum have also determined that, pursuant to 25 U.S.C. 3001 (3)(D), this cultural item has ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Finally, officials of the Southwest 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 Pueblo of Zuni.

This notice has been sent to officials of the Pueblo of Zuni. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Dr. Kathleen Whitaker, Chief Curator, Southwest Museum, P.O. Box 41558, Los Angeles, CA 19941–0558; telephone (213) 221–2164 before May 16, 1997. Repatriation of these objects to the Pueblo of Zuni may begin after that date if no additional claimants come forward.

Dated: April 9, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–9836 Filed 4–15–97 ; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Water Quality Improvement Program, Planning Report and Final Environmental Impact Statement, Colorado River Salinity Control Program, Price-San Rafael River Units, Utah

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: In June 1974, Congress enacted the Colorado River Basin Salinity Control Act (Act). This Act directed the Secretary of the Interior to develop a program to enhance and

protect water quality in the Colorado River for use in the United States and the Republic of Mexico. Using the criterion set forth in this Act and its amendments, the Bureau of Reclamation (Reclamation) and the U.S. Department of Agriculture's Natural Resource Conservation Service (NRCS) (formerly the Soil Conservation Service), as joint lead agencies, have prepared a Planning Report and Final Environmental Impact Statement (PR/FEIS) for the Price-San Rafael River Units, of the Colorado River Water Quality Improvement Program and the Colorado River Salinity Control Program. The Preferred Alternative for accomplishing the goals set forth for the Price-San Rafael River Units is identified in a Record of Decision (ROD) signed April 9, 1997. Reclamation and NRCS have decided to proceed with the preferred alternative identified in the PR/FEIS.

ADDRESSES: Copies of the ROD may be requested from the Bureau of Reclamation, Attention: Provo Area Office, 302 East 1860 South, Provo, Utah 84606–7317.

FOR FURTHER INFORMATION CONTACT: Dan Fritz at (801) 379–1150.

SUPPLEMENTARY INFORMATION: In June 1974, Congress enacted the Colorado River Basin Salinity Control Act (Act), Pub. L. 93–320. The Act directs that plans will be made and evaluated for cost effectiveness and maximum salinity reduction. In October 1984, Pub. L. 98–569 was enacted amending the Salinity Control Act of 1974. It directed the Secretary of Agriculture to establish a voluntary on-farm salinity control Program within the U.S. Department of Agriculture. In March 1994, a public review of the Colorado River Basin Salinity Control Program was initiated. The result was a 1995 amendment (Pub. L. 104–20) to the Salinity Control Act. The new Act authorized a basin-wide salinity control program that the Secretary of the Interior, acting through the Bureau of Reclamation, shall implement. An additional $75,000,000 was authorized to be appropriated to complete the program.

The preferred alternative identified in the ROD includes both Reclamation's component for off-farm irrigation systems and winter water improvements and the NRCS's on-farm irrigation systems. The preferred alternative includes installation of sprinkler irrigation systems, improved surface irrigation and irrigation water management, and the elimination of water for open conveyance systems in the project area during the winter (or non-irrigation) season. These on- and off-farm irrigation improvement components are interdependent in terms of economic and efficient operation. This alternative would result in the removal of 161,000 tons of salt per year from the Colorado River System.

Dated: April 9, 1997.

Rick L. Gold,

Deputy Regional Director.

[FR Doc. 97–9734 Filed 4–15–97; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–A–744 (Final)]

Certain Brake Drums and Rotors From China

Determinations

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of imports from China of certain brake drums that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission also determines,[2] pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from China of certain brake rotors that have been found by the Department of Commerce to be sold in the United States at LTFV. The Commission, with respect to imports of certain brake rotors and pursuant to section 735(b)(4)(A) of the Act (19 U.S.C. 1673d(b)(4)(A)), makes a negative determination regarding critical circumstances. Both certain brake drums and rotors are provided for in subheading 8708.39.50 of the Harmonized Tariff Schedule of the United States.[3]

Background

The Commission instituted this investigation effective March 7, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by counsel for the Coalition for the Preservation of American Brake Drum & Rotor Aftermarket Manufacturers.[4] The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain brake drums and rotors from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission,

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Carol T. Crawford dissenting.

[3] For purposes of this investigation, the subject brake drums are defined by Commerce as being made of:

''gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake drums limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake drums are those that are ready for sale and installation without any further operations. Semifinished drums are those on which the surface is not entirely smooth, and has undergone some drilling. Unfinished drums are those which have undergone some grinding or turning.

These brake drums are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (OEM) which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake drums covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake drums that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria.''

The subject brake rotors are defined by Commerce as being made of:

''gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semifinished rotors are those on which the surface is not entirely smooth, and has undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (OEM) which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria.''

[4] The members of the Coalition for the Preservation of American Brake Drum & Rotor Aftermarket Manufacturers consist of Brake Parts, Inc., McHenry, IL; Kinetic Parts Manufacturing, Inc., Harbor City, CA; Iroquois Tool Systems, Inc., North East, PA; and Wagner Brake Corp., St. Louis, MO.

Washington, DC, and by publishing the notice in the **Federal Register** of November 6, 1996 (61 FR 57449). The hearing was held in Washington, DC, on February 28, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 9, 1997. The views of the Commission are contained in USITC Publication 3035 (April 1997), entitled ''Certain Brake Drums and Rotors from China: Investigation No. 731–TA–744 (Final).''

Issued: April 8, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–9844 Filed 4–15–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–388]

Certain Dynamic Random Access Memory Controllers and Certain Multi-layer Integrated Circuits, as Well as Chipsets and Products Containing Same; Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 13) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3106.

SUPPLEMENTARY INFORMATION: On June 12, 1996, the Commission voted to institute this investigation based on a complaint filed by Intel Corp. of Santa Clara, California (''Intel''), to determine whether there were violations of section 337 of the Tariff Act of 1930, as amended, in the importation, sale for importation, or sale within the United States after importation of certain dynamic random access memory controllers and certain multi-layer integrated circuits, as well as chipsets and products containing same, by reason of infringement of claims 1, 2, 5, and 7 of U.S. Letters Patent 5,703,320, or claims 1 and 11 of U.S. Letters Patent 4,775,550, both owned by Intel. 61 F.R. 31148. The complaint named the following parties as respondents: Silicon Integrated Systems Corp. of Taiwan and Silicon Integrated Systems Corp. (U.S.) (collectively, ''the SiS respondents''), United Microelectronics Corporation, Hsinchu, Taiwan (''UMC''), and Integrated Technology Express, Santa Clara, CA (''ITE''). On November 7, 1996, the presiding ALJ issued an initial determination (ID) (Order No. 5), terminating the SiS respondents from the investigation pursuant to agreement and removing U.S. Letters Patent 5,703,320 from the scope of the investigation. This ID was not reviewed by the Commission and became the Commission's final determination on December 3, 1996. *See* Commission Notice issued December 3, 1996.

On February 6, 1997, Intel and the remaining respondents, UMC and ITE, filed a joint motion under 19 C.F.R. § 210.21 to terminate the investigation based on a settlement agreement. On March 13, 1997, the ALJ granted the joint motion and issued his ID (Order No. 13) terminating the investigation on the basis of the settlement agreement. The ALJ found that there is no indication that termination of the investigations would have an adverse impact on the public interest and that termination based on settlement is generally in the public interest. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission rule 210.42, 19 C.F.R. § 210.42.

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: April 9, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–9843 Filed 4–15–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–372 Enforcement Proceeding]

Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing Same; Notice of Commission Determination Concerning Violation of Consent Order; Denial of Request for Oral Argument; and Schedule for the Filing of Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that the respondents in the above-captioned formal enforcement proceeding have violated the Commission consent order issued to them on October 11, 1995.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3116.

SUPPLEMENTARY INFORMATION: On October 11, 1995, the Commission issued a consent order in the above-captioned investigation. The consent order provides that respondents San Huan New Materials High Tech, Inc., Ningbo Konit Industries, Inc., and Tridus International, Inc. (collectively the ''San Huan respondents''):

> shall not sell for importation, import into the United States or sell in the United States after importation or knowingly aid, abet, encourage, participate in, or induce the sale for importation, importation into the United States or sale in the United States after importation of neodymium-iron-boron magnets which infringe any of claims 1–3 of [U.S. Letters Patent 4,588,439 (the '''439 patent'], or articles or products which contain such magnets, except under consent or license from Crucible.

On March 4, 1996, complainant Crucible Materials Corporation (''Crucible'') filed a complaint seeking institution of formal enforcement proceedings against the San Huan respondents for alleged violations of the consent order. On May 16, 1996, the Commission issued a notice instituting this enforcement proceeding based on Crucible's enforcement complaint. The following were named as parties to the formal enforcement proceeding: (1) Crucible Materials Corporation, State Fair Boulevard, P.O. Box 977, Syracuse, New York 13201–0977 (complainant in the original investigation and requester of the formal enforcement proceeding); (2) San Huan New Materials High Tech,

Inc., No. 8 South 3rd Street, Zhong Guan Cun Road, Beijing, Peoples Republic of China 100080 (enforcement proceeding respondent); (3) Ningbo Konit Industries, Inc., Ningbo Economic and Technical Development Zone, Zhejiang Province, People's Republic of China (enforcement proceeding respondent); (4) Tridus International, Inc., 8527 Alondra Boulevard, Suite 205, Paramount, California 90723 (enforcement proceeding respondent); and (5) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

On July 1, 1996, the Commission referred the formal enforcement proceeding to an administrative law judge (''ALJ'') for issuance of a recommended determination (''RD'') regarding whether respondents violated the consent order and what enforcement measures, if any, are appropriate in light of the nature and significance of any such violations. The ALJ conducted an evidentiary hearing in the enforcement proceeding from November 4 through November 8, 1996. Post-hearing briefs were submitted, and closing arguments were made before the ALJ on December 12, 1996. On December 24, 1996, the ALJ issued his RD in which he recommended that the Commission find that the San Huan respondents have violated the Commission's consent order, and that a penalty of $1,625,000 be assessed against them. In order to allow the parties to express their views concerning the RD prior to Commission action, the Commission provided the parties with the opportunity to file exceptions to the RD and proposed alternative findings of fact and conclusions of law. Exceptions and proposed alternative findings of fact and conclusions of law were filed by all parties.

Having considered the RD, the exceptions thereto, and proposed alternative findings of fact and conclusions of law, as well as the entire record in this proceeding, the Commission determined that the San Huan respondents had violated the Commission's consent order by importing and selling infringing neodymium-iron-boron magnets on thirty one (31) days between October 11, 1995, and September 10, 1996. The Commission adopted the RD with respect to the ALJ's determinations concerning (1) whether to rely on Crucible's in-house testing to determine whether respondents'' sales of imported magnets infringed Crucible's patent; (2) whether respondents'' sales of certain magnets containing cobalt infringed Crucible's patent and therefore violated the consent order; and (3) whether Crucible met its burden of proving that certain other magnets in evidence in this proceeding were imported and sold in violation of the consent order.

The Commission declined to adopt the RD with respect to the ALJ's determinations concerning (1) the effect that the Federal Circuit decision in *Maxwell* v. *J. Baker*, 86 F.3d 1098 (Fed. Cir.), *reh'g denied, suggestion of reh'g in banc declined, petition for cert. filed* (1996), should have on the enforcement proceeding and on the Commission's outstanding remedial orders in this investigation; (2) whether respondents'' sales of certain magnets with elevated levels of rare earth elements infringed Crucible's patent and therefore violated the consent order; and (3) the date from which it is appropriate to find that respondents'' importations and sales of magnets that infringe under the doctrine of equivalents violated the consent order. Finally, the Commission denied complainant's request for an oral argument.

The Commission issued its determination on violation concurrently with issuance of this notice. A Commission opinion concerning certain issues addressed in the RD will be issued shortly.

In connection with final disposition of this investigation, the Commission may revoke the consent order and issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see the Commission Opinion, *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337-TA–360.

If the Commission contemplates revoking the consent order and issuing some other form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy other than the consent order, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed, if remedial orders are issued.

Written Submissions

The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration in the event it determines to revoke the consent order. Written submissions shall not exceed 35 pages in length. Parties are requested not to repeat any arguments made to the Commission in their exceptions to the RD and proposed alternative findings of fact and conclusions of law. The written submissions and proposed remedial orders must be filed no later than the close of business on April 22, 1997. Reply submissions shall not exceed 20 pages in length and must be filed no later than the close of business on April 29, 1997. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be

treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Copies of the public version of the Commission's opinion in support of this determination and all other nonconfidential documents filed in connection with this enforcement proceeding are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.75).

Issued: April 8, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–9845 Filed 4–15–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–745 (Final)]

Steel Concrete Reinforcing Bars From Turkey

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that a regional industry in the United States is materially injured by reason of imports from Turkey of steel concrete reinforcing bars, provided for in subheadings 7213.10.00 and 7214.20.00 of the Harmonized Tariff Schedule of the United States,[3] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission also makes a negative determination, pursuant to section 735(b)(4)(A) of the Act (19 U.S.C. § 1673d(b)(4)(A)), regarding critical circumstances.

Background

The Commission instituted this investigation effective March 8, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by AmeriSteel Corporation,[4] Tampa, FL, and New Jersey Steel Corporation, Sayreville, NJ. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of steel concrete reinforcing bars from Turkey were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 6, 1996 (61 FR 57451, November 6, 1996). The hearing was held in Washington, DC, on February 26, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 9, 1997. The views of the Commission are contained in USITC Publication 3034 (April 1997), entitled ''Steel Concrete Reinforcing Bars from Turkey: Investigation No. 731–TA–745 (Final).''

Issued: April 11, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–9842 Filed 4–15–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1841–97]

Notice of Requirement of Carriers To Present for Inspection In-Transit Passengers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice informs carriers that effective April 1, 1997, carriers are required to present for inspection, in accordance with the special procedures outlined in the notice, all international-to-international (ITI) passengers, formerly known as in-transit lounge (ITL) passengers, transiting through the United States from one foreign country to another foreign country with one stop in the United States. This change is necessary to comply with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the Act of 1996) which amended section 235 of the Immigration and Nationality Act (the Act) to statutorily require the Service to inspect aliens transiting through the United States. It is anticipated that further modifications to the ITI program and procedures to conform to the change in law will be accomplished through promulgation of rules in accordance with the notice and comment provisions of the Administrative Procedures Act.

EFFECTIVE DATE: April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Robert F. Hutnick, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Room 4064, Washington, DC 20536, telephone number (202) 616–7499.

SUPPLEMENTARY INFORMATION: Prior to the enactment of the Act of 1996, the Service employed its discretionary authority under section 235 of the Act to exempt ITI passengers from inspection under certain circumstances. However, section 235(a)(3) of the Act, as amended by the Act of 1996 and effective April 1, 1997, now provides:

(3) INSPECTION.—All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States *shall* be inspected by immigration officers [emphasis added].

To give effect to the legal mandate to inspect ITI passengers, on March 26, 1997, the Service issued the following instructions to the appropriate field offices which take effect on April, 1, 1997:

''*New Procedures:*

(1) International-to-international passengers shall be inspected but not admitted to the United States. This inspection should be conducted at the ITL. If this is not feasible, the port director or district office manager shall contact the appropriate deputy assistant regional director for inspections to provide justification for not using the ITL and to make alternative arrangements in keeping with the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Carol T. Crawford dissenting.

[3] The product covered by this investigation is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain-round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar.

[4] Formerly Florida Steel Corporation.

overall goal of facilitation or the ITI operations.

(2) The transit passenger inspection (TPI) shall consist of a visual examination of ITI passengers during the transfer process at the Port-of-Entry. Questioning of ITI passengers and examination of travel documents shall be done selectively and on a random basis but should not interfere with the overall facilitation of the ITI operation.

(3) The Ports-of-Entry shall dedicate sufficient resources at the ITI inspection locations to maximize facilitation and law enforcement while ensuring inspector safety and security without adversely affecting the inspection of passengers seeking admission to the United States.

(4) Pending further notice, carriers are not required to present for inspection ITI passengers and crewmen who remain on board aircraft.

Carrier Responsibilities

(1) Carriers signatory to Immediate and Continuous Transit Agreements (with provisions for control of uninspected passengers and In-Transit Lounge Use), also known as ITL agreements, will be allowed continued transit privileges of ITI passengers until further notice.

Implementation

(1) The inspection of ITI passengers will take effect on April 1, 1997. The TPI procedures enumerated are issued for an initial transition period. Further instructions will be issued as procedures are developed.

(2) Ports-of-Entry shall endeavor to maintain a flexible approach to the inspection of ITI passengers during this transition period to maximize facilitation while not subverting the inspection requirements mandated.

(3) Ports-of-Entry shall report to the Office of Programs, through channels, any significant implementation problems, including adverse effects on the 45 minute inspection requirement and/or on resources, with any of the above inspection requirements.

(4) Ports-of-Entry are reminded of the critical need to obtain and record accurate ITI passenger counts. Carrier representatives should be questioned regarding ITI passengers counts upon presentation of the Aircraft/Vessel Report, Form I–92. For the interim, this refers to passenger counts only and not to biographical data. The figures reported on the G–22.1 are for planning purposes and for use in discussions with the carriers.''

Carriers interested in utilizing in-transit lounge facilities at individual Ports-of-Entry for the temporary holding of inspected in-transit passengers who are departing the United States for a foreign country on a direct flight without stopover in the United States should contact local Service Port Directors for information concerning new ITI agreements. Though they will be negotiated at the port level, these agreements will be approved by the Assistant Commissioner for Inspections. Until further notice, however, the present Immediate and Continuous Transit Agreements (with provision for control of uninspected passengers and In-Transit Lounge Use) will remain in effect. However, the Service has notified carriers signatory to ITL Agreements that beginning April 1, 1997, the Service will invoke its contractual right under these agreements to require signatory carriers to present all in-transit passengers for inspection in accordance with the procedures outlined in this notice. Any rights or liabilities already accrued under the present agreement(s) are not terminated by operation of this notice.

It is anticipated that further modifications to the ITI program and procedures to conform to the change in law will be accomplished through promulgation of rules in accordance with the notice and comment provisions of the Administrative Procedures Act.

Dated: March 31, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–9815 Filed 4–15–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities; Extension of a Currently Approved Collection; Comment Request

ACTION: National Crime Victimization Survey.

PURPOSE: The information collection extension is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until June 16, 1997.

We request written comments and suggestions from the public and affected agencies' concerning the extension of a currently approved collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Craig Perkins (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact Craig A. Perkins, Statistician, Victimization Statistics Branch, by calling (202) 633–3039, or by writing to the Bureau of Justice Statistics, 633 Indiana Ave., NW, Washington, DC, 20531.

The information collection is listed below:

(1) Type of information collection. Extension of Currently Approved Collection.

(2) The title of the form/collection. National Crime Victimization Survey (NCVS).

(3) The agency form number and applicable component of the Department sponsoring the collection. Form: NCVS–1, NCVS–1A; NCVS–1A(SP); NCVS–2; NCVS–2(SP); NCVS–7; NCVS–110; NCVS–500; NCVS–541; NCVS–545; NCVS–548; NCVS–551; NCVS–554; NCVS–554(SP); NCVS–572(L)KOR/SP/CHIN(T)/CHIN(M)/VIET; NCVS–573((L); NCVS593(L); and NCVS–594(L). Component: Victimization Statistics Branch, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: Individuals or Households. The National Crime Victimization Survey collects, analyzes, publishes, and disseminates statistics on the amount and type of crime committed against households and individuals in the United States. Respondents include persons 12 years and older living in about 49,200 interviewed households.

(5) An estimate of the total number of respondents and the amount of time

estimated for an average respondent to respond: 111,100 respondents at 1.95 hours per interview.

(6) An estimate of the total public burden (in hours) associated with the collection: 72,684 hours annual burden.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: April 11, 1997.

Robert B. Briggs,

Department Clearance Officer.

[FR Doc. 97–9803 Filed 4–15–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Solicitation for Grant Application

AGENCY: Employment and Training Administration.

ACTION: Notice; extension of application period and correction of room number for submission of applications.

SUMMARY: On February 11, 1997, the Department of Labor, Employment and Training Administration (ETA), published a notice in the **Federal Register** at 62 FR 6272, announcing the availability of funds and a solicitation for grant applications (SGA) for funding migrant and seasonal farmworker training and employment programs in five states—Minnesota, Mississippi, North Dakota, Puerto Rico, and South Dakota. All information and forms required to submit and application are contained in the February notice.

DATES: The closing date for receipt of applications for grant award(s) under the SGA is extended from April 14 to April 22, 1997 at 4:45 p.m. (Eastern Time) at the address published in the SGA at 62 FR 6272 (February 11, 1997.)

ADDRESSES: Mail or hand deliver application to: James DeLuca, Grant Officer, U.S. Department of Labor, ETA, 200 Constitution Avenue, NW, Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Irene Taylor-Pindle, Division of Acquisition and Assistance. Telephone: (202) 219–8702 ext. 114 (this is not a toll-free number).

Signed at Washington, DC, this 11th day of April, 1997.

James C. DeLuca,

Grant Officer, Division of Acquisition and Assistance.

[FR Doc. 97–9818 Filed 4–15–97; 8:45 am]

BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 97–1]

Revision of the Cable and Satellite Carrier Compulsory Licenses; Public Meetings

AGENCY: Copyright Office, Library of Congress.

ACTION: Change in schedule for written testimony.

SUMMARY: The Copyright Office is examining the copyright licensing of broadcast retransmissions for the purpose of recommending legislative changes to Congress. In response to a request for an extension of time in filing comments for this study, the Copyright Office is announcing changes in the schedule for filing written testimony, reply comments, and notices of intention to testify. The dates of the public meetings remain unchanged.

DATES: Formal written testimony and questions for witnesses shall be filed no later than April 28, 1997, and reply comments shall be filed no later than June 16, 1997. Notices of intention to testify shall be submitted to the Office no later than April 22, 1997.

ADDRESSES: If delivered by hand, fifteen copies of written statements, questions, and reply comments should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM–403, First and Independence Avenue, S.E., Washington, D.C. 20540. If sent by mail, fifteen copies of written statements, questions, and reply comments should be sent addressed to Nanette Petruzzelli, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Nanette Petruzzelli, Acting General Counsel, or William Roberts, Senior Attorney for Compulsory Licenses. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On February 6, 1997, Senator Orrin Hatch, Chairman of the Committee on the Judiciary, United States Senate, sent a letter to the Register of Copyrights requesting the Copyright Office to conduct a global review of the copyright licensing regimes governing the retransmission of over-the-air broadcast signals. The Copyright Office is scheduled to report its findings to Congress on August 1, 1997.

On March 20, 1997, the Copyright Office announced a schedule for open public meetings to gather testimony from parties with an interest in copyright licensing of broadcast signal retransmissions. 62 FR 13396 (March 20, 1997). The Office requested parties wishing to testify to notify the Office by April 15, 1997, and to submit their formal written testimony and questions for witnesses no later than April 18, 1997. Interested parties were asked to submit reply comments by June 3, 1997. The public meetings are to take place the week of May 6, 1997.

On April 7, 1997, the Office received a joint motion requesting an extension of time for the filing of written testimony and questions for witnesses. Joining the motion are the National Association of Broadcasters, Satellite Broadcasting Communications Association, Joint Sports Claimants, Association of Local Television Stations, Inc., the Motion Picture Association of America, Inc., and the Public Broadcasting Service. These parties request a sixty day extension, noting that the questions presented by the Office in the March 20 **Federal Register** notice raise a number of issues of broad importance which require further deliberation. In particular, the parties state that additional time is required to evaluate the impact of the Supreme Court's decision in *Turner Broadcasting System, Inc.* v. *FCC,* 1997 U.S. Lexis 2078 (March 31, 1997). Additionally, the parties submit that the current schedule may adversely impact the ongoing negotiations between broadcasters and satellite carriers to settle ''white area'' restriction problems under the Satellite Home Viewer Act because the parties would be required to submit written testimony prior to finalizing any agreements. In sum, the parties advise that the quality of the testimony and the likelihood of consensus solutions to issues raised in the March 20 notice will be greatly improved, if the 60 day extension is granted.

Due to scheduling difficulties and the firmness of the August 1, 1997 deadline, the Office is unable to grant a 60 day extension at this time. However, the Office is granting a 10 day extension for the filing of comments and a 13 day extension for the filing of reply comments. Formal written testimony and written questions for witnesses shall be due no later than the close of

business on April 28, 1997, and reply comments should be due no later than the close of business on June 16, 1997. In addition, parties may submit their notices of intention to testify no later than April 22, 1997. Parties who have already submitted such notification need not do so again. All other deadlines and filing requirements announced in the March 20 **Federal Register** notice shall remain in force.

Dated: April 11, 1997.

Nanette Petruzzelli,

Acting General Counsel.

[FR Doc. 97–9819 Filed 4–15–97; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–046)]

Government-Owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Jet Propulsion Laboratory. Claims are deleted from the patent applications to avoid premature discloure.

DATES: April 16, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas H. Jones, Patent Counsel, NASA Management Office–JPL, Mail Code SPJ, Pasadena, CA 91109; telephone (818) 354–5179.

NASA Case No. DRC–095–022: In-Flight Adaptive Performance Optimization (APO) Control Using Redundant Control Effectors of an Aircraft;

NASA Case No. NPO–19602–1–CU: Method and Apparatus for Reducing Multipath Signal Error Using Deconvolution;

NASA Case No. NPO–19423–2–CU: Parallel Proximity Detection for Computer Simulation.

Dated: April 8, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–9730 Filed 4–15–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–047]

Government-Owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Ames Research Center. Claims are deleted from the patent applications to avoid premature disclosure.

DATES: April 16, 1997.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Warsh, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; telephone (415) 604–5104, fax (415) 604–1592.

NASA Case No. ARC–14068–1–SB: Organopolysiloxane Waterproofing Treatment for Porous Ceramics;

NASA Case No. ARC–14062–1: System for Selective Body Segment Compression and Taction;

NASA Case No. ARC–14077–1–SB: Quality Unistep In—Situ Ceramo-Organo (QUIC) Coating Materials;

NASA Case No. ARC–14122–1–GE: Low Speed Canard Conformally Stowabale for SuperSonic Cruise for Application to High Speed Civil Transport Configurations;

NASA Case No. ARC–14172–1–CU: Robotics System With Multimodality Instrument for Tissue Identification.

Dated: April 8, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–9731 Filed 4–15–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–048)]

Government-Owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Johnson Space Center. Claims are deleted from the patent applications to avoid premature disclosure.

DATES: April 16, 1997.

FOR FURTHER INFORMATION CONTACT: Ed Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, TX 77058; telephone (281) 483–0837, fax (281) 244–8452.

NASA Case No. MSC–22721–1: Blood Pump Bearing System;

NASA Case No. MSC–22614–1: Whole Blood Staining Device;

NASA Case No. MSC–22270–1–SB: Ammonia Monitor;

NASA Case No. MSC–22358–2: Method for Production of Powders;

NASA Case No. MSC–22595–1: Torque-Limiting Manipulation Device;

NASA Case No. MSC–22513–1: Variable Resistance Elastomer Sensor.

Dated: April 8, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–9732 Filed 4–15–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice No. 97–049]

NASA Advisory Council (NAC), Task Force on the Shuttle-Mir Rendezvous and Docking Missions; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NAC Task Force on the Shuttle-Mir Rendezvous and Docking Missions.

DATES: May 5, 1997, 1 p.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 7W31, 300 E Street, SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert Kirkham, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–1692.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review issues associated with the launch of STS–84. This meeting will be closed to

the public from 1 p.m. to 2 p.m. in accordance with 5 U.S.C. 552b(c)(6), to allow for a discussion on qualifications of individuals being considered for membership to the Task Force. The remainder of the meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register. The agenda for the meeting is as follows:

—Status report on the Operational Readiness of the STS–84 Mission.

—Status report on the Environmental Control and Life Support System aboard the Mir Station.

—Conclusions from the Task Force fact finding meetings at JSC and in Russia concerning the Shuttle-Mir program.

Dated: April 9, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer.

[FR Doc. 97–9729 Filed 4–15–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts Partnership Teleconference

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Partnership Advisory Panel (Your Town Section) to the National Council on the Arts will convene by teleconference on April 24, 1997 at 11:00 a.m. The teleconference will take place in Room 726 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of application evaluation under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9) (B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5691.

Dated: April 11, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 97–9812 Filed 4–15–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Anthropological, Geographic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), The National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Anthropological and Geographic Sciences (1757).

Date & Time: April 22, 1997 10:00 a..m. (Conference Call).

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 320, Arlington, VA 22230.

Contact Person: Dr. John E. Yellen, Program Director for Systematic Collections, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1759.

Agenda: To review and evaluate Systematic Collections proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the 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.

Reason for Late Notice: Delay in getting determination on closing approved.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–9840 Filed 4–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences (1186); 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 Astronomical Sciences (1186).

Date and Time: May 2, 1997 8:30 am–5:00 pm.

Place: Room 1020, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Seth L. Tuttle, Program Manager, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: 703/306–1829.

Purpose of Meeting: To provide advice and recommendations on proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate Major Research Instrumentation Astronomy proposals.

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.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–9839 Filed 4–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 920463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities (1193).

Date: April 21, 1997.

Time: 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Washington Boulevard, Room 1150, Arlington, VA 22230.

Contact Person: Tse-yun Feng, Program Director, National Science Foundation, 4201 Wilson Boulevard, Room 1160, Arlington, VA 22230.

Type of Meeting: Closed.

Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Research Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed includes 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.

Reason for Late Notice: The meeting announcement was delayed due to new office personnel.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management Acting Committee Management Officer.

[FR Doc. 97–9838 Filed 4–15–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Cross Disciplinary Activities; 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 Cross Disciplinary Activities (1193).

Date and Time: May 2, 1997 from 8:30 AM to 5 PM.

Place: Rooms 1150, 1120, 1105.17 and 1105.05, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Caroline E. Wardle, Deputy Director, Cross Disciplinary Activities, Room 1160, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Major Research Instrumentation 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.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–9841 Filed 4–15–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

The Cleveland Electric Illuminating Company, The Toledo Edison Company, Duquesne Light Company; Ohio Edison Company, and Pennsylvania Power Company; Beaver Valley Power Station, Units 1 and 2; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring

Notice is hereby given that the United States Nuclear Regulatory Commission (the Commission) is considering approval by issuance of an order under 10 CFR 50.80 of an application concerning a proposed merger between Centerior Energy Corporation and Ohio Edison Company. Centerior Energy Corporation is the parent holding company of The Cleveland Electric Illuminating Company and the Toledo Edison Company, which hold licenses to possess interests in the Beaver Valley Power Station. Ohio Edison Company and its subsidiary Pennsylvania Power Company also hold licenses to possess interests in the Beaver Valley Power Station. By letter dated December 13, 1996, from The Cleveland Electric Illuminating Company, The Toledo Edison Company, Ohio Edison Company and Pennsylvania Power Company, through their counsel, the Commission was informed that the Centerior Energy Corporation and Ohio Edison Company have entered into a merger agreement which provides for the formation of a new, single holding company, FirstEnergy Corporation (''FirstEnergy''). Under the agreement, The Cleveland Electric Illuminating Company, The Toledo Edison Company, and Ohio Edison Company will become subsidiaries of FirstEnergy, and Pennsylvania Power Company will remain a subsidiary of Ohio Edison Company.

According to the application, the merger will have no effect on the operation of Beaver Valley Power Station or the provisions of its operating license. The Cleveland Electric Illuminating Company, The Toledo Edison Company, Ohio Edison Company, and Pennsylvania Power Company will remain licensees responsible for their possessory interests and related obligations. Duquesne Light Company, which is not involved in the merger, will continue to operate the Beaver Valley Power Station after the merger, as required by the operating license. No direct transfer of the license will result from the merger.

Pursuant to 10 CFR 50.80, the Commission may consent to the transfer of control of a license after notice to interested persons. Such consent is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this proposed action, see the application from The Cleveland Electric Illuminating Company, The Toledo Edison Company, Ohio Edison Company, and Pennsylvania Power Company, dated December 13, 1996, submitted through their counsel and supplements dated February 12, 14, and 19, 1997. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555, and at the local public document room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 9th day of April 1997.

For the Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–9809 Filed 4–15–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–348]

Southern Nuclear Operating Company, Inc. Correction to Notice of Consideration of Amendment Request

The U.S. Nuclear Regulatory Commission issued a ''Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing'' for the Joseph M. Farley Nuclear Plant, Unit No. 1, on March 31, 1997. In the **Federal Register** issue of Friday, April 4, 1997, make the following correction:

On page 16202, second column, last paragraph, the ''application for amendment dated March 23, 1997,'' should have read ''application for amendment dated March 25, 1997.''

Dated at Rockville, Maryland, this 9th day of April 1997.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–9808 Filed 4–15–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Correction to Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission issued an Environmental Assessment and Finding of No Significant Impact for Facility Operating License No. DPR–64 for the Indian Point Nuclear Generating Unit No. 3. For the **Federal Register** issue of Tuesday, April 1, 1997, make the following correction:

On page 15546, third column, under Agencies and Persons Consulted, should read ''In accordance with its stated policy, on April 10, 1997, the staff consulted with the New York State official, Jack Spath, of the New York State Energy Research and Development Authority regarding the environmental impact of the proposed action. The state official had no comments.''

The technical content of the Environmental Assessment remains the same and the original **Federal Register** notice is not changed in any other manner.

Dated at Rockville, Maryland, this 10th day of April 1997.

For the Nuclear Regulatory Commission.

George F. Wunder,

Project Manager Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–9807 Filed 4–15–97; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C., Chapter 35), the Peace Corps is requesting approval from the Office of Management and Budget for the continued use of the RPCV Country Survey to be used by the World Wise Schools (WWS) program. A copy of the information collection may be obtained from Alyce P. Hill, Office of the World Wise Schools, Peace Corps, 1990 K St., NW, Washington DC 20525. Ms. Hill may be called at (202) 606–3294. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Comments on this form should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: RPCV Country Survey.

Need for and use of the Information: World Wise Schools needs this information to accurately describe other countries and its educational materials. The information collected assists WWS and the agency in fulfilling the third goal of Peace Corps as required by Congressional legislation and to enhance the Office of World Wise Schools global education program.

Respondents: Returned Peace Corps Volunteers (RPCVs).

Respnodents obligation to reply: Voluntary.

Burden on the Public:

a. Annual reporting burden: 175 hrs
b. Annual record keeping burden: 0 hrs
c. Estimated average burden per response: 15 min
d. Frequency of response: on occasion
e. Estimated number of likely respondents: 300
f. Estimated cost to respondents: $3.03

This notice is issued in Washington, DC on April 11, 1997.

Stanley D. Suyat,

Associate Director for Management.

[FR Doc. 97–9855 Filed 4–15–97; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps is requesting approval from the Office of Management and Budget for the continued use of the Teacher Brochure/ Enrollment Form to be used by the World Wise Schools program. A copy of the information collection may be obtained from Alyce P. Hill, Office of World Wise Schools, Peace Corps, 1990 K St., NW., Washington, DC 20525. Ms. Hill may be called at (202) 606–3294. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Comments on this form should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Teacher Brochure/Enrollment Form.

Need for and use of the Information: This form is completed voluntarily by educators throughout the country. This information will be used by WWS to enroll classrooms in the program and to determine what changes need to be addressed to meet the needs of participating teachers and the Peace Corps Volunteers. Enrollment in this program also fulfills the third goal of Peace Corps as required by Congressional legislation and to enhance the Office of World Wise Schools global education program.

Respondents: Educators throughout the public and private school systems in the United States.

Respondents obligation to reply: Voluntary.

Burden on the Public:

a. Annual reporting burden: 833 hrs
b. Annual recordkeeping burden: 0 hrs
c. Estimated average burden per response: 10 min
d. Frequency of response: On occasion & annually
e. Estimated number of likely respondents: 5,000
f. Estimated cost to respondents: $2.02

This notice is issued in Washington, DC, on April 11, 1997.

Stanley D. Suyat,

Associate Director for Management.

[FR Doc. 97–9856 Filed 4–15–97; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 20a–1, SEC File No. 270–132, OMB Control No. 3235–0158

Rule 489 and Form F–N, SEC File No. 270–361, OMB Control No. 3235–0411

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 soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 20a–1 requires that the solicitation of a proxy, consent or authorization with respect to a security issued by a registered fund be in compliance with Regulation 14A (17 CFR 240.14a–1), Schedule 14A (17 CFR 240.14a–101), and all other rules and regulations adopted under section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)). Rule 20a–1 also requires a fund's investment adviser, or a prospective adviser, to transmit to the person making a proxy solicitation the information necessary to enable that person to comply with the rules and regulations applicable to the solicitation.

Regulation 14A and Schedule 14A establish the disclosure requirements applicable to the solicitation of proxies, consents and authorizations. In particular, Item 22 of Schedule 14A contains extensive disclosure requirements for registered investment company proxy statements. Among other things, it requires the disclosure of information about fund fee or expense increases, the election of directors, the approval of an investment advisory contract and the approval of a distribution plan.

The Commission requires the dissemination of this information to assist investors in understanding their fund investments and the choices they may be asked to make regarding fund operations. The Commission does not use the information in proxies directly, but reviews proxy statement filings for compliance with applicable rules.

It is estimated that approximately 1,000 registered investment companies are required to file one proxy statement annually. The total annual reporting and recordkeeping burden of the collection of information is estimated to be approximately 96,200 hours (1,000 responses × 96.2 hours per response).

Rule 489 and Form F–N requires certain entities that are excepted from the definition of investment company by virtue of rules 3a–1, 3a–5, and 3a–6 under the Investment Company Act of 1940 to file Form F–N to appoint a United States agent for services of process when making a public offering of securities in the United States.

It is estimated that approximately 21 entities are required by rule 489 to file Form F–N. The total estimated annual burden of complying with the filing requirement is approximately 25 hours.

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 will 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 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.

Please 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: April 8, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9716 Filed 4–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 22613; Investment Advisers Act Release No. 1628; 812–10388]

Equus II Incorporated, et al.; Notice of Application

April 10, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''Investment Company Act'') and the Investment Advisers Act of 1940 (''Advisers Act'').

APPLICANTS: Equus II Incorporated (''Fund''), Equus Capital Corporation (''ECC''), the Equus Capital Management Corporation (''ECMC'').

RELEVANT INVESTMENT COMPANY ACT SECTIONS: Order requested under section 6(c) granting an exemption from section 63.

RELEVANT ADVISERS ACT SECTIONS: Order requested under section 206A granting an exemption from section 205(a)(1).

SUMMARY OF APPLICATION: Applicants request an order to permit the Fund to pay and the adviser and subadviser to the Fund to receive performance compensation on the basis of cumulative realized and unrealized gains net of realized and unrealized losses on securities in the Fund's portfolio.

FILING DATES: The application was filed on October 10, 1996, and amended on March 20, 1997, and April 1, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 5, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 2929 Allen Parkway, Suite 2500, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Mercer E. Bullard, Branch Chief, at (202) 942–0564, or Elizabeth G. Osterman, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund, a Delaware corporation, is the successor to Equus Investments II, L.P., a Delaware limited partnership (''Partnership''). The Fund has elected to be a business development company (''BDC'') pursuant to section 54(a) of the Investment Company Act. The Fund's investment objective is to achieve capital appreciation by making equity and equity-oriented investments in growth capital, leveraged buyouts or recapitalizations of existing companies or divisions thereof and subsequently disposing of such investments.

2. As an investor primarily in private securities, the Fund holds such securities until a portfolio company can be taken public or acquired by another company or other investors. The Fund's holding period generally exceeds five years and the Fund has held certain investments for more than nine years. The nature of venture capital investing is such that bad investments typically surface earlier than successful investments, and the ultimate success of the Fund may be dependent upon realizing substantial gains in a relatively small number of investments. The nature of the Fund's investments is such that the Fund's unrealized appreciation generally exceeds its unrealized depreciation.

3. At December 31, 1996, the Fund had total net assets of $103,223,308 and 4,300,682 shares of common stock of the Fund issued and outstanding. The shares of the Fund are listed for trading on the American Stock Exchange (''AMEX''). Since the listing of the Fund's shares on the AMEX, the Fund's shares have traded at a discount to the Fund's net asset value. At December 31, 1996, the closing sale price of the Fund's shares was $16.125 and the net asset value of the Fund was $24.00 per share, for a discount of approximately 33%.

4. ECMC and ECC, both registered investment advisers under the Advisers Act, provide investment advisory services to the Fund. ECC is a wholly owned subsidiary of ECMC, which is in turn controlled by Equus Corporation International, a privately owned corporation engaged in a variety of investment activities. Certain directors and officers of ECMC and ECC are also directors and/or officers of the Fund.

5. ECMC serves the Fund's management company and, pursuant to a management agreement between the Fund and ECMC, performs, or arranges for third parties to perform, the management, administrative, investment advisory, and other services necessary for the operation of the Fund. Such management and administrative services include providing the Fund with office space, equipment, facilities, and supplies; keeping and maintaining the books and records of the Fund; preparing accounting, management, and other reports; and providing such other managerial and administrative services as may be necessary to identify, structure, monitor, and dispose of the Fund's investments. ECMC entered into a sub-adviser agreement with ECC, pursuant to which ECC provides certain investment advisory services to the Fund, including approving the Fund's quarterly net asset valuations and arranging for necessary financing for the Fund or its leverage transactions.

6. ECMC receives (1) a management fee at an annual rate of 2% of the net assets of the Fund, paid quarterly in arrears, (2) compensation for providing certain investor communication services at the rate of $50,000 per year, and (3) incentive compensation equal to 20% of the net realized capital gains of the Fund less unrealized capital depreciation, computed on a cumulative basis over the life of the Fund and its predecessors. ECC is entitled to a fee from ECMC equal to one-half of the incentive compensation that ECMC receives from the Fund, paid quarterly in arrears. If, at the end of any quarter or upon termination of the Fund, net payments previously made to ECMC exceed 20% of the Fund's cumulative net realized capital gains less unrealized capital depreciation, ECMC is required to repay such excess.

7. At December 31, 1996, the Fund had accrued a deferred management company incentive fee (''Deferred Fee'') of $10,784,028. This amount represents the unpaid computed incentive compensation fee on the excess of unpaid realized and unrealized appreciation of the Fund's investments over unrealized depreciation at December 31, 1996, and would be payable to ECMC upon sale of the Fund's investments at their current net asset values as of such date.

8. The Fund is managed by a board of directors, a majority of whom are not ''interested persons'' of the Fund, as defined in the Investment Company Act (''Independent Directors''). At its February 1995 meeting, the board of directors established a committee to review ways for the Fund to enhance shareholder value (''Committee''). The Committee reviewed and the Fund's board of directors approved a proposal to end the payment of incentive compensation to ECMC and ECC and to substitute in its place a stock option plan for the directors and officers of the Fund. The stock option plan adopted by the board of directors would comply with the provisions of section 61(a)(3)(B) of the Investment Company Act.[1]

9. The board of directors does not wish to penalize ECMC and ECC by terminating the incentive compensation provisions of their management agreements prematurely. The board of directors therefore proposes that, upon termination of the incentive compensation provisions of the current management agreement with ECMC, ECMC be vested with the amount of the Deferred Fee as of the effective date of termination (''Valuation Date''). The Fund has set the Valuation Date as March 31, 1997, contingent on approval of the stock option plan and the payment of the Deferred Fee in shares of the Fund's common stock by the shareholders of the Fund and the issuance of an exemptive order by the SEC. The proposal to pay the Deferred Fee in shares of the Fund's common stock will be submitted to the shareholders of the Fund for approval at a special shareholders meeting.

10. For purposes of determining the Deferred Fee, the investment portfolio of the Fund will be appraised by an independent appraiser selected by the Independent Directors, the cost of which will be borne one-half by ECMC and one-half by the Fund. All unrealized capital gains and losses of the Fund will be deemed realized at that time. ECMC will be paid the Deferred Fee in shares of the Fund's common stock valued at the net asset value of such shares on the Valuation Date. The appraisal will take into account the difficulties of determining the fair market value of the Fund's investments and provide for an independent analysis of such value.

11. The payment of the Deferred Fee in shares of the Fund's common stock valued at net asset value would result in ECMC receiving shares with a market value substantially less than the amount of the Deferred Fee. For example, if the

[1] The Fund has filed an application requesting relief from section 61(a)(3)(B) of the Act to permit it to offer the stock option plan as it applies to directors of the Fund who are neither officers or employees of the Fund (File No. 812–10574).

Deferred Fee at December 31, 1996, of $10,784,028 had been paid in shares at the net asset value of such shares at December 31, 1996 ($24.00), the Fund would have issued 449,334 shares with an aggregate current market value on that date of $7,245,511, or $16.125 per share, a discount of approximately 33%.

12. The shares of Fund's common stock issued in payment of the Deferred Fee will not be registered under the Securities Act of 1933 (''Securities Act''). Consequently, they will be restricted from resale for a minimum of one year as ''restricted securities'' under rule 144(d) under the Securities Act and will be subject to the volume limitations on the amount of securities that may be sold thereafter. Under Rule 144(e), based on the 4,300,682 shares of Fund's common stock outstanding on December 31, 1996, and assuming that approximately 450,000 shares are issued to ECMC in payment of the deferred fee, ECMC could sell approximately 47,500 shares (1% of the shares of common stock outstanding) every three months after it has held the shares for one year.[2] Thus, without taking into account the average weekly trading volume of the shares (which did not exceed 47,500 shares in a recent four calendar week period), it would take more than three years for ECMC to realize the total value of the Deferred Fee after receiving the shares representing payment of the Fee.

Applicants' Legal Analysis

1. Section 63 of the Investment Company Act provides that section 23 of the Act shall apply to a BDC to the same extent as if it were a registered closed-end investment company, with certain exceptions. Section 23(a) prohibits registered closed-end companies from issuing their securities for services. Applicants believe that, to the extent that the payment of the Deferred Fee in shares of the Fund's common stock represents the issuance of such shares for services, the payment may be deemed to violate section 23(a).

2. Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from having an advisory agreement that provides for it to receive compensation on the basis of a share of capital gains upon or capital appreciation of a client's funds. Section 205(b)(3) of the Advisers Act provides that section 205(a)(1) shall not apply to an agreement between an investment adviser and a BDC for the adviser to receive a limited performance fee based on realized gains computed net of realized and unrealized losses, provided that, among other things, the BDC does not also have outstanding any option issued pursuant to section 61(a)(3) of the Investment Company Act.[3] Applicants believe that, to the extent that the calculation of the Deferred Fee provides that all unrealized capital appreciation or gains be deemed realized, such calculation may be deemed to violate section 205(a)(1).

3. Section 6(c) of the Investment Company Act and section 206A of the Advisers Act provide that the SEC may exempt any person or transaction from any provision of the Investment Company Act and the Advisers Act if such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of each Act. Applicants believe that these standards are satisfied for the reasons stated below.

4. Applicants contend that payment of the Deferred Fee in shares of the Fund's common stock is beneficial to the Fund and its shareholders because it will permit the Fund to retain cash otherwise required to pay the Deferred Fee and assist in better aligning management's compensation with the Fund's shareholders' objective of increasing the market value of the Fund's shares. Applicants believe that the loss of the accrued incentive compensation by ECC and ECMC would not be in the best interest of the Fund because it would penalize the very persons for whom the board of directors wishes to create incentives.

5. Applicants argue that elimination of the Deferred Fee also will significantly reduce expenses and the expense ratio of the Fund. By eliminating the Deferred Fee, applicants note that the expenses of the Fund would have been reduced from $10,857,087 to $3,310,381 for the year ended December 31, 1996, and the expense ratio of the Fund would have been reduced from 13.1% to 4.0% for 1996.

6. Applicants believe that Congress may have excluded unrealized gains from the calculation of performance fees under section 205(b)(3) in part because it was concerned about the possible overcompensation of the BDC's adviser resulting from overvaluation of the BDC's portfolio securities. Applicants assert that this concern will be addressed by basing the Deferred Fee on a valuation of the Fund's portfolio securities provided by an independent appraiser selected by the Independent Directors.

7. Applicants state that Congress permitted the payment of incentive compensation under section 205(b)(3) only if the BDC did not also have a stock option plan. Applicants believe that this condition may have arisen from a concern that management might be paid twice with respect to the same capital gains. Applicants note that the Fund proposes to issue to directors and officers of the Fund stock options exercisable at the market price on the date of issuance. Applicants therefore believe there would be a risk that management may receive additional compensation based on the same capital gain if the shares of common stock issued in payment of the Deferred Fee were issued at market value and the subsequent realization of a capital gain previously deemed realized in determining the Deferred Fee reduced the market discount on the Fund's net asset value. Applicants assert that payment of the Deferred Fee in shares of common stock at net asset value eliminates this risk because ECMC and ECC would not receive any benefit from the current market discount on the Fund's net asset value.

Applicants' Condition

Applicants agree that any order of the SEC granting the requested relief will be subject to the condition that the shares of the Fund's common stock to be issued in payment of the Deferred Fee will be valued at the net asset value of such shares on the same date as of which the Deferred Fee is determined.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9804 Filed 4–15–97; 8:45 am]

BILLING CODE 8010–01–M

[2] Rule 144(e) provides that, after the one-year holding period has expired, a holder of restricted securities that is an affiliate of the issuer may not sell, in any three-month period, more than the greater of (1) 1% of the issuer's outstanding shares or (2) the average weekly reported volume of trading in the shares over the preceding four calendar weeks.

[3] Section 61(a)(3) permits a BDC to issue options pursuant to an executive compensation plan provided that certain requirements are satisfied.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22612; 812–10400]

Smith Barney Inc., et al.; Notice of Application

April 9, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Smith Barney Incorporated (the ''Sponsor''); and Corporate Securities Trust, Directions Unit Investment Trust, Government Securities Trust, Harris Upham Tax Exempt Fund, E.F. Hutton Corporate Income Trust, E.F. Hutton Tax-Exempt Trust, E.F. Hutton Trust for Government Guaranteed Securities, Hutton Investment Trust, Hutton Telephone Trust, Hutton Utility Trust, Michigan Fund, Penn State Tax-Exempt Investment Trust, Pennsylvania Fund, Smith Barney Shearson Unit Trusts, Tax-Exempt Municipal Trust, Tax Exempt Securities Trust, The Tax-Exempt Trust, The Uncommon Values Unit Trust, Equity Focus Trust, Angels With Dirty Faces Trust, The Countryfund Opportunity Trust (each an ''Existing Trust''); and any other future unit investment trust sponsored by the Sponsor (collectively, with the Existing Trusts, the ''Trusts'').

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(c) for exemptions from sections 2(a)(3), 2(a)(35), 22(d) and 26(a)(2) of the Act and rule 22c–1 thereunder, and pursuant to section 11(a) for an exemption from section 11(c).

SUMMARY OF APPLICATION: Applicants request an order to modify a condition to an existing order (the ''Prior Order'') [1] and to permit the Trusts to impose sales charges on a deferred basis and waive the deferred sales charge in certain cases, exchange Trust units having deferred sales charges, and exchange units of a terminating series of a Trust for units of the next available series of that Trust.

FILING DATE: The application was filed on October 8, 1996, and amended on February 26, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 on May 5, 1997 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certification of service. Hearing requests should state the nature of the writer's request, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

[1] Investment Company Act Release Nos. 20296 (May 16, 1994) (notice) and 20344 (June 8, 1994) (order).

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Laurie A. Hesslein, Smith Barney Inc., 388 Greenwich Street, 23rd Floor, New York, NY 10013.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517 or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Trusts is a unit investment trust registered or to be registered as an investment company under the Act and is sponsored or will be sponsored by the Sponsor. Each of the Trusts consists of one or more series of separate unit investment trusts issuing securities registered or to be registered under the Securities Act of 1933 (the ''Series''). Applicants request that the relief sought herein apply to the Trusts and to future series of the Trusts.

2. Each Series is created by a trust indenture among the Sponsor, a banking institution or trust company as trustee, and an evaluator. The Sponsor acquires a portfolio of securities, which is then deposited with a trustee in exchange for certificates representing fractional undivided interests in the deposited portfolio (''Units''). The Units are then offered to the public through the Sponsor, underwriters and dealers at a public offering price which, during the initial offering period, is based upon the aggregate market value of the underlying securities plus an up-front sales charge. The sales charge currently ranges from 1.50% to 4.70% of the public offering price, generally depending upon the terms of the underlying securities. The maximum charge is usually subject to reduction in compliance with rule 22d–1 under the Act under certain stated circumstances disclosed in the prospectus, such as for a volume discount purchase.

3. Applicants seek exemptive relief to permit payment of the sales charge for Units of any Series of any of the Trusts to be made on a deferred basis (the ''deferred sales charge'' or ''DSC''). The Sponsor will determine the maximum amount of the sales charge per Unit, and this maximum amount will be stated in the prospectus for the applicable Series. The Sponsor will have the flexibility to defer the collection of all or part of the sales charge initially determined as described above over a period (the ''Collection Period'') subsequent to the settlement date for the purchase of Units, provided that the Sponsor will in no event add to the deferred amount of the sales charge determined as described above any additional amount for interest or any similar or related charge to reflect or adjust for in any way any ''time-value of money'' calculation related to such deferral. Applicants also intend to offer certain scheduled variations to the deferred sales charge such as volume discounts and waivers under certain circumstances.

4. The Sponsor presently anticipates collecting a portion of the total sales charge ''up front,'' *i.e.*, immediately upon purchase of Trust Units. The outstanding balance of the sales charge per Trust Unit as of the initial date of deposit will be collected over the remaining collection Period relevant to each particular Trust Series.

5. The amount of the DSC per Unit as of the initial date of deposit will be stated in the prospectus as a dollar amount and/or as a percentage. The table required by item 2 of Form N–1A (modified as appropriate to reflect the difference between unit investment trusts and open-end management investment companies) and a schedule setting forth the number and date of each installment payment will be included in the prospectus. The duration of the Collection Period shall also be stated in such prospectus.

6. A ratable portion of the sales charge remaining to be collected will be deducted (''Distribution Deductions'') from income distributions on the Units, from amounts received on the maturity or sale of securities or from a combination thereof, or may be paid by the Series on a periodic basis. Such payment amounts may be advanced by the trustee, who will be reimbursed from the income account of the Series (the ''Income Account'') or from the capital or principal account of the Series (the ''Capital Account'') upon the receipt of the proceeds from the maturity or sale of securities, until the total amount per Unit is collected, or deducted from the proceeds of sale, exchange, redemption or termination. The total of all these amounts will not exceed the sales charge per Unit. The DSC may be paid out of the Income or Capital Accounts of the Series and securities may be sold in order to pay any portion of the DSC due on a certain date in the event that income is insufficient to pay any amount due on such date.

7. The Sponsor intends to deduct any amount of the unpaid DSC expense from the proceeds of any redemption of Units

or of any sale of Units to the Sponsor. In general, if the Sponsor were to impose a DSC on the redemption or sale of Units, a determination would be made as to whether a DSC applies to a particular redemption or sale of Units. For such purposes, it will be assumed that Units owned by a particular investor on which the total aggregate of Distribution Deductions have been collected (and therefore for which no DSC is due) are liquidated first. Any Units disposed of over and above such amounts will be subject to the DSC, which will be applied on the assumption that Units held for the longest time by such investor are redeemed first.

8. The Sponsor may adopt a procedure of waiving the DSC payable out of net sales or redemption proceeds under certain circumstances which will be disclosed in the current prospectus for each Series of Trust affected. Any such waiver of the DSC will be implemented in accordance with the provisions of rule 22d–1.

9. Applicants' Prior Order permits the applicants to: (a) make certain exchange offers between specified funds (the ''Exchange Privilege''); (b) make certain exchange offers to holders of any registered unit investment trust carrying a specified sales load (the ''Conversion Privilege''); and (c) publicly offer units of the trusts without previously privately placing at least $100,000 of units. Under the Prior Order, applicants may charge a sales charge at the time of the exchange or conversion not to exceed 1.5% of the unit being acquired on each exchange. Applicants seek to modify a condition to the Prior Order to permit exchanges and conversions of Units of Series at a reduced, as opposed to specified, sales charge (the ''Revised Exchange and Conversion Privilege'').

10. Applicants also propose to offer a rollover privilege (the ''Rollover Privilege'') which would allow holders the ability to roll over any or all of their Units in a Series which is terminating (the ''Terminating Trust'') for Units in one or more new Series (the ''Rollover Trust'') at a reduced sales charge. The Revised Exchange and Conversion Privilege and Rollover Privilege would extend to all exchanges, conversions, and rollovers of Units sold either with a fixed sales charge or with a DSC for Units of one or more Series (''Exchange Trust'' or ''Conversion Trust'') or Rollover Trust sold either with a fixed sales charge or with a DSC.

11. A holder must notify the Sponsor of this desire to exercise his Rollover Privilege. Exercise of the Rollover Privilege is subject to the following conditions: (i) the Sponsor must be maintaining a secondary market in the Units of the available Rollover Trust, (ii) at the time of the Holder's election to participate in the Rollover Privilege, there must also be Units of the Rollover Trust available for sale, and (iii) exchanges will be effected in whole Units only.

12. Investors who purchase Units under the Revised Exchange and Conversion Privilege or Rollover Privilege will pay a lower sales charge than that which would be paid by a new investor. The applicable reduced sales charge will be applied when an investor exchanges or converts his Units within five months of his acquisition for Units of a Series with a lower sales charge. An adjustment would be made, however, if Units of any Series are exchanged or converted within five months of acquisition for Units of a Series with a higher sales charge. In such cases, the exchange or conversion fee will be the greater of (i) the applicable reduced sales charge or (ii) an amount which, together with the sales charge already paid on the Units being exchanged or converted, equals the normal sales charge on the Units of a Trust Series being acquired through such exchange or conversion. This method of determining the exchange fee will also be applied in the case where the exchange of Units is from a Series of a Trust which is terminating for Units of one or more new Series of such Trust.

Applicant's Legal Analysis

1. Under section 6(c), the Commission may exempt any person or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the pubic interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 2(a)(32) defines a ''redeemable security'' as any security, other than short term paper, under the terms of which the holders upon its presentation to the issuer or a person designated as the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 4(2) defines a unit investment trust as an investment company that issues only redeemable securities. Applicants submit that the imposition of the DSC would not cause the Units of the Trusts to fall outside the definition of redeemable securities in section 2(a)(32) of the Act. In order to avoid uncertainty in this regard, however, applicants request an exemption from section 2(a)(32) to the extent necessary to permit implementation of the DSC under the proposed deferred sales charge program.

3. Section 2(a)(35) defines the term ''sales load'' to be the difference between the sales price and that portion of the proceeds from its sale which is received and invested or held for investment by the depositor or trustee. Applicants submit that the DSC is within the section 2(a)(35) definition of sales load, but for the timing of the imposition of the charge. Applicants therefore request an exemption from section 2(a)(35) to the extent necessary to implement the proposed DSC.

4. Section 22(c) and rule 22c–1 require that the price of a redeemable security issued by an investment company for purposes of sale, redemption, and repurchase be based on the security's current net asset value. Applicants submit that, although the DSC will be deducted at the time of redemption or repurchase from the holder's proportionate liquidation proceeds, such deduction does not in any way affect the calculation of net asset value used to determine the redemption price for the Units. In order to avoid any possibility that questions might be raised regarding the applicability of rule 22c–1, applicants request an exemption from the rule to the extent necessary or appropriate to permit applicants to implement the DSC under the proposed deferred sales charge program.

5. Section 22(d) requires an investment company and its principal underwriter and dealers to sell any redeemable security issued by such investment company only at the current public offering price described in the investment company's prospectus. Sales loads were historically deemed to be subject to the provisions of section 22(d) because they were traditionally a component of the public offering price; hence all investors were charged the same sales load. Rule 22d–1 was adopted to permit registered investment companies and principal underwriters and dealers thereof to sell any redeemable securities issued by such company with scheduled variations in its sales load, subject to certain conditions. In the interest of clarity, applicants request that an exemption from the provisions of section 22(d) in order to permit scheduled variations or waivers of the DSC under certain circumstances.

6. Section 26(a)(2) prohibits a trustee or custodian of a unit investment trust from collecting from the trust as an expense any payment to a depositor or principal underwriter thereof. Applicants state that in order to avoid any possibility that questions may be

raised as to the propriety of the trustee disbursing these charges to the Sponsor, applicants request an exemption from section 26(a)(2) to the extent necessary to permit the trustee to collect these deductions and disburse them to the Sponsor as contemplated by the deferred sales charge program.

7. Section 11(c) prohibits any type of offers of exchange of the securities of a registered unit investment trusts for securities of any other investment company unless the terms of the offer have been approved by the SEC. Applicants assert that certain savings in sales related expenses involving repeat investors may appropriately be passed along to such investors, which savings will be recognized by a reduction in the sales charge of the unit exchanged into. Applicants maintain that the reduction in the sales charge paid for units of the Series exchanged into is consistent with the provisions of the Act whether the sales charge on the units exchanged into is collected up-front and/or on a deferred basis.

8. Applicants represent that holders will not be induced or encouraged to participate in the Revised Exchange and Conversion Privilege or Rollover Privilege through an active advertising or sales campaign. The Sponsor recognizes its responsibility to its customers against generating excessive commissions through churning and represents that the sales charge collected will not be a significant economic incentive to salesmen to promote inappropriately the Revised Exchange and Conversion Privilege or Rollover Privilege. The Sponsor also believes that the operation and implementation of the DSC program will be adequately disclosed and explained to potential investors as well as unitholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants agree that whenever the Revised Exchange and Conversion Privilege or Rollover Privilege is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) no notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Revised Exchange and Conversion Privilege or the Rollover Privilege, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of an Exchange, Conversion or Rollover Trust under section 22(e) of the Act and the rules and regulations promulgated thereunder, or (ii) an Exchange, Conversion or Rollover Trust temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Revised Exchange and Conversion Privilege or Rollover Privilege will pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge will be reasonably related to the expense of providing such service, and may include an amount that will fairly and adequately compensate the Sponsor.

3. Applicants agree that the prospectus of each Series and any sales literature or advertising that mentions the existence of the Revised Exchange and Conversion Privilege or the Rollover Privilege will disclose that they are subject to termination and that their terms are subject to change.

4. Each Series offering Units subject to a DSC will include in its prospectus the table required by Item 2 of Form N–1A (modified as appropriate to reflect the differences between unit investment trusts and open-end management investment companies) and a schedule setting forth the number and date of each installment payment.

5. Applicants agree to continue to comply with all of the conditions contained in the Prior Order, except that condition 2 of the Prior Order is amended by condition 2 above.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9802 Filed 4–15–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38491; File No. SR–NASD–97–06]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Scope of the Uniform Practice Code

April 9, 1997.

On February 20, 1997, the NASD Regulation, Inc., (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] To amend Rule 11100 of the Uniform Practice Code (''Code'') of the National Association of Securities Dealers, Inc., (''NASD'' or ''Association''), to clarify the scope of the Code and the exception for transactions settled through a clearing agency.[2] No comment letters were received. The Commission is approving the proposed rule change.

I. Background

The introductory language in paragraph (a) of Rule 11100 states the general standard that ''all over-the-counter secondary market transaction in securities between members shall be subject to the provisions of this Code. * * *'' According to NASD Regulations, that introductory language does not encompass those provisions of the Code that address the rights and liabilities of the members participating in the transaction or provide procedures that are not related to securities transactions, *e.g.*, the setting of ex-dates and the transfer of customer accounts. In addition, subparagraph (a)(1) of the Rule 11100 of the Code excludes securities transactions compared, cleared or settled through a registered clearing agency from the provisions of the Code. NASD Regulation believes that exception is technically not available when the rules of the clearing agency require that the Code or the rules of other relevant markets apply to the transaction. Finally, since the SEC's adoption of Rule 144A in 1991, NASD Regulation believes that members were uncertain as to whether the Code is applicable to transactions in restricted

[1] 15 U.S.C. § 78s(B)(1)(1988).

[2] The proposed rule change was originally submitted on January 29, 1997. The NASD subsequently submitted Amendment No. 1 that removed certain unnecessary text. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulations, SEC, dated February 20, 1997.

securities. Thus, NASD Regulation proposes to amend the Code to expand the language of paragraph (a) of Rule 11100 to state that the Code applies to all secondary market transactions in securities including: (i) The ''rights and liabilities of the members participating in the transaction''; (ii) ''those operational procedures that affect the day-to-day business of members'',[3] (iii) securities transactions compared, cleared or settled through a registered clearing agency when the rules of the clearing agency require that the Code or the rules of other relevant markets apply to the transaction; and (iv) securities transactions in ''restricted securities, as defined in Rule 144(a)(3) under the Securities Act of 1933.'' According to NASD Regulations, as a result of this change, secondary market transactions in restricted securities that are not in a depository will be required to comply with the Code's operational procedures. NASD Regulation is also clarifying that securities sold offshore pursuant to the exemption from registration provided by Regulation S are considered to be subject to the requirements of the Code when those securities are traded in the U.S. after the expiration of the restricted period.

II. Discussion

The Commission believes the proposed rule change is consistent with the Association's obligations under Section 15A(b)(6) to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities because the proposed rule change clarifies that the Code applies to the liabilities of parties to a transaction, transactions in restricted securities, the operational procedures that affect the day-to-day business of members and transactions settled through a clearing agency where the rules of the clearing agency direct that the rules of the governing market apply to the transaction. The Commission believes the proposed rule change should clarify the broad scope and applicability of the Code, simplify the transaction of day-to-day business by NASD members and guide NASD members regarding the application of the Code to transactions settled through a clearing agency.

The Commission also believes the proposed rule change is consistent with the NADA's obligations under Section 15A(b)(2) to enforce compliance by its members with the provisions of the Act, the rules and regulations thereunder and the rules of the NASD in that the proposed rule change applies the Code to the liabilities of NASD members that are parties to a securities transaction, the operational procedures that affect the day-to-day business of NASD members, transactions in restricted securities and transactions settled through a clearing agency, when the rules of the clearing agency direct that the rules of the governing market apply to the transaction.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–97–06 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9715 Filed 4–15–97; 8:45 am]

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[3] This language is drawn from Article XV, Section 1 of the NASD By-Laws which authorizes the Association to adopt the Uniform Practice Code which states that the adoption of such Code is for the purpose that ''the transaction of day-to-day business by members may be simplified and facilitated. . . .''

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38480]

Telemarketing and Consumer Fraud and Abuse Prevention Act; Determination that No Additional Rulemaking Required

April 7, 1997.

A. Background

The Telemarketing and Consumer Fraud and Abuse Prevention Act (the ''Telemarketing Act'') [1] requires the Commission to promulgate, or require the securities industry self-regulatory organizations (''SROs'') to promulgate, rules substantially similar to the rules adopted by the Federal Trade Commission (''FTC'') pursuant to the Telemarketing Act (the ''FTC'').[2] The purpose of these rules is to prohibit deceptive and other abusive telemarketing acts or practices by brokers, dealers, and other securities industry professionals.[3] the Telemarketing Act provides that the Commission may elect not to promulgate such rules only if it determines that existing rules provide protection against deceptive and abusive practices in securities transactions that is substantially similar to that provided by the FTC Rules, or that additional rules are not necessary or appropriate in the public interest.[4]

In early 1996, members of the staff of the Division of Market Regulation conducted a series of meetings and conferences with representatives of the National Association of Securities Dealers, Inc. (''NASD'') and other major SROs to discuss the requirements of the Telemarketing Act. As a result, the NASD filed a proposed rule change (the ''NASD Rule'') [5] with the Commission for approval. Shortly thereafter, the Municipal Securities Rulemaking Board (''MSRB'') filed a substantially similar proposed rule change (the ''MSRB Rule'') [6] with the Commission. The staff, by delegated authority, approved the

[1] 15 U.S.C. 6101–08 (1996).

[2] Section 3(d)(1)(a) of the Telemarketing Act provides that ''not later than 6 months after the effective date of the rules promulgated by the Federal Trade Commission under subsection (a) [of Section 3 of the Telemarketing Act], the Securities and Exchange Commission shall promulgate, or require any national securities exchange or registered securities association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices described in paragraph (2) [of Section 3(d)].'' 15 U.S.C. 6102(d)(1)(a) (1996). The FTC adopted the FTC Rules on August 23, 1995, with an effective date of December 31, 1995. 60 FR 43842 (codified at 16 CFR 310.1–310.8 (1996)). The proposed NASD Rule was filed with the Commission on June 28, 1996. *See* Securities Exchange Act Release No. 37475 (July 30, 1996).

[3] Section 3(d)(2)(A) of the Telemarketing Act provides that ''[t]he rules promulgated by the Securities and Exchange Commission under paragraph (1)(a) shall apply to a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company, or any individual associated with [any of the foregoing].'' 15 U.S.C. 6102(d)(2)(A) (1996). The Telemarketing Act defines such terms by reference to the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and the Investment Company Act of 1940, and explicitly states that the FTC Rules shall not apply to such persons.

[4] Section 3(d)(1)(B) of the Telemarketing Act provides that ''[t]he Securities and Exchange Commission is not required to promulgate a rule under [Section 3(d)(1)(A)] if it determines that—(i) Federal securities laws or rules adopted by the Securities and Exchange Commission thereunder provide protection from deceptive and other abusive telemarketing by persons described in [Section 3(d)(2)] substantially similar to that provided by rules promulgated by the Federal Trade Commission under [Section 3(a)]; or (ii) such a rule promulgated by the Securities and Exchange Commission is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets.'' 15 U.S.C. 6102(d)(1)(B) (1996).

[5] the NASD Rule, SR–NASD–96–28, initially was filed with the Commission on June 28, 1996, and subsequently was amended by the NASD on July 18, 1996, July 24, 1996, and October 18, 1996. *See* Securities Exchange Act Release No. 37475 (July 24, 1996).

[6] The MSRB filed the MSRB Rule, SR–MSRB–96–6, with the Commission for approval on July 30, 1996. *See* Securities Exchange Act Release No. 37626 (Aug. 30, 1996). The MSRB amended its rule filing on November 1, 1996.

NASD rule on December 2, 1996,[7] and the MSRB Rule on December 16, 1996.[8]

As discussed below, the Commission finds that the Securities Exchange Act of 1934 (the ''Exchange Act'') and the Investment Advisers Act of 1940 (the ''Advisers Act''), the rules thereunder, and the other rules of the SROs (including the NASD Rule and the MSRB Rule), satisfy the requirements of the Telemarketing Act because the applicable provisions of such laws and rules are substantially similar to the FTC Rules, except for those FTC Rules that involve areas already extensively regulated by existing securities laws or regulations, or activities inapplicable to securities transactions. Accordingly, the Commission has determined that no additional rulemaking is required by it under the Telemarketing Act. In accordance with Section 3(d)(1)(B) of the Telemarketing Act, the Commission is publishing this determination in the Federal Register, together with the reasons therefor.[9]

B. Discussion

The FTC Rules address three areas: (1) Abusive telemarketing acts or practices, which are addressed through a requirement to maintain a do-not-call list, calling time restrictions, required oral disclosures, and proscriptions against the use of threats, intimidation, profane or obscene language, and certain repetitive calling patterns; (2) deceptive telemarketing acts or practices, which are addressed primarily through required disclosures about the goods or services being offered and prohibitions against misrepresentations with respect thereto; and (3) recordkeeping requirements relating to various aspects of telemarketing transactions.

1. Abusive Telemarketing Acts or Practices

Section 310.4 of the FTC Rules proscribes a number of ''abusive telemarketing acts or practices'' by telemarketers. First, the FTC Rules effectively require the maintenance of do-not-call lists by telemarketers. Second, time-of-day restrictions prohibit cold-calls prior to 8 a.m. or after 9 p.m. local time at the called person's location. Third, telemarketers are required to disclose orally to the called person the caller's identity, that the purpose of the call is to sell goods or services, the nature of the goods or services being offered, and, if a prize promotion is involved, that no purchase is necessary to participate therein. Fourth, telemarketers are prohibited from using threats or intimidation, profane or obscene language, or certain repetitive calling patterns, in connection with telemarketing transactions. Finally, the FTC Rules prohibit a telemarketer from receiving payment in advance from a consumer for (1) Cleansing a credit report, (2) Obtaining a refund or goods promised with respect to a prior telemarketing transaction, or (3) Arranging a loan or other extension of credit.

With respect to the do-not-call list requirement, the New York Stock Exchange (''NYSE''), the NASD, the Chicago Board Options Exchange (''CBOE''), the American Stock Exchange (''AMEX''), and the Pacific Stock Exchange (''PSE'') have each adopted rules that require all members to make and maintain a centralized do-not-call list.[10] Further, the MSRB Rule includes a provision requiring municipal securities brokers and dealers to maintain a do-not-call list.[11]

Certain other abusive telemarketing acts or practices proscribed by the FTC Rules, which are addressed by the calling time restrictions and required oral disclosures, are covered by the NASD Rule and the MSRB Rule.[12] Both the NASD Rule and the MSRB Rule, with certain limited exceptions, (a) prohibit cold-calls at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the called person,[13] and (b) require the cold-caller to identify himself and his firm, provide a name or address at which the caller may be contacted, and state that the purpose of the call is to sell securities.[14]

A third group of abusive telemarketing acts or practices proscribed by the FTC Rules, namely the use of threats, intimidation, profane or obscene language, and certain repetitive calling patterns, are prohibited specifically by recent NASD and MSRB interpretations. The NASD and MSRB have each issued an interpretation of their general rule proscribing conduct inconsistent with just and equitable principles of trade or fair dealing, clarifying that such proscribed conduct includes (a) Threats, intimidation, and the use of profane or obscene language, and (b) calling a person repeatedly with intent to annoy, abuse, or harass the called party.[15]

Finally, certain specific abusive telemarketing acts or practices addressed by the FTC Rules do not appear applicable to securities transactions. The FTC Rules addressing the receipt of payment in advance for cleansing a credit report, obtaining refunds, or arranging a loan, are included in this category.

2. Deceptive Telemarketing Acts or Practices

Section 310.3 of the FTC Rules prohibits a number of ''deceptive telemarketing acts or practices'' by telemarketers, and primarily requires specified disclosures and prohibits misrepresentations. First, the telemarketer must disclose the following information, in a clear and conspicuous manner, prior to payment by a customer for the goods or services offered: (1) The quantity of goods or services involved and the total cost thereof; (2) All material restrictions, limitations, or conditions with respect thereto; (3) All material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policy, or the lack thereof; (4) In a prize promotion, the odds of receiving the prize, that no purchase or payment is required to participate, and instructions on how to participate; and (5) in a prize promotion, all material costs or conditions to redeem the prize that is the subject thereof. Second, a telemarketer may not make any false or misleading statement to induce any person to pay for goods or services, and misrepresentation by a telemarketer, directly or by implication, specifically is prohibited with respect to (1) Any of the required disclosure items described above; (2) Any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services offered; (3) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability; and (4) A seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization. Third, a telemarketer may not obtain or submit for payment a check, draft, or other form

[7] *See* Securities Exchange Act Release No. 38009 (Dec. 2, 1996).

[8] *See* Securities Exchange Act Release No. 38053 (Dec. 16, 1996).

[9] Section 3(d)(1)(B) of the Telemarketing Act provides that, if the Commission determines that no additional rulemaking is required, it ''shall publish in the Federal Register its determination with the reasons for it.'' 15 U.S.C. 6102(d)(1)(B) (1996).

[10] NYSE Rule 440A; NASD Rule 3110(g); CBOE Rule 9.24; AMEX Rule 428; PSE Rule 9.20(b).

[11] MSRB rule G–8(a)(xix)(A).

[12] Virtually all registered broker-dealers that conduct a public business (i.e., those that potentially may engage in telemarketing activities) are NASD members or municipal securities dealers, and accordingly are subject either to the NASD Rule or the MSRB Rule.

[13] NASD Rule 2211(a); MSRB rule G–39(a).

[14] NASD Rule 2211(b); MSRB rule G–39(b).

[15] *See* NASD Notice to Members 96–44 (July 1996) (conduct inconsistent with NASD Rule 2110); MSRB Reports, Vol. 16, No. 3 (September 1996) (conduct inconsistent with MSRB rule G–17).

of negotiable paper drawn on a customer's bank or other account without the customer's express verifiable authorization, and credit card laundering (i.e., having a third party present a credit card sales draft) is prohibited in connection with a telemarketing transaction. Finally, no person may provide substantial and knowing assistance with respect to a violation of any of the FTC Rules.

One of the deceptive telemarketing acts or practices proscribed by the FTC Rules, namely the unauthorized use of demand drafts, specifically is addressed by the NASD Rule and the MSRB Rule. Both the NASD Rule and the MSRB Rule prohibit the cold-caller from utilizing a demand draft without the customer's express verifiable authorization.[16]

Certain of the deceptive telemarketing acts or practices proscribed by the FTC Rules, namely those addressing prize promotions and credit card laundering, are not applicable to securities transactions.

The remaining deceptive telemarketing acts or practices proscribed by the FTC Rules involve areas already extensively regulated by existing securities laws and regulations. The FTC Rules that proscribe deceptive telemarketing acts or practices primarily (1) Require the disclosure of certain information with respect to the goods or services being offered, and (2) prohibit misrepresentations with respect thereto. However, Section 9(a) of the Exchange Act,[17] section 10(b) of the Exchange Act and the rules promulgated thereunder,[18] Sections 15(c) and 15(g) of the Exchange Act and the rules promulgated thereunder,[19] and the related antifraud rules of the SROs,[20] extensively regulate disclosure and prohibit misrepresentations in connection with the offer and sale of securities. Therefore, the more limited regulations addressing required disclosures and prohibited misrepresentations set forth in the FTC Rules and applicable to non-securities transactions are unnecessary or inappropriate in the securities context in light of the more extensive existing regulatory framework.

3. Recordkeeping Requirements

The FTC Rules require that the following records be kept by telemarketers with respect to their telemarketing activities for a period of 24 months: (1) Copies of all substantially different advertising, brochures, telemarketing scripts, and promotional materials; (2) the name and address of each customer, the product or service purchased, the price paid, and the date shipped or provided; (3) the name, address, telephone number, and job title of each current and former employee directly involved in telephone sales; (4) the name and address of each recipient of a prize with a value of at least $25, and a description of such prize; and (5) all verifiable authorizations required in connection with the submission of any demand drafts described above.

Both the NASD Rule and the MSRB Rule require the retention of any express verifiable authorization obtained in connection with the use of a demand draft for a period of three years.[21] As noted above, the FTC Rules addressing prize promotions are not applicable to securities transactions.

The remaining recordkeeping requirements of the FTC Rules are unnecessary in the securities context given the more extensive recordkeeping requirements imposed upon broker-dealers by the Exchange Act and existing SRO rules. Rule 17a–3 under the Exchange Act requires a broker-dealer to maintain certain records, including detailed records of all transactions in securities effected by, and all salespersons employed by, such broker-dealer.[22] Rule 17a–4 under the Exchange Act requires, among other things, such records, as well as copies of all communications sent by a broker-dealer relating to its business (which would include advertisements and sales literature),[23] to be retained by the broker-dealer for varying periods, but in no case less than three years. Existing rules of the SROs, in general, also contain comparable recordkeeping requirements.[24]

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[16] NASD Rule 3110(g)(2); MSRB rule G–8(a)(xix)(B).

[17] Section 9(a)(4) of the Exchange Act prohibits a broker or dealer, in connection with the purchase or sale of any security registered on a national securities exchange, from making ''any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.''

[18] Section 10(b) of the Exchange Act proscribes the use, in connection with the purchase or sale of any security, of ''any manipulative or deceptive device or contrivance'' in contravention of the rules and regulations promulgated by the Commission. Rule 10b–5 under the Exchange Act, for example, makes it unlawful for ''any person, directly or indirectly, . . . (a) to employ any device, scheme, or artifice to defraud, (b) to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.'' In addition, Rule 10b–10 under the Exchange Act generally requires a broker-dealer to give or send to its customer, at or before the completion of a securities transaction, a written notification disclosing, among other things, the date of the transaction, the identity, price, and number of shares or units (or principal amount) of the security purchased or sold, whether the broker-dealer acted as principal or agent in the transaction, and the fees paid to, or markup received by, the broker-dealer in connection therewith.

[19] Sections 15(c)(1) and 15(c)(2) of the Exchange Act, among other things, prohibit brokers, dealers, municipal securities dealers, and government securities brokers and dealers from effecting transactions in, or inducing or attempting to induce the purchase or sale of, securities by means of any manipulative, deceptive, or other fraudulent device or contrivance. With respect to non-municipal or non-government securities brokers or dealers, the foregoing is limited to transactions otherwise than on a national securities exchange of which such broker or dealer is a member (in which case Section 9(a)(4) of the Exchange Act would apply). The rules promulgated by the Commission pursuant thereto define the prohibited activities in more detail. For example, Rule 15c1–2 under the Exchange Act defines these proscribed activities as including ''any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person'' and ''any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, which statement or omission is made with knowledge or reasonable grounds to believe it is untrue or misleading.'' Rule 15c2–8 sets forth certain prospectus delivery requirements for brokers and dealers participating in certain distributions of securities with respect to which a registration statement has been filed under the Securities Act of 1933. Section 15(g) of the Exchange Act and Rules 15g–2 and 15g–9 thereunder, among other things, prohibit a broker or dealer from effecting certain transactions in ''penny stocks'' (generally, securities with a price of less than $5 per share or unit that are not traded on an exchange or on NASDAQ) unless the broker or dealer first (1) has delivered a risk disclosure document to the customer, (2) has made certain suitability determinations and delivered to the customer a written statement setting forth the basis therefore, and (3) has received from the customer the customer's written agreement to the transaction.

[20] *E.g.,* NASD Rule 2120; NYSE Rule 476; MSRB rule G–17.

[21] NASD Rule 3110(g)(3); MSRB rule G–9(b)(xii).

[22] For example, Rule 17a–3(a)(1) under the Exchange Act provides that broker-dealers shall make and keep current ''[b]lotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debts and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.'' Rule 17a–3(a)(12) requires broker-dealers to maintain detailed information with respect to each associated person (which includes any salesman or employee soliciting transactions or accounts) of such broker-dealer.

[23] Telemarketing scripts expressly are included within the definitions of ''sales literature'' or ''advertisement'' in both the NASD and MSRB rules. *See* NASD Rule 2210(a)(2); MSRB rule G–21(a).

[24] *See, e.g.,* NASD Rules 2210 and 3110; NYSE Rules 410 and 472.

4. Investment Companies and Investment Advisers

Most investment company securities are sold through registered broker-dealers that are required by the Exchange Act to be members of the NASD and are subject to NASD rules. Separate rulemaking under the Investment Company Act of 1940 covering the telemarketing of investment company securities by NASD members would be largely duplicative of the NASD Rule and would not provide additional protections to consumers.

A small minority of investment companies are ''self-distributed'' (*i.e.*, the investment company sells its share to the public directly and not through a registered broker-dealer). The sale of these companies' securities are not covered by NASD rules. Under Exchange Act Rule 3a4–1, however, unsolicited telemarketing by self-distributed investment companies generally is prohibited.[25] Because telemarketing by self-distributed investment companies is already restricted by Rule 3a4–1, additional rulemaking appears unnecessary.

Investment advisers infrequently employ telemarketing to obtain advisory clients. Unlike the sale of a single security or other products and services, the service provided by an investment adviser typically involves an ongoing personal relationship that cannot easily be established over the telephone. Moreover, the Advisers Act and Commission rules thereunder provide procedural safeguards that have the effect of deterring abusive telemarketing by advisers. For example, Rule 204–3 generally requires a registered investment adviser to provide to a prospective client a written disclosure statement containing specified information concerning its personnel, investment strategies and methods, the services provided and the fees charged (1) At least 48 hours before entering into an investment advisory contract, or (2) At the time the contract is entered into, if the client has the right to terminate the contract without penalty within five business days.[26]

Unsolicited telemarketing is not, however, prohibited by the Advisers Act or the rules thereunder. Although the Commission does not believe that specific rules are warranted at this time, it will monitor the implementation and effectiveness of the NASD Rule and consider whether similar rules are necessary to deter the development of abusive telemarketing practices by the investment advisory industry.

C. Conclusion

The Commission finds that the NASD Rule and MSRB Rule, together with the Exchange Act and the Advisers Act, the rules thereunder, and the other rules of the SROs, satisfy the requirements of the Telemarketing Act, because the applicable provisions of such laws and rules are substantially similar to the FTC Rules,[27] except for those FTC Rules that involve areas already extensively regulated by existing securities laws or regulations or activities inapplicable to securities transactions.[28] Accordingly, the Commission has determined that no additional rulemaking is required by it under the Telemarketing Act.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9712 Filed 4–15–97; 8:45 am]

BILLING CODE 8010–01–M

[25] Rule 3a4–1 provides an exclusion from the definition of ''broker'' for certain persons associated with issuers of securities. Self-distributed investment companies operate without NASD membership pursuant to this rule. Rule 3a4–1(a)(4)(iii) prohibits ''oral solicitations'' of ''potential purchasers.'' Investment company personnel may respond, however, ''to inquiries of a potential purchaser in a communication initiated by the potential purchaser in a communication initiated by the potential purchaser'' as long as the response is limited to information contained in the investment company's prospectus.

[26] Rule 204–3 does not require a disclosure statement for a ''contract for impersonal advisory services'' involving a payment of less than $200. Impersonal advisory services include (1) general information or recommendations not tailored for a specific client, and 92) statistical information that does not make a recommendation regarding a particular security. Neither the Division of Investment Management nor the Office of Compliance Inspections and Examinations is aware of any instances in which impersonal advisory services have been sold to consumers through unsolicited telemarketing.

[27] The Commission finds that such laws and rules provide protection from deceptive and other abusive telemarketing acts and practices by persons described in Section 3(d)(2) of the Telemarketing Act substantially similar to that provided by the FTC Rules. *See* Section 3(d)(1)(B)(i) of the Telemarketing Act, 15 U.S.C. 6102(d)(1)(B)(i) (1996).

[28] With respect to those FTC Rules that involve areas already extensively regulated by existing securities laws or regulations, or activities inapplicable to securities transactions, the Commission finds that the promulgation of substantially similar rules is not necessary or appropriate in the public interest. *See* Section 3(d)(1)(B)(ii) of the Telemarketing Act, 15 U.S.C. 6102(d)(1)(B)(ii) (1996).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–20]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 24, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule docket (AGC–200), Petition Docket No. 28890, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on April 11, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: 28890.

Petitioner: Frontier Flying Service, Inc.

Sections of the FAR Affected: 14 CFR 121.591 et seq.

Description of Relief Sought: To permit the petitioner to utilize ATP-certificated pilots to dispatch flights for a period of 60 days.

[FR Doc. 97–9821 Filed 4–15–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 9, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0006.

Form Number: ATF F 3310.4.

Type of Review: Extension.

Title: Report of Multiple Sales or Other Disposition of Pistols and Revolvers.

Description: This form is used by ATF to develop investigative leads and patterns of criminal activity. It identifies possible handgun traffickers in the illegal market. Its use along the border identifies possible international traffickers.

Respondents: Business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 10,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,000 hours.

OMB Number: 1512–0019.

Form Number: ATF F 6A (5330.3C).

Type of Review: Extension.

Title: Release and Receipt of Imported Firearms, Ammunition and Implements of War.

Description: This information collection is needed to verify importation of firearms, ammunition and implements of war. ATF Form 6A is completed by Federal firearms licensees, active duty military members, nonresident U.S. citizens returning to the U.S. and aliens immigrating to the United States.

Respondents: Individuals or households.

Estimated Number of Respondents: 20,000.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,000 hours.

OMB Number: 1512–0030.

Form Number: ATF F 5300.11.

Type of Review: Extension.

Title: Annual Firearms Manufacturing and Exportation Report.

Description: ATF collects this data for the purpose of: ATF law enforcement witness qualifications; Congressional investigations in aid of legislation; disclosure to interested members in accordance with a court order; furnishing info to other Federal agencies; ATF inspections of manufacturers ensuring that the requirements of the National Firearms Act (NFA) are met.

Respondents: Business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 1,500.

Estimated Burden Hours Per Respondent/Recordkeeper: 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 1,125 hours.

OMB Number: 1512–0038.

Form Number: ATF F 5030.6.

Type of Review: Extension.

Title: Authorization to Furnish Financial Information and Certificates of Compliance.

Description: The Right to Financial Privacy Act of 1978 limits access to records held by financial institutions and provides for certain procedures to gain access to the information. ATF F 5030.6 serves as both a customer authorization for ATF to receive information and as the required certification to the financial institution.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 500 hours.

OMB Number: 1512–0046.

Form Number: ATF F 27-G, ATF REC 5520/2.

Type of Review: Extension.

Title: Applications—Volatile Fruit-Flavor Concentrate Plants.

Description: Persons who wish to establish premises to manufacture, volatile fruit-flavor concentrates are required to file an application so requesting. ATF uses the application information to identify persons responsible for such manufacture, since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 10.

Estimated Burden Hours Per Recordkeepers: 3 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 30 hours.

OMB Number: 1512–0059.

Form Number: ATF F 5120.29.

Type of Review: Extension.

Title: Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.

Description: ATF F 5120.29 is used to determine the classification of wines for labeling and consumer protection. The form describes the person filing, type of product to be made and restrictions to the labeling and manufacture. The form is also used to audit a product.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 600.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,200 hours.

OMB Number: 1512–0082.

Form Number: ATF F 1582–A (5120.24).

Type of Review: Extension.

Title: Drawback on Wines Exported.

Description: When proprietors export wines that have been produced, packaged, manufactured, or bottled in the U.S. they file a claim for drawback or refund for the taxes that have already been paid on the wine. This form notifies ATF that the wine was in fact exported and helps to protect the revenue and prevent fraudulent claims.

Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 900.
Estimated Burden Hours Per Respondent: 1 hour, 7 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,025 hours.

OMB Number: 1512–0131.
Form Number: ATF F 5400.14/ATF F 5400.15, Part III.
Type of Review: Extension.
Title: Renewal of Explosives License or Permit.
Description: This information collection activity is used for the renewal of explosives licenses and permits. This short renewal form is used in lieu of a more detailed application.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 2,500.
Estimated Burden Hours Per Respondent: 20 hours.
Frequency of Response:
Estimated Total Reporting Burden: 825 hours.

OMB Number: 1512–0192.
Form Number: ATF F 5110.11.
Recordkeeping Requirement Number: ATF REC 5110/02.
Type of Review: Extension.
Title: Distilled Spirits Plants Warehousing Records.
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. It also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 230.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 5,520 hours.

OMB Number: 1512–0205.
Form Number: ATF F 5110.40.
Recordkeeping Requirement Number: ATF REC 5110/01.
Type of Review: Extension.
Title: Distilled Spirits Records and Monthly Report of Production Operations.
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. This information also provides data to analyze trends in the industry, and plan efficient allocation of field resources, audit plant operations and compilation of statistics for government economic analysis.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 150.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,600 hours.

OMB Number: 1512–0247.
Recordkeeping Requirement Number: ATF REC 5000/2.
Type of Review: Extension.
Title: Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.
Description: These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 50.
Estimated Burden Hours Per Recordkeeper: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 325 hours.

OMB Number: 1512–0292.
Recordkeeping Requirement Number: ATF REC 5120/2.
Type of Review: Extension.
Title: Letterhead Applications and Notices Relating to Wine.
Description: Letterhead applications and notices relating to wine are required to ensure that the intended activity will not jeopardize the revenue or defraud consumers.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,650.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 825 hours.

OMB Number: 1512–0335.
Recordkeeping Requirement Number: ATF REC 5150/4.
Type of Review: Extension.
Title: Letterhead Application and Notices Relating to Tax-Free Alcohol.
Description: Tax-free alcohol is used for nonbeverage purposes in scientific research and medicinal uses by educational organizations, hospitals, laboratories, etc. Permits/Applications control authorized uses and flow. Protect tax revenue and public safety.
Respondents: Business or other for-profit, Federal Government, State, Local or Tribal Government.
Estimated Number of Recordkeepers: 4,444.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 2,222 hours.

OMB Number: 1512–0512.
Form Number: None.
Type of Review: Extension.
Title: Notices Relating to Payment of Firearms and Ammunition Excise Tax.
Description: Excise taxes are collected on the sale or use of firearms and ammunition by firearms or ammunition manufacturers, importers or producers. Taxpayers who elect to pay excise taxes by electronic fund transfer must furnish a written notice upon election and discontinuance. Tax revenue will be protected.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–9771 Filed 4–15–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 8, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: In order to make this amended form ATF Form 1 available for

use by the public as soon as possible, the Bureau of Alcohol, Tobacco and Firearms is requesting emergency review and approval from the Office of Management and Budget (OMB) by April 25, 1997. To obtain a copy of this form, please contact the Bureau of Alcohol, Tobacco and Firearms Clearance Officer at the address listed below or call (202) 927–7768.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0024.
Form Number: ATF F 1 (5320.1).
Type of Review: Revision.
Title: Application to Make and Register a Firearm.
Description: This form is used by the public when applying to make a firearm that falls within the purview of the National Firearms Act (NFA). The information supplied by the applicant on the form helps to establish the applicant's eligibility for approval of the request.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 1,271.
Estimated Burden Hours Per Respondent: 4 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 5,084 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–9772 Filed 4–15–97; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 9, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0033.
Form Number: POD Form 1672.
Type of Review: Extension.
Title: Application of Undertaker for Payment of Funeral Expenses From Funds to the Credit of a Deceased Depositor.
Description: This form is used by the undertaker to apply for payment of a postal savings account of a deceased depositor to apply for funeral expenses. This form is supported by a certificate from relative (POD 1690) and an itemized funeral bill. Payment is made to the Funeral Home.
Respondents: Individuals or households.
Estimated Number of Respondents: 15.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 8 hours.
Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–9773 Filed 4–15–97; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 3, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Customs Service (CUS)

OMB Number: 1515–0093.
Form Number: CF 300.
Type of Review: Revision.
Title: Bonded Warehouse Proprietor's Submission.
Description: Customs Form 300 is prepared by Bonded Warehouse Proprietor's and submitted to the Customs Service annually. The document reflects all bonded merchandise entered, released, and manipulated, and includes beginning and ending inventories.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 1,800.
Estimated Burden Hours Per Respondent: 20 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 36,000 hours.

OMB Number: 1515–0155.
Form Number: None.
Type of Review: Extension
Title: Approval of Commercial Gaugers and Accreditation of Commercial Laboratories.
Description: The Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers are used by individuals or businesses desiring Customs approval to measure bulk products or analyze importations may apply to Customs by letter. This recognition is required of businesses wishing to perform such work on imported merchandise.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 5 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 50 hours.

OMB Number: 1515–0163.
Form Number: None.
Type of Review: Reinstatement.
Title: Country of Origin Marking Requirements for Containers or Holders.
Description: Containers or Holders imported into the United States destined for an ultimate purchaser must be marked with the English name of the country of origin at the time of importation into Customs territory.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 250.
Estimated Burden Hours Per Respondent: 15 seconds.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 41 hours.
Clearance Officer: J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management

Branch, Room 6216, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–9774 Filed 4–15–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

April 4, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1502.

Form Number: IRS Forms 5304–SIMPLE, IRS Form 5305–SIMPLE, and Notice 97–6.

Type of Review: Extension.

Title: Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (Not Subject to the Designated Financial Institutions Rules) (5304–SIMPLE); Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (5305–SIMPLE); and

Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (Notice 97–6).

Description: Forms 5304–SIMPLE and 5305–SIMPLE are used by an employer to permit employees to make salary reduction contributions to a savings incentive match plan (SIMPLE IRA) described in Code section 408(p). These forms are not to be filed with IRS, but to be retained in the employers' records as proof of establishing such a plan, thereby justifying a deduction for contributions made to the SIMPLE IRA. The data is used to verify the deduction.

Notice 97–6 provides guidance for employers and trustees regarding how they can comply with the requirements of Code section 408(p) in establishing and maintaining a SIMPLE Plan, including information regarding the notification and reporting requirements under Code section 408.

Respondents: Business and other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 600,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	5304–SIMPLE	5305–SIMPLE	Notice 97–6
Recordkeeping	3 hr., 38 min	3 hr., 38 min	0 hr., 0 min.
Learning about the law or the form	2 hr., 26 min	2 hr., 26 min	0 hr., 15 min.
Preparing the form	47 min	47 min	0 hr., 0 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 2,127,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–9775 Filed 4–15–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 7, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the focus group interviews described below in the late April to early May 1997 timeframe, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by April 18, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 97–010–G.

Type of Review: Revision.

Title: Most Serious Problems Encountered by Taxpayers Focus Group Interviews.

Description: The objective of these focus group interviews is to gather feedback from taxpayers, age 50 and older and small business owners with 10 or less employees, on what they consider the most serious problems they face in dealing with the IRS. Information from these groups will be used to improve customer service to taxpayers and make changes necessary to help increase voluntary compliance with reducing burden.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 650.

Estimated Burden Hours Per Response:

Participant recruiting—5 minutes per call.

Focus group sessions—2 hours.

Travel—1 hour.

Frequency of Response: Other.

Estimated Total Reporting Burden: 324 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–9776 Filed 4–15–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 7, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the focus group study described below in late April 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by April 18, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 97–011–G.
Type of Review: Revision.
Title: IRS On-Line Filing (OLF) Program Focus Group Interviews.
Description: The objective of this focus group study is to gather information from these taxpayers about what they perceive to be barriers to On-Line Filing, and how they prefer to be informed about the program. This study is being conducted at the request of the Pennsylvania District Office Research and Analysis division and the Philadelphia District Taxpayer Education/Electronic Filing staffs.
Respondents: Individuals or households, Business or other for-profit
Estimated Number of Respondents: 420.
Estimated Burden Hours Per Response:
Participant recruiting—5 minutes per call.
Focus group sessions—2 hours.
Travel—1 hour.
Frequency of Response: Other.
Estimated Total Reporting Burden: 197 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–9777 Filed 4–15–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 7, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the focus group study described below in late April 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by April 11, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 97–013–G.
Type of Review: Revision.
Title: Automated Tax Law Interactive Applications Focus Group Interviews.
Description: The purpose of the focus groups is to (1) assess the use of interactive applications in the delivery of tax law assistance; (2) obtain feedback on specific Automated Tax Law applications; and (3) provide information which will allow the IRS to make the applications more user friendly.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 350.
Estimated Burden Hours Per Response:
Participant recruiting—5 minutes per call.
Focus group sessions—2 hours.
Travel—1 hour.
Frequency of Response: Other.
Estimated Total Reporting Burden: 165 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–9778 Filed 4–15–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

April 9, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0387.
Form Number: IRS Form 4419.
Type of Review: Revision.
Title: Application for Filing Information Returns Magnetically/ Electronically.
Description: Under section 6011(e)(2)(a) of the Internal Revenue Code, any person, including corporations, partnerships, individuals, estates and trusts, who is required to file 250 or more information returns must file such returns magnetically/ electronically. Payers required to file on magnetic media must complete Form 4419 to receive authorization to file.
Respondents: State, Local or Tribal Government, Business and other for-profit, Not-for-profit institutions, Federal Government.
Estimated Number of Respondents: 15,000.
Estimated Burden Hours Per Respondent:
Preparing the form—26 min.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 6,500 hours.
OMB Number: 1545–1412.
Regulation Project Number: FI–54–93 Final.
Type of Review: Extension.

Title: Clear Reflection of Income in the Case of Hedging Transactions.

Description: This information is required by the Internal Revenue Service to verify compliance with section 446 of the Internal Revenue Code. This information will be used to determine that the amount of tax has been computed correctly. The likely recordkeepers are businesses or other for-profit institutions.

Respondents: Business and other for-profit.

Estimated Number of Recordkeepers: 110,000.

Estimated Burden Hours Per Recordkeeper: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 22,000 hours.

OMB Number: 1545–1434.

Regulation Project Number: CO–26–96 NPRM and Temporary.

Type of Review: Extension.

Title: Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups.

Description: Section 382 limits the amount of income that can be offset by loss carryovers after an ownership change. These regulations provide rules for applying section 382 in the case of short taxable years and with respect to controlled groups.

Respondents: Business and other for-profit.

Estimated Number of Respondents: 3,500.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 875 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–9779 Filed 4–15–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 8, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the focus group study described below in late April 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by April 11, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 97–014–G.

Type of Review: Revision.

Title: Enrolled Agents' Opinions Regarding EIC Focus Group Study.

Description: The purpose of the focus groups is to gather opinions from enrolled agents (practitioners) regarding the IRS' administration of the Earned Income Credit (EIC).

Respondents: Business or other for-profit.

Estimated Number of Respondents: 520.

Estimated Burden Hours Per Response:

Participant screening—5 minutes per call.

Focus group sessions—2 hours.

Frequency of Response: Other.

Estimated Total Reporting Burden: 187 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 97–9780 Filed 4–15–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 1, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0086.

Form Number: PD F 5262.

Type of Review: Extension.

Title: Reinvestment Request for Treasury Notes or Bonds.

Description: PD F is used to request information to support a request to reinvest Treasury Notes or Bonds at Maturity.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 140,000.

Estimated Burden Hours Per Response: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 142,000 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–9781 Filed 4–15–97; 8:45 am]

BILLING CODE 4810–40–P

Federal Register

Wednesday
April 16, 1997

Part II

Department of Agriculture

7 CFR Part 1703

Distance Learning and Telemedicine Loan and Grant Program; Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1703

RIN 0572–AB31

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulation concerning the Distance Learning and Telemedicine Grant Program. This proposed rule will promulgate regulations for a new loan program that will provide both loans and grants for distance learning and telemedicine projects benefiting rural areas. The regulation is necessary to implement a new loan program mandated by the Federal Agriculture Improvement and Reform Act of 1996. The regulation will establish, among other things, RUS' policy, the method of selecting projects to receive loans and grants and allocating the available funds, and the requirements for submitting an application for financial assistance.

DATES: Written comments must be received by RUS or carry a postmark or equivalent not later than May 16, 1997.

ADDRESSES: Submit written comments to Robert Peters, Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW, STOP 1590, Room 4056, South Building, Washington, DC 20250–1590. RUS requests a signed original and three copies of all comments (7 CFR part 1700). All comments received will be made available for public inspection at Room 4034, South Building, U.S. Department of Agriculture, Washington, DC, between 8:00 a.m. and 4:00 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Barbara L. Eddy, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, Room 4056, South Building, U.S. Department of Agriculture, Washington, DC 20250–1590. Telephone number (202) 720–9554.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Sec. 3. of the Executive Order.

Regulatory Flexibility Act Certification

In accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the following analysis of regulatory options that would minimize any significant impact on small businesses is provided. Title VII, section 704, of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) (Public Law 104–127) amended Chapter 1 of subtitle D of title XXIII of the Food, Agriculture, Conservation, and Trade Act of 1990 by authorizing the Secretary of Agriculture to make loans for distance learning and telemedicine services in rural areas. This proposed rule would amend 7 CFR part 1703 to set forth the rules for this new loan program to be administered by the RUS. The objectives of the proposed rule are to encourage and improve telemedicine and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies by students, teachers, medical professionals, and rural residents.

The new RUS Distance Learning and Telemedicine loan program would assist in providing modern telecommunication interconnectivity to educational and medical facilities in rural America. Through 4 years of Distance Learning and Telemedicine grant program activity, approximately 704 rural schools, serving hundreds of thousands of rural students, will gain access to improved educational resources through the information superhighway by sharing limited teaching resources and gaining access to libraries, training centers, vocational schools, and other institutions located in metropolitan centers. For telemedicine, approximately 500 rural medical facilities will gain access to improved medical care through linkage with other rural hospitals and major urban medical centers for clinical interactive video consultation, distance training of rural health care providers, management and transport of patient information, and access to medical expertise or library resources.

This proposed regulation would set forth the rules for the new loan program which would provide supplementary funding for distance learning and telemedicine services in rural areas. The proposed regulation would optimize the use of a limited source of grant and loan funding by setting forth certain criteria which enables the Agency to distribute the amount of funding available among the greatest number of applicants in an economical, efficient, and orderly manner. The regulatory alternative would be to not publish a regulation; however, the desired regulatory purposes, to improve the access of people residing in rural areas to improved educational, learning, training, and health care services and to achieve the maximum use of funds available, would not be achieved.

Entities eligible for assistance under this proposed rule would be those entities that provide, or would provide, educational or health care services or the facilities needed to provide these services through the use of advanced telecommunications in rural areas. There is no good estimate, at this time, of the number of entities that would be affected by the proposed rule since the regulatory requirements would apply to only those entities which choose to apply for the financial assistance. However, RUS is estimating between 250 and 300 applications would be submitted annually under this program and of those applicants, between 30 and 50 grants and 100 and 120 loans or combination thereof would be awarded. RUS' existing Distance Learning and Telemedicine Grant Program, since its inception in 1993, has received nearly 900 applications for grant funding.

The various reporting and compliance requirements contained in this proposed rule for applicants are necessary to determine such factors as: eligibility; funding purposes; compliance with other Federal regulations; project costs and alternative funding sources; project feasibility; and need for educational and/or telemedicine services. Those reporting requirements imposed on recipients of financial assistance are necessary to ensure proper use of financing for approved purposes. Some of the required reporting documents include information generally maintained by certain types of entities (i.e., patients or students served, financial statements, contracts, audits, etc.). The information collected is in a format designed to minimize the paperwork burden on small businesses and other small entities. The information collected is the minimum needed by the Agency to approve financial assistance and monitor the grantee or borrower performance.

The impact on small entities would be limited to the reporting and compliance regulations which were designed to minimize the burden in order to

encourage applicants. Even the compliance regulations are designed to only assure the Agency that the financial assistance was utilized for Act purposes and also are regulations for already imposed Government-wide financial assistance of any kind.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) RUS is requesting comments on the information collection incorporated in this proposed rule.

Comments on this information collection must be received by June 16, 1997.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information; (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.

For further information contact Jonathan Claffey, Acting Deputy Director, Advanced Telecommunications Services Staff, Rural Utilities Service. Telephone: (202) 720–0530. Fax: (202) 720–2734.

Title: Distance Learning and Telemedicine Loan and Grant Program.

OMB Number: 0572–0096.

Type of Request: Revision of a previously approved information collection.

Abstract: The RUS currently implements a program that provides grants to rural community facilities, such as schools, hospitals, and medical centers, to encourage, improve, and make affordable the use of advanced telecommunications and computer networks to provide educational and medical benefits to people living in rural areas and to improve rural access to reliable facsimile, document and data transmission, multi-frequency tone signaling services, 911 emergency service with automatic number identification, interactive audio and visual transmissions, voice mail services designed to record, store, and retrieve voice messages, and other advanced telecommunications services. RUS currently awards grants and is proposing to also award loan funds to projects that will improve the quality of life of people residing in rural areas by improving their access to improved educational, training, and medical services; and, their access to opportunities that rely on these advanced communication and information technologies to provide such services. For grants, RUS funds up to 70 percent of any project selected, and requires at least a 30 percent matching contribution from the grant applicant. For applicants who voluntarily request loans, RUS proposes to fund up to 90 percent of any project selected, and requires at least a 10 percent matching contribution from the loan applicant.

In order for the public to receive the benefits of the new loan program, they need to submit an application and the supporting information for RUS to determine if they meet the eligibility requirements. The Distance Learning and Telemedicine Loan and Grant Program regulations (7 CFR 1703, subpart D), establish the method of selecting projects to receive grants and loans, the method of allocating the available funds, the method of determining the beneficiaries of the program, and the requirements for the application to be submitted to RUS, the method of notifying potential applicants of maximum and minimum amounts of grant and loan funds that will be considered for a single application.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Business or other for profit and non-profit institutions.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 29.

Estimated Total Annual Burden on Respondents: 18,248.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Support and Regulatory Analysis, Rural Utilities Service. Telephone: (202) 720–0812.

Send comments regarding this information collection requirement, to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Desk Officer, USDA, Room 10102, New Executive Office Building, Washington, DC 20503, and to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4034, South Building, Washington, DC 20250–1522.

Comments are best assured of having full effect if OMB receives them within 30 days of publication in the **Federal Register**. All comments will become a matter of public record.

National Environmental Policy Act Certification

RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Program Affected

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under number 10.855, Distance Learning and Telemedicine Loan and Grant Program. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Intergovernmental Review

This program is subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials.

Unfunded Mandate

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandate Reform Act) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act.

Background

Title 7, CFR part 1703, subpart D, was originally published in the **Federal Register** February 26, 1993, (58 FR 11507), and became effective March 29, 1993. The Agriculture Improvement and Reform Act of 1996 (FAIR Act) modified the Distance Learning and Telemedicine (DLT) grant program by creating a loan component. The regulation was modified and published as a final rule in the **Federal Register** on June 27, 1996, (61 FR 33622), to incorporate the changes to the grant program mandated by the FAIR Act, excluding those provisions for administering a loan program since funds appropriated in fiscal year 1996 could only be used for grants. This proposed rule, while based in part on the existing rule, will (1) establish criteria for loan and grant eligibility, (2) simplify the determination for the comparative rurality calculation, and (3) place

greater emphasis on the need for distance learning or telemedicine services in the scoring criteria.

Criteria for Loan and Grant Eligibility

The Administrator determines the portion of the financial assistance provided to a recipient that consists of grants and the portion that consists of cost of money loans so as to result in the maximum feasible repayment to the government of the financial assistance, based on the recipient's ability to repay and the full utilization of the funds available.

RUS proposes to use the National School Lunch Program (NSLP) to assist in determining the mix of grants, loans, and loan-grant combinations for applicants requesting financial assistance. The extent of participation by residents of an area in the NSLP is a widely accepted measure of the relative well-being of the area. RUS believes that using NSLP ratings in the allocation of grant and loan funds furthers the FAIR Act's purpose of providing modern DLT services in the most needy parts of rural America. A high rate of eligibility for school lunch assistance indicates a low relative income in the area and less ability to repay loans. Grants will be made available to only those otherwise eligible applicants determined by the Administrator, after review of the financial information furnished by the applicant, to have the least ability to repay the full amount of the assistance.

RUS is proposing to use a subjective method to score, up to 45 points, documentation submitted to support ''the need for services and benefits derived from services'' [see 1703.117(b)(1)]. RUS believes that the need for services and the benefits derived from the services should be a critical factor in determining which application will be successful in obtaining financial assistance. RUS could not determine an objective method to use in scoring this particular criterion due to the nature of some of the benefits to be derived that are priceless, such as lives saved, students attending higher education institutions, etc. RUS would like to receive suggestions from commentors on any objective method that could be used or indications from commentors that the subjective method is acceptable.

The 1995 statistics for the NSLP indicate that the percentages to be used to establish eligibility for loans and grants will result in financial assistance in the form of loans for approximately 75 percent of qualifying applications. However, before an applicant may be awarded a loan, the applicant must be able to show that the loan will be repaid within the repayment period and at the interest rate under which financial assistance is offered. In addition, this proposed rule allows for third party guarantees as evidence of an applicant's ability to repay a loan. RUS believes that the use of third party secured loan guarantees will provide adequate loan security and will increase the number of successful applications for the loan program.

Rurality Calculation

The rurality calculation used in the existing regulation was based on a scale which looked at the characteristics of an entire county instead of the sites in which financial assistance being requested was to be used. This methodology placed certain areas with ''rural'' characteristics, yet located in semi-urban counties, at a disadvantage. The proposed methodology will address this situation by being more ''site'' specific when determining rural needs and characteristics. For purposes of this determination, an area shall be considered rural if it is included within the boundaries of any incorporated or unincorporated city, village, or borough having a population not in excess of 10,000 inhabitants.

Need for Services

More emphasis has been placed on the need for services and benefits derived from those services in the scoring criteria in this proposed rule versus the existing rule. In seeking support for this criterion, applicants may submit documentation explaining (1) the economic, education or health care challenges facing the community, (2) proposed plans to address those challenges, and (3) how financial assistance will help and how the project could not be accomplished without RUS funding. This scoring criterion seeks to measure the true ''outcomes'' of a proposed project and its derived benefits and therefore RUS believes it merits increased scoring value. The points available for this scoring criterion have been increased to represent 26 percent of the total possible points available for any project.

List of Subjects in 7 CFR Part 1703

Community development, Grant programs—education, Grant programs—health care, Grant programs—housing and community development, Loan programs—education, Loan programs—health care, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1703—RURAL DEVELOPMENT

1. The authority citation for part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*, Pub. L. 103–354, 108 Stat 3178 (7 U.S.C. 6941 *et seq.*).

2. Subpart D of part 1703 is revised to read as follows:

Subpart D—Distance Learning and Telemedicine Loan and Grant Program

Sec.

Subpart D—Distance Learning and Telemedicine Loan and Grant Program

§ 1703.100 Purpose.

The purpose of this subpart is to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced

technologies by students, teachers, medical professionals, and rural residents.

§ 1703.101 Policy.

(a) RUS recognizes that the transmission of information is vital to the economic development, education, and health of rural Americans. To further this objective, RUS will award loans and grants under this subpart to distance learning and telemedicine projects that will improve the access of people residing in rural areas to improved educational, learning, training, and health care services. Unless a distinction is made in the various sections of this subpart, all aspects of this subpart will apply to all funding requests.

(b) In providing assistance under this subpart, RUS will give priority to rural areas that it believes have the greatest need of distance learning and telemedicine services. RUS believes that generally the need is greatest in economically challenged areas and those requiring high costs to serve. This program is consistent with provisions of the 1996 Telecommunications Act (Public Law 104–104, 110 Stat. 56) that designates telecommunications service discounts for schools, libraries, and rural health care providers providing benefits to rural end-users. RUS will take into consideration the community's involvement in the project and the applicant's ability to leverage grant funds based on its access to capital.

(c) RUS believes that the residents of rural areas and their local institutions which serve them can best determine what are the most appropriate communications or information systems for use in their respective communities. Therefore, in administering this subpart, RUS will not favor or mandate the use of one particular technology over another.

(d) All rural institutions are encouraged to cooperate with each other and with applicants and end users in promoting the program being implemented under this subpart.

(e) RUS staff will make diligent efforts to inform potential applicants in rural areas of the program being implemented under this subpart.

(f) Financial assistance under this subpart will consist of grants or cost of money loans, or both. The Administrator shall determine the portion of the financial assistance provided to a recipient that consists of grants and the portion that consists of cost of money loans so as to result in the maximum feasible repayment to the Federal Government of the financial assistance, based on the ability of the recipient to repay and with the full utilization of funds made available to carry out this subpart.

(g) The Administrator may provide a cost of money loan to entities using telemedicine and distance learning services, and, to entities providing or proposing to provide telemedicine service or distance learning service to other persons at rates calculated to ensure that the benefit of the financial assistance is passed through to the other persons.

(h) The Administrator may provide a cost of money loan under this subpart to a borrower of a telecommunications or electric loan under the Rural Electrification Act of 1936. A borrower receiving a cost of money loan under this subpart shall:

(1) Make the funds provided available, under any terms it so chooses as long as the terms are no more stringent than the terms under which it received the funding, to entities that qualify as distance learning and/or telemedicine projects satisfying the requirements of this subpart.

(2) Use the funds provided to acquire, install, improve, or extend a system referred to in this subpart.

§ 1703.102 Definitions.

Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

Administrator means the Administrator of the Rural Utilities Service or his or her designee.

Applicant means an eligible organization which applies for funding under this subpart.

Champion community means any community or area so designated under the proper procedures.

Completed application means an application that includes all those items specified in § 1703.109 in form and substance satisfactory to the Administrator.

Comprehensive rural telecommunications plan means the plan submitted by an applicant in accordance with § 1703.109(a).

Computer networks means computer hardware and software, terminals, signal conversion equipment including both modulators and demodulators, or related devices, used to communicate with other computers to process and exchange data through a telecommunication network in which signals are generated, modified, or prepared for transmission, or received, via telecommunications terminal equipment and telecommunications transmission facilities.

Consortium means a combination or group of eligible entities formed to undertake the purposes for which the distance learning and telemedicine funding is provided. Each consortium shall be composed of a minimum of two eligible entities that meet the requirements of § 1703.103.

Construct means to acquire, construct, extend, improve, or install a facility or system.

Cost of money loan. The term *cost of money loan* means a loan made under Title XXIII bearing interest at a rate equal to the then current cost of money to the Federal Government, at the time the feasibility study is completed, for loans of similar maturity not to exceed 10 years.

Data terminal equipment means equipment that converts user information into data signals for transmission, or reconverts the received data signals into user information, and is normally found on the terminal of a circuit and on the premises of the end user.

Distance learning means a telecommunications link to an end user through the use of eligible equipment to:

(1) Provide educational programs, instruction, or information originating in one area, whether rural or not, to students and/or teachers who are located in rural areas; or

(2) Connect teachers and/or students, located in one rural area with teachers and/or students that are located in a different rural area.

DLT borrower means an entity that has outstanding loans under the provisions of Title XXIII.

Economic useful life as applied to facilities financed under Title XXIII means the number of years resulting from dividing 100 percent by the depreciation rate (expressed as a percent) based on Internal Revenue Service depreciation rules or recognized telecommunications industry guidelines.

Eligible equipment means computer hardware and software, audio and visual equipment, computer network components, telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, inside wiring, interactive video equipment, or other facilities that would further telemedicine services or distance learning services. Land, buildings, or building construction are not considered eligible equipment (see § 1703.107(a)(10)).

Eligible organization means an incorporated entity that meets the requirements of § 1703.103.

Empowerment Zone and Enterprise Community (EZ/EC) means any community whose designation as such

pursuant to 26 U.S.C. 1391 et seq. is in effect at the time RUS agrees to provide financial assistance.

End user means either or both of the following:

(1) Rural elementary or secondary schools or other educational institutions, such as institutions of higher education, vocational and adult training and education centers, libraries, and teacher training centers, and students, teachers and instructors using such rural educational facilities, that participate in a rural distance learning telecommunications program through a project funded under this subpart;

(2) Rural hospitals, primary care centers or facilities, such as medical centers and clinics, and physicians and staff using such rural medical facilities, that participate in a rural telemedicine program through a project funded under this subpart.

End user site means a facility that is part of a network or telecommunications system that is utilized by end users.

Financial assistance shall consist of grants, cost of money loans, or both, made under Title XXIII.

Grant documents means the letter of agreement, including any amendments and supplements thereto, between RUS and the grant recipient.

Grantee means a recipient of a grant from RUS to carry out the purposes of Title XXIII.

Hub means control center of a network or telecommunications system.

Instructional programming means educational material, including computer software, which would be used for educational purposes in connection with eligible equipment but does not include salaries, benefits, and overhead of medical or educational personnel.

Interactive video equipment means equipment used to produce and prepare for transmission audio and visual signals from at least two distant locations such that individuals at such locations can orally and visually communicate with each other. Such equipment includes monitors, other display devices, cameras or other recording devices, audio pickup devices, and other related equipment.

Letter of agreement means a legal document executed by RUS and the grantee that contains specific terms, conditions, requirements, and understandings applicable to a particular grant.

Loan documents mean the loan agreement, note, and security agreement, including any amendments and supplements thereto, between RUS and the DLT or Telecommunications/ Electric borrower.

Local exchange carrier means a commercial, cooperative or mutual-type association, or public body that is engaged in the provision of telephone exchange service or exchange access.

Matching funds means the applicant's funding contribution for allowable purposes.

National School Lunch Program (NSLP) means the federally assisted meal program established under the National School Lunch Act of 1946 (42 U.S.C. 1751).

Project means an undertaking to provide or improve distance learning or telemedicine by using financial assistance from RUS under this subpart.

Project service area means the area in which at least 90 percent of the persons to be served by the project are likely to reside.

Rural community facilities means facilities such as schools, libraries, learning centers, training facilities, hospitals, medical centers, or similar facilities, primarily used by residents of rural areas, that will use a telecommunications, computer network, or related advanced technology system to provide educational and/or health care benefits primarily to residents of rural areas.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture formerly known as REA. See 7 CFR 1700.1.

Scope of work means a detailed plan of work that has been approved by the Administrator to be performed by the applicant using funding provided under this subpart.

Secretary means the Secretary of Agriculture.

Technical assistance means:

(1) Assistance in learning to operate equipment or systems; and

(2) Studies, analyses, designs, reports, manuals, guides, literature, or other forms of creating, acquiring, and/or disseminating information.

Telecommunications carrier means any provider of telecommunications services.

Telecommunications/Electric borrower means an entity that has outstanding electric or telephone RUS and/or Rural Telephone Bank loans or loan guarantees under the provisions of the Act.

Telecommunications terminal equipment means the assembly of telecommunications equipment at the end of a circuit or path of a signal, including but not limited to over the air broadcast, satellite, and microwave, normally located on the premises of the end user, that interfaces with telecommunications transmission facilities, and that is used to modify, convert, encode, or otherwise prepare signals to be transmitted via such telecommunications facilities, or that is used to modify, reconvert, or carry signals received from such facilities, the purpose of which is to accomplish the goal for which the circuit or signal was established.

Telecommunications transmission facilities means facilities that transmit, receive, or carry data between the telecommunications terminal equipment at each end of the telecommunications circuit or path. Such facilities include microwave antennae, relay stations and towers, other telecommunications antennae, fiber-optic cables and repeaters, coaxial cables, communication satellite ground station complexes, copper cable electronic equipment associated with telecommunications transmissions, and similar items.

Telemedicine means a telecommunications link to an end user through the use of eligible equipment which electronically links medical professionals at separate sites in order to exchange health care information in audio, video, graphic, or other format for the purpose of providing improved health care services primarily to residents of rural areas.

Title XXIII means subtitle D, chapter 1, of the Rural Economic Development Act of 1990 (7 U.S.C. 950aaa through 950aaa–4).

§ 1703.103 Applicant eligibility and allocation of funds.

(a) To be eligible to receive funding under this subpart, the applicant must be organized in one of the following corporate structures:

(1) An incorporated organization, partnership, Indian tribe and tribal organization as defined in 25 U.S.C. 450b (b) and (c), or other legal entity, including a municipal corporation or a private corporation organized on a for-profit or not-for-profit basis, which operates, or will operate, a school, college, university, learning center, training facility, or other educational institution, including a regional educational laboratory, library, hospital, medical center, medical clinic or any rural community facility. A state government, other than a state government entity that operates a rural community facility, is not considered an eligible applicant; or

(2) A consortium, as defined in § 1703.102. A consortium which includes a state government entity is only eligible if the state government entity operates a rural community facility; or

(3) An incorporated organization, partnership, Indian tribe and tribal organization as defined in 25 U.S.C. 450b (b) and (c), or other legal entity which is providing or proposes to provide telemedicine service or distance learning service to other legal entities or consortia at rates calculated to ensure that the economic value and other benefits of the distance learning or telemedicine grant is passed through to such other legal entities or consortia.

(b) At least one of the entities in a partnership or consortium must be eligible individually, and the partnership or consortium must provide written evidence of its legal capacity to contract with RUS. If a partnership or consortium lacks the capacity to contract, each individual entity must contract with RUS on its own behalf.

(c) A borrower of an electric or telecommunications loan under the Rural Electrification Act of 1936 is eligible for a cost of money loan only.

(d) All applicants for financial assistance, with the exception of applicants requesting a loan and having the minimum required score, will be ranked by the type of application (health care or educational) and total points scored. Grant funds available for medical and educational applicants will be allocated based on the total number of medical and educational applications scoring in the top 50 percent of all applications received. Applications will be ranked only in one category based on the predominant use of the project.

§ 1703.104 Allowable grant and loan funding percentage.

(a) Financial assistance, except as noted in paragraph (b) of this section, may be used by eligible organizations for distance learning and telemedicine projects to finance up to 70 percent of the cost of allowable purposes outlined in § 1703.105 provided that no financial assistance may exceed the maximum grant or loan amount for the year in which the grant or loan is made.

(b) Cost of Money Loans requested by an applicant may be used by eligible organizations for distance learning and telemedicine projects to finance up to 90 percent of the cost of allowable loan purposes outlined in § 1703.105, provided that no loan may exceed the maximum loan amount for the year in which the loan is made. Financial assistance applications that do not request a loan and qualify for a loan or combination loan and grant will be funded up to 70 percent of the cost of allowable purposes.

§ 1703.105 Grant and loan purposes.

(a) Grants and loans shall be limited to costs associated with the initial capital assets associated with the project. Grant and loan funds as set out in the last sentence of this section shall not exceed twenty percent (20 percent) of the requested financial assistance. The following are allowable grant and loan purposes:

(a) Acquiring, by lease or purchase, eligible equipment as defined in § 1703.102;

(b) Acquiring instructional programming; and

(c) Providing technical assistance and instruction for using eligible equipment, including any related software; developing instructional programming; providing engineering or environmental studies relating to the establishment or expansion of the phase of the project that is being financed with the financial assistance.

§ 1703.106 In-kind matching provisions.

(a) In-kind matching, the applicant's minimum funding contribution (specified in § 1703.104) for allowable purposes, is generally required in the form of cash. However, in-kind contributions for the purposes listed in § 1703.105 may be substituted for cash.

(b) In-kind items listed in § 1703.105 must be non-depreciated or new assets with established monetary value. Manufacturers or service providers discounts are not considered in-kind matching.

(c) Funding may be provided for end user sites. Funding may also be provided for hubs located in rural or non-rural areas, if they are necessary to provide distance learning and/or telemedicine services to rural residents at end user sites.

§ 1703.107 Ineligible loan and grant purposes.

(a) Without limitation, funding under this subpart will not be provided:

(1) To cover the costs of installing or constructing telecommunications transmission facilities, except as provided in paragraph (c) of this section;

(2) To pay for medical equipment except medical equipment primarily used for encoding and decoding data, such as images, for transmission over a telecommunications or computer network;

(3) To pay salaries, wages, or employee benefits to medical or educational personnel;

(4) To pay for the salaries or administrative expenses of the applicant or the project;

(5) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider;

(6) To duplicate facilities providing distance learning or telemedicine services in place or to reimburse the applicant or others for costs incurred prior to RUS' receipt of the completed application;

(7) To pay costs of preparing the application package for funding under this program;

(8) For projects whose sole objective is to provide links between teachers and students or medical professionals who are located at the same facility;

(9) For site development and the destruction or alteration of buildings;

(10) For the purchase of land, buildings, or building construction;

(11) For projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(12) For any purpose that the Administrator has not specifically approved; or

(13) Except for leases provided in § 1703.105, to pay the cost of recurring or operating expenses for the project.

(b) Except as otherwise provided in § 1703.140, funds shall not be used to finance a project in part when success of the project is dependent upon the receipt of additional funding under this subpart D or is dependent upon the receipt of other funding that is not assured.

(c) Loans can be used to cover the costs of telecommunications transmission facilities if no telecommunications carrier will install such facilities under the Act or through other financing procedures within a reasonable time period and at a cost to the applicant that does not jeopardize the feasibility of the project, as determined by the Administrator.

§ 1703.108 Maximum and minimum sizes of a grant and a loan.

Applications for grants and loans to be considered under this subpart will be subject to limitations on the proposed amount of funding. The Administrator may establish the maximum amount of financial assistance to be made available to an individual recipient for each fiscal year under this subpart, by publishing notice of the maximum amount in the **Federal Register** not more than 45 days after funds are made available for the fiscal year to carry out this subpart. The minimum size of a grant and/or loan is $50,000.

§ 1703.109 The funding application.

The following items comprise the required material that must be submitted to RUS in support of the funding request:

(a) Proposed scope of work of the project. The proposed scope of work of the project which includes, at a minimum:

(1) The specific activities to be performed under the project;

(2) Who will carry out the activities;

(3) The time-frames for accomplishing the project objectives and activities; and

(4) A budget for capital expenditures reflecting the line item costs for both the grant and/or loan funds and other sources of funds for the project.

(b) Executive summary for the project. The applicant must provide RUS a general project overview, verification of compliance with the general requirements of this subpart, and documentation of eligibility. The executive summary shall contain the following 9 categories:

(1) A description of why the project is needed.

(2) An explanation of how the applicant will address the need cited in paragraph (b)(1) of this section, why the applicant requires financial assistance and types of educational and/or medical services to be offered by the project, and the benefits to the rural residents.

(3) A description of the applicant, documenting eligibility with § 1703.103.

(4) An explanation of the total cost of the project including a breakdown of the RUS funding required and the source of funding for the remainder of the project.

(5) A statement that the project is either a distance learning or telemedicine facility as defined in § 1703.102. If the project provides both distance learning and telemedicine services, the applicant must identify the predominant use of the system.

(6) A general overview of the telecommunications system to be developed, including the types of equipment, technologies, and facilities used.

(7) A description of the participating hubs and end user sites and the number of rural residents which will be served by the proposed project at each end user site.

(8) The applicant must certify that facilities using financial assistance do not duplicate adequate established telemedicine services or distance learning services. RUS will make the final determination whether or not financial assistance requested by an applicant will duplicate such adequate established services.

(9) A listing of the location of each end user site [city, town, village, borough or rural area plus the state] discussing how the appropriate National School Lunch Program eligibility percentage was determined in accordance with § 1703.112. These percentages may be obtained from the State or local organization that administers the program and must be certified by that organization as being correct.

(c) Financial Information. The applicant must provide financial information to support the need for the funding requested for the project. It must show its financial capacity to carry out the proposed work, and show project feasibility. For educational institutions participating in a project application (including all members of a consortium), the financial data must reflect revenue and expense reports and balance sheet reports, reflecting net worth, for the most recent annual reporting period preceding the date of the application. For medical institutions participating in a project application (including all members of a consortium), the financial data must include income statement and balance sheet reports, reflecting net worth, for the most recent completed fiscal year preceding the date of the application. When the applicant is a partnership, company, corporation or other entity, current balance sheets, reflecting net worth, are needed from each of the entities that has at least a 20 percent interest in such partnership, company, corporation or other entity. When the applicant is a consortium, a current balance sheet, reflecting net worth, is needed from each member of the consortium and from each of the entities that has at least a 20 percent interest in such member of the consortium.

(1) Applicants must include sufficient pro-forma financial data which adequately reflects the financial capability of project participants and the project as a whole to continue a sustainable project for a minimum of 10 years after completion of the project. This documentation should include sources of sufficient income or revenues to pay operating expenses including telecommunications access and/or toll charges, system maintenance, salaries, training, and any other general operating expenses, and provide for replacement of depreciable items.

(2) For applicants requesting a loan and applicants who qualify for a loan or a combination loan/grant in accordance with § 1703.112, the documentation must demonstrate the ability to repay the loan. RUS will consider a secured loan guarantee by a third party as evidence of the ability of the applicant to repay a loan.

(3) For each hub and end user site, the applicant must identify and provide reasonable evidence of each source of revenue. If the projection relies on cost sharing arrangements among hub and end user sites, the applicant must provide evidence of agreements made among project participants.

(4) For applicants eligible under § 1703.103(a)(3), an explanation of the economic analysis justifying the rate structure to ensure that the benefit, including cost saving, of the financial assistance is passed through to the other persons receiving telemedicine or distance learning services.

(5) For RUS telecommunications and electric borrowers applying for a cost of money loan, the only financial information required in support of that application is the respective most recent Annual Report to RUS (i.e. RUS Form 479, Form 7, or Form 12).

(d) A statement of experience. The applicant must provide a written narrative (not exceeding three single spaced pages) describing its demonstrated capability and experience, if any, in operating an educational or health care endeavor and any project similar to the proposed project. Experience in a similar project is desirable but not required.

(e) Funding commitment from other sources. The applicant must provide evidence, in form and substance satisfactory to the Administrator, that all funds in addition to funds provided under this subpart are committed and will be used for the proposed project.

(f) Telecommunications System Plan. A Telecommunications System Plan, consisting of the following, is required. The items in paragraphs (f)(4) and (5) of this section are needed only when the applicant is requesting loan funds for telecommunications transmission facilities:

(1) The capabilities of the telecommunications terminal equipment, including a description of the specific equipment which will be used to deliver the proposed service. The applicant must document discussions with various technical sources which could include consultants, engineers, product vendors, or internal technical experts, provide detailed cost estimates for operating and maintaining the end user equipment and provide evidence that alternative equipment and technologies were evaluated.

(2) A listing of the proposed purchases or leases of telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite

ground station equipment, or any other elements of the telecommunications system designed to further the purposes of this subpart, that the applicant intends to build or fund using RUS financial assistance.

(3) A description of the consultations with the appropriate telecommunications carriers (including other interexchange carriers, cable television operators, enhanced service providers, providers of satellite services and telecommunications equipment manufacturers and distributors) and the anticipated role of such providers in the proposed telecommunications system.

(4) Results of discussion with local exchange carriers serving the project area addressing concerns in § 1703.107(c).

(5) The capabilities of the telecommunications transmission facilities, including bandwidth, networking topology, switching, multiplexing, standards and protocols for intra-networking and open systems architecture (the ability to effectively communicate with other networks). In addition, the applicant must explain the manner in which the transmission facilities will deliver the proposed services. For example, for medical diagnostics, the applicant might indicate whether or not a guest or other diagnosticians can join the network from locations off the network. For educational services, indicate whether or not all hub and end-user sites are able to simultaneously hear in real-time and see each other or the instructional material in real-time. The applicant must include detailed cost estimates for operating and maintaining the network, and include evidence that alternative delivery methods and systems were evaluated.

(g) Proposed evaluation methodology. The applicant must provide a proposed method of evaluating the success of the project in meeting the objectives of the program as set forth in § 1703.100 and § 1703.101 and the proposed scope of work.

(h) Compliance with other Federal statues and regulations. The applicant is required to submit evidence that it is in compliance with other Federal statues and regulations, as detailed in § 1703.33 as follows:

(1) Equal opportunity and nondiscrimination requirements;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs;

(5) Drug-free workplace;

(6) ''Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transaction'' (See 7 CFR 3017.510);

(7) Intergovernmental review of Federal programs if clearing house(s) exists for the state(s) in which project is located; and

(8) Restrictions on lobbying. For an application for funding in excess of $100,000, a certification statement, ''Certification Regarding Lobbying'' is required. If the applicant is engaged in lobbying activities , the applicant must submit a completed disclosure form, ''Disclosure of Lobbying Activities'' (see 7 CFR part 3018).

(i)(1) Environmental impact and historic preservation. The applicant must provide details of the project's impact on the environment and historic preservation. Grants and loans made under this part are subject to 7 CFR part 1794 which contains the policies and procedures of RUS for implementing a variety of Federal statues, regulations and executive orders generally pertaining to protection of the quality of the human environment that are listed in 7 CFR 1794.1. The application shall contain a separate section entitled ''Environmental Impact of the Project.''

(2) Environmental information. An ''Environmental Questionnaire,'' appendix A to this subpart, may be used by applicants to assist in complying with the requirements of this section. Copies of the Environmental Questionnaire are available from RUS.

(j) A completed Standard Form 424, ''Application for Federal Assistance,'' along with a board of directors resolution authorizing the funding request.

(k) Evidence of the applicant's legal existence and authority to enter into a grant and/or loan agreement with RUS and perform activities proposed under the grant or loan application.

(l) Evidence that the applicant is not delinquent on any obligation owed to the Federal government (7 CFR parts 3015 and 3016).

(m) Evidence that the applicant has consulted with the USDA State Director, Rural Development, concerning the availability of other sources of funding available at the state or local level.

(n) Evidence from the USDA State Director, Rural Development, that the application conforms with the State strategic plan as prepared under section 381D of the Consolidated Farm and Rural Development Act 7 U.S.C. 1921 et seq.). The applicant should indicate if such a plan does not exist.

(o) A depreciation schedule covering all assets of the project. Those assets for which financial assistance is being requested should be clearly indicated.

(p) Supplemental information. The applicant should provide any additional information it considers relevant to the project and likely to be helpful in determining the extent to which the proposed project would further the purposes of this subpart.

(q) Additional information requested by RUS. The applicant must provide any additional information the Administrator may consider relevant to the application and necessary to adequately evaluate the application and make funding decisions. The Administrator may also request modifications or changes, including changes in the amount of funds requested, in any proposal described in an application submitted under this subpart.

§ 1703.110 Conflict of interest.

At any time prior to the disbursement of a grant or loan awarded under this subpart, the Administrator may disqualify an otherwise eligible project whenever, in the judgment of the Administrator, the project would create a conflict of interest or the appearance of a conflict of interest. The Administrator will notify the applicant in writing of his/her intention to disqualify the project under this section and set forth the basis for his/her determination that a conflict of interest or appearance exists. Thereafter, the applicant will have 30 days from the date of such notice to file a written response with the Administrator. If the Administrator receives the applicant's response within the 30-day period, the Administrator will consider the information contained therein before making a final determination whether to disqualify the project. The Administrator will promptly notify the applicant of the final determination whether a conflict of interest or appearance of a conflict exists. If the determination is affirmative, the notice will also advise the applicant whether the project is disqualified or conditionally disqualified. If the project is conditionally disqualified, the notice will state under what circumstances the project may continue to be eligible for assistance under this subpart. The Administrator's decision under this section will be final.

§ 1703.111 [Reserved]

§ 1703.112 Determination of types of funding.

(a) To maximize the use of available funding and to obtain the maximum repayment to the Federal Government, RUS will determine if an applicant will

be awarded a grant, loan or a combination of both loans and grants based upon the following:

(1) The percentage of students eligible to participate in the National School Lunch Program in the areas where the end user sites comprising the project are located; and

(2) The applicant's ability to pay for the project.

(b) The methodology contained in this section will be used to evaluate the relative financial need of the applicant, community, and project. All applicants are required to provide the applicable percentage of students eligible to participate in the National School Lunch Program for each end user site which must be certified as being correct by the appropriate State or local organization administering the program. The type of financial assistance will be determined as follows:

(1) If the end user site(s) for the project have, or are located in school districts which have, from 0–32 percent student eligibility in the National School Lunch Program, the project qualifies for a loan.

(2) If the end user site(s) for the project have, or are located in school districts which have, from 33–60 percent student eligibility in the National School Lunch Program, the project qualifies for a loan and may be eligible for some grant funds.

(3) If the end user site(s) for the project have, or are located in school districts which have, from 61–100 percent student eligibility in the National School Lunch Program, the project qualifies for a grant. The applicant may indicate its desire to be considered for a loan or a combination loan and grant if denied a grant provided the financial data required in § 1703.109(c) indicates the ability to repay a loan. Grant applicants should indicate if they desire to be considered for a loan.

(c) The following guidelines will be used to determine the applicable National School Lunch Program eligibility percent for a particular end user site:

(1) Public schools or non profit private schools of high school grade or under will use the actual eligibility percentage for that particular school.

(2) Schools and institutions of higher learning ineligible to participate in the National School Lunch Program and non-school end user sites (medical facilities, libraries, etc.) will use the eligibility percentage of all students in the school district where the end user will be located.

(d) If all the end user sites in a proposed network or system fall within the same percentile category, the project will be eligible for the type of financial assistance set forth in paragraph (b) of this section.

(e) If end user sites fall within different percentile categories the eligibility percentages associated with each end user site will be averaged to determine the percentile category and type of financial assistance the applicant is eligible for. For purposes of averaging, if a hub is also utilized as an end user site, the hub will be considered as an end user site.

(f) For those applicants which qualify for a combination loan/grant, the Administrator will determine the amount of grant funding the applicant will receive, if any, based upon analysis of the financial condition of the applicant as reflected by the information submitted under § 1703.109(c). The minimum amount of grant funding will be $5,000.

(g) RUS will submit a letter to those applicants being offered financial assistance in the form of a loan, or a combination of a loan and grant, outlining terms and conditions of such assistance. The applicant will have 15 days from the date of the letter to accept the terms and conditions in the letter. If the applicant fails to respond within this time the Administrator may withdraw the offer of financial assistance and the applicant will have no right to appeal the withdrawal.

§ 1703.113 Application filing dates, location, processing, and public notification.

(a) Applications for funding under this subpart shall be submitted to the Administrator, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Washington, DC 20250–1590. Applications should be marked ''Attention: Assistant Administrator, Telecommunications Program''.

(b) Applications for loans can be submitted at any time. RUS will review each application for completeness in accordance with § 1703.109, and notify the applicant, within 15 working days of the receipt of the application, of the results of this review, citing any information which is incomplete. To be considered for loan funds during the fiscal year (FY) that the application is submitted, the applicant must submit any information needed to complete the application by June 30. If this review concludes that a loan is feasible and the application receives the required minimum number of points as determined using the scoring criteria in § 1703.117, the Administrator will immediately process the application. The minimum number of points required for a loan application to be immediately processed will be published in the **Federal Register** each fiscal year.

(c) Applications requesting grant funds must be submitted to RUS to arrive not later than May 31, 1997, if the applications are to be considered during FY 1997. Beyond FY 1997, all applications requesting grant funds must be submitted to RUS to arrive not later than April 30 if the applications are to be considered during the fiscal year the application is submitted. It is suggested that applications be submitted prior to the above deadline to ensure they can be reviewed and considered complete by the deadline. RUS will review each application for completeness in accordance with § 1703.109, and notify the applicant, within 15 working days of the receipt of the application, of the results of this review, citing any information which is incomplete. To be considered for grant funds, the applicant must submit the information to complete the application by May 31 in FY 97 and April 30 beyond FY 97. If the applicant fails to submit such information by the appropriate deadline, the application will be considered during the next fiscal year.

(d) The Administrator will publish, at the end of each fiscal year, a notice in the **Federal Register** of all completed applications receiving funding under this subpart. The Administrator will also make those applications available for public inspection at the U.S. Department of Agriculture, 1400 and Independence Avenue, SW., Washington, DC. For purposes of this paragraph, applications include any information not protected by the Privacy Act of 1974, 5 U.S.C. 552a, and any other information that has not been designated as proprietary information by the applicant.

(e) All applicants must submit an original and two copies of a completed application. A grant applicant must also submit a copy of the application to the State government point of contact, if one has been designated for the state, at the same time it submits an application to RUS. All applications must include the information described in § 1703.109.

§§ 1703.114–1703.116 [Reserved]

§ 1703.117 Criteria for scoring applications.

(a) *Criteria.* The criteria in this section will be used by the Administrator to score applications that have been determined to be in compliance with the requirements of this subpart.

Applicants shall address the following criteria:

(1) The need for services and benefits derived from services;

(2) The comparative rurality of the proposed project service area;

(3) The ability to leverage resources;

(4) Innovativeness of design;

(5) Connectivity with outside networks;

(6) The cost effectiveness of the design;

(7) Project participation in EZ/EC (Empowerment Zone and Enterprise Communities); and

(8) Project participation in Champion communities.

(b) *Scoring criteria*—(1) *The need for services and benefits derived from services.* (i) This criterion will be used by the Administrator to score applications based on the documentation submitted in the support of the funding application that reflects the need for services and benefits derived from the services proposed by the project. Up to 45 points can be assigned to this criterion.

(ii) The Administrator will consider the extent of the applicant's documentation explaining the economic, education or health care challenges facing the community; the applicants proposed plan to address these challenges; how the financial assistance can help; and why the applicant cannot complete the project without a loan or grant. The Administrator will also consider any support by recognized experts in the related educational or health care field, any documentation substantiating the educational and/or health care underserved nature of the applicant's proposed service area, and any justification for specific educational and/or medical services which are needed and will provide direct benefits to rural residents. Some examples of benefits to be provided by the project include, but are not limited to:

(A) Improved education opportunities for a specified number of students;

(B) Travel time and money saved by telemedicine diagnosis;

(C) Number of doctors retained in rural areas;

(D) Number of additional students electing to attend higher education institutions;

(E) Lives saved due to prompt medical diagnosis and treatment;

(F) New education courses offered, including college level courses;

(G) Expanded use of educational facilities such as night training;

(H) Number of patients receiving telemedicine diagnosis;

(I) Provision of training, information resources, library assets, adult education, lifetime learning, community use of technology, jobs, connection to region, nation, and world.

(iii) That rural residents, and other beneficiaries, desire the educational and/or medical services to be provided by the project (a strong indication of need is the willingness of local end users or institutions to pay, to the extent possible, for proposed services).

(iv) The project's development and support based on input from the local residents and institutions.

(v) The extent to which the application is consistent with the State strategic plan prepared by the Rural Development State Director of the United States Department of Agriculture.

(2) *The comparative rurality of the proposed project service area.* (i) The methodology contained in this section is used to evaluate the relative rurality (i.e. population) of service areas for various projects. Under this system, the end user sites and hubs (as defined in § 1703.102) contained within the proposed project service area are identified. Then, those locations are given a score according to the population of the area where the end user sites are located. Up to 35 points can be assigned to this criterion.

(ii) The following definitions are used in the evaluation of rurality:

(A) Exceptionally Rural Area means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 5,000 inhabitants.

(B) Rural Area means any area of the United States included within the boundaries of any incorporated or unincorporated city, village, or borough having a population over 5,000 and not in excess of 10,000 inhabitants.

(C) Urban Area means any area of the United States included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 10,000 inhabitants.

(iii) The applicant will receive points as follows:

(A) There are a total of 35 possible points for this criterion. The maximum number of points each end user site can receive is determined by dividing the total possible points for this criterion, 35, by the total number of end user sites. If a hub is utilized as an end user site, the hub will be considered as an end user site.

(B) If the end user site is located in an Exceptionally Rural Area, it will receive the maximum number of points each end user site. If the end user site is located in a Mid-Rural Area, it will receive 50 percent of the maximum number of points each end user site. If the end user site is located in an Urban Area, it will receive 0 percent of the maximum number of points each end user of the applicant can receive.

(C) The total points for each end user site will be added to reach a final point total for the project.

(D) An application must receive a minimum of 18 points under this criterion to be eligible for any financial assistance.

(3) *The ability to leverage resources.* (i) This section is used to evaluate the ability of the applicant to contribute financially to the project and to secure other non-Federal sources of funding. Documentation submitted in the support of the funding application should reflect any additional financial support for the project from non-Federal sources above the applicant's required percent matching of the RUS financial assistance as set forth in § 1703.104. The applicant must include evidence from authorized representatives of the sources that the funds are available and will be used for the proposed project—up to 35 points.

(ii) The applicant will receive points as follows:

(A) Matching for allowable financial assistance purposes greater than 30 percent, but less than or equal to 50 percent of the RUS financial assistance—10 points.

(B) Matching for allowable financial assistance purposes greater than 50 percent, but less than or equal to 100 percent of the RUS financial assistance—20 points.

(C) Matching for allowable financial assistance purposes greater than 100 percent, but less than or equal to 150 percent of the RUS financial assistance—25 points.

(D) Matching for allowable financial assistance purposes greater than 150 percent, but less than or equal to 200 percent of the RUS financial assistance —30 points.

(E) Matching for allowable financial assistance purposes greater than 200 percent of the RUS financial assistance—35 points.

(4) *Innovativeness of project.* This criterion will be used by the Administrator to score applications based on the documentation submitted in the support of the funding application that reflects the innovative nature of the project. The applicant should explain the extent to which, if any, the project is an innovative approach to either delivering or using telecommunications to address the needs of the community, and how the project differs in approach from the

typical educational or health care application of technology. Up to 20 points can be assigned to this criterion.

(5) *Connectivity with outside networks.* (i) This criterion will be used by the Administrator to score applications based on the documentation submitted in support of the funding application that reflects the extent to which the proposed project can be connected to other educational and/or health care networks. Up to 20 points can be assigned to this criterion.

(ii) Consideration will be given to the extent that the proposed project will interconnect with other existing networks at the regional, statewide, national or international levels. RUS believes that to the extent possible, educational and health care networks should be designed to connect to the widest practicable number of other networks that expand the capabilities of the proposed project, thereby affording rural residents opportunities that may not be available at the local level. The ability to connect to the internet alone can not be used as the sole basis to fulfill this criteria.

(iii) Consideration will also be given to the extent that facilities constructed with federal financial assistance, particularly financial assistance under this chapter provided to entities other than the applicant, will be utilized to extend or enhance the benefits of the proposed project.

(6) *Cost effective design.* (i) This criterion will be used by the Administrator to score applications based on the documentation submitted in the support of the funding application that reflects the cost efficiency of the project design. Up to 15 points can be assigned to this criterion.

(ii) Consideration will be given to the extent that the proposed technology or technologies for delivering the proposed educational and/or health care services for the project service area are the most cost effective for the project proposed. The application must contain information necessary for the Administrator to use accepted analytical and financial methodologies to determine whether the applicant is proposing the most cost-effective option. The Administrator will consider the applicant's documentation comparing various systems and technologies, whether the applicant's system is the most cost-effective system, and whether buying or leasing specific equipment is more cost effective. Points will be deducted from the scores of the applications that fail to utilize existing telecommunications facilities that could provide the transmission path for the needed services.

(7) *Project participation in EZ/ECs.* This criterion will be used by the Administrator to score applications based on the documentation submitted in support of the funding application that reflects the designation of Empowerment Zones and Enterprise Communities (EZ/EC) included as beneficiaries of the proposed project. Ten (10) points will be assigned if at least one end user site is located in an EZ/EC.

(8) *Project participation in Champion communities.* This criterion will be used by the Administrator to score applications based on the documentation submitted in support of the funding application that reflects the designation of Champion communities included as beneficiaries of the proposed project. Five (5) points will be assigned if at least one end user site is located in a Champion community.

§ 1703.118 Other application selection provisions.

(a) *Selection.* Applications will be selected for funding based on scores, availability of funds, and the provisions of this section. The Administrator will make determinations regarding the reasonableness of all numbers; dollar levels; rates; the nature and design of the project; cost; location; and other characteristics of the application and the proposed project to determine the number of points assigned to a grant application for all selection criteria. Joint applications submitted by multiple applicants as set forth in § 1703.113 will be rated as a single application.

(b) Regardless of the number of points an application receives in accordance with § 1703.117 or the feasibility of the proposed project, the Administrator may, based on a review of the applications in accordance with the requirements of this subpart:

(1) Limit the number of applications selected for projects located in any one state during a fiscal year;

(2) Limit the number of selected applications for a particular project;

(3) Select an application receiving fewer points than another higher scoring application if there are insufficient funds during a particular funding period to select the higher scoring application; provided, however, the Administrator may ask the applicant of the higher scoring application if it desires to reduce the amount of its application to the amount of funds available if, notwithstanding the lower grant amount, the Administrator determines the project is financially feasible in accordance with § 1703.109(d)(1) at the lower amount;

(4) Award a grant to an applicant whose application carries out the priorities listed in the scoring criteria in such a way to make the application unique; or

(5) Award a grant to an applicant which would normally qualify for other financial assistance, if the project achieves one or more of the following:

(i) Utilizes cutting edge technology to provide a solution to a unique problem;

(ii) Provides services otherwise not possible in an extremely isolated geographic area; or

(iii) Provides inordinate quantifiable benefit to rural communities relative to the amount of financial assistance requested.

(c) The Administrator will not approve an application if the Administrator determines that:

(1) The applicant's proposal does not indicate financial feasibility or is not sustainable in accordance with the requirements of § 1703.109(d)(1);

(2) The applicant's proposal indicates technical flaws, which, in the opinion of the Administrator, would prevent successful implementation, operation, or sustainability of the proposed project; or

(3) Any other aspect of the applicant's proposal fails to adequately address any requirements of this subpart or contains inadequacies which would, in the opinion of the Administrator, undermine the ability of the project to meet the general purpose of this subpart or comply with policies of the Distance Learning and Telemedicine Loan and Grant Program set forth in § 1703.101.

(d) The Administrator may reduce the amount of the applicant's grant award based on insufficient program funding for the fiscal year in which the project is reviewed, and/or offer the applicant loan funds in addition to the grant funds, if the Administrator determines that, notwithstanding a lower grant award, the project will show financial feasibility in accordance with § 1703.109(d)(1), and continues to meet all other provisions of this subpart. RUS will discuss its findings informally with the applicant and make every effort to reach a mutually acceptable agreement with the applicant. Any discussions with the applicant and agreements made with regard to a reduced grant amount will be confirmed in writing, and these actions shall be deemed to have met the notification requirements set forth in paragraph (e) of this section.

(e) The Administrator will provide the applicant an explanation of any determinations made with regard to paragraphs (c)(1) through (c)(3) of this section prior to making final project funding selections for the year. The

applicant will be provided 15 days from the date of the Administrator's letter to respond, provide clarification, or make any adjustments or corrections to the project. If, in the opinion of the Administrator, the applicant fails to adequately respond to any determinations or other findings made by the Administrator, the project will not be funded, and the applicant will be notified of this determination. If the applicant does not agree with this finding an appeal may be filed in accordance with § 1703.119.

§ 1703.119 Appeal provisions.

All qualifying applications under this subpart will be scored based on criteria in section § 1703.117. A determination will be made by the Administrator based on the highest ranking applications and the amount of funds available for grants and loans. All applicants will be notified in writing of the score each application receives, and included in this notification will be a tentative minimum required score to receive financial assistance. If the score received by the applicant could result in the denial of its application, or if its score, while apparently sufficient to qualify for financial assistance, may be surpassed by the score awarded to a competing application after appeal, the applicant may appeal its numerical scoring. Any appeal must be based on inaccurate scoring of the application by RUS and no new information or data that was not included in the original application will be considered. The appeal must be made in writing within 10 days after the applicant is notified of the scoring results. Appeals shall be submitted to the Administrator, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW, STOP 1590, Washington, DC 20250–1590. Thereafter, the Administrator will review the original scoring to determine whether to sustain, reverse or modify the original scoring determination. Final determinations will be made after consideration of all appeals. The Administrator's determination will be final. A copy of the Administrator's decision will be furnished promptly to the applicant. An appeal based solely upon the type of financial assistance the applicant qualifies for will not be considered.

§§ 1703.120–1703.121 [Reserved]

§ 1703.122 Further processing of selected applications.

(a) During the period between the submission of the application and the execution of implementing documents, the applicant must inform the Administrator if the project is no longer viable or the applicant no longer desires financial assistance for the project. If the applicant so informs the Administrator, the selection will be rescinded and written notice to that effect shall be sent promptly to the applicant.

(b) If an application has been selected and the nature of the project changes, the applicant may be required to submit a new application to the Administrator for consideration depending on the degree of change. A new application will be subject to review in accordance with this subpart. The selection may not be transferred to another project.

(c) If state or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 3 months of the Administrator's selection of the application, the Administrator may rescind the selection and written notice to that effect will be sent promptly to the applicant.

(d) Recipients of financial assistance will be required to submit RUS Form 479–A, ''Distance Learning and Telemedicine Technical Questionnaire.''

(e) After an applicant selected for financial assistance has submitted such additional information, if any, the Administrator determines is necessary for completing the financial assistance documents, the Administrator will send the documents to the applicant to execute and return to RUS.

(1) The financial assistance documents will include a letter of agreement for grants; loan documents, including third party guarantees, for loans; or any other legal documents the Administrator deems appropriate, including suggested forms of certifications and legal opinions.

(2) The letter of agreement and the loan documents will contain, among other things, conditions on the release or advance of funds and include at a minimum, a project description, approved purposes, the maximum amount of the funding, supplemental funds, required of the project and certain agreements or commitments the applicant may have proposed in its application. In addition, the loan documents will contain covenants and conditions the Administrator deems necessary or desirable to provide assurance that the loan will be repaid and the purposes of the loan will be accomplished.

(3) The recipient of a loan will be required to execute a security instrument in form and substance satisfactory to the Administrator.

(4) DLT borrowers must, before receiving any advances of loan funds, provide security that is adequate, in the opinion of the Administrator, to assure repayment, within the time agreed, of all loans to the borrower under Title XXIII. This assurance will generally be provided by a first lien upon all of the borrower's assets or such portion thereof as shall be satisfactory to the Administrator. The Administrator may consider the projected revenues from the facilities subject to the lien.

(5) Security may also be provided by third-party guarantees, letters of credit, pledges of revenue or other forms of security satisfactory to the Administrator.

(6) The mortgage, deed of trust, security agreement and other loan documents required by the Administrator in connection with loans under Title XXIII shall contain such pledges, covenants, and other provisions as may, in the opinion of the Administrator, be necessary or desirable to secure repayment of the loan.

(7) If the facilities financed do not constitute a complete operating system, the DLT borrower shall provide evidence demonstrating, to the Administrator's satisfaction, that the borrower has sufficient contractual or other arrangements to assure that the facilities financed will provide adequate and efficient service.

(f) Until the letter of agreement or loan documents have been executed and delivered by RUS and by the applicant, the Administrator reserves the right to require any changes in the project or legal documents covering the project to protect the integrity of the program and the interests of the United States Government.

(g) If the applicant fails to submit, within 120 calendar days from the date of the Administrator's selection of an application, all of the information that the Administrator determines to be necessary to prepare legal documents and satisfy other requirements of this subpart, the Administrator may rescind the selection of the application and written notice of such rescission will be sent promptly to the applicant.

§§ 1703.123–1703.125 [Reserved]

§ 1703.126 Disbursement of loan and grant funds.

(a) For financial assistance of $100,000 or greater, prior to the disbursement of funds, the recipient, if it is not a unit of government, will provide evidence of fidelity bond coverage as required by 7 CFR 3015.17.

(b) Financial assistance will be disbursed to recipients on a reimbursement basis, or with unpaid invoices for the eligible purposes set

forth in this subpart, by the following process:

(1) An SF 270, ''Request for Advance or Reimbursement,'' will be completed by the recipient and submitted to RUS not more frequently than once a month;

(2) After receipt of a properly completed SF 270, RUS will review for accuracy and if the form is satisfactory will schedule payment. Payment will ordinarily be made within 30 days; and

(3) For financial assistance approved during and subsequent to FY 1997, funds will be advanced in accordance to 7 CFR 1744.69.

(c) The recipient's share in the cost of the project will be disbursed in advance of financial assistance, or if the recipient agrees, on a pro rata distribution basis with financial assistance during the disbursement period. Recipient will not be permitted to provide its contribution at the end of the project.

(d) Concurrent grant and loan funds will be disbursed on a pro rata distribution basis.

§ 1703.127 Reporting and oversight requirements.

(a) A project performance activity report will be required of all recipients on an annual basis until the project is complete and the funds are disbursed by the applicant.

(b) A final project performance report will be required. It must provide an evaluation of the success of the project in meeting the objectives of the program. The final report may serve as the last annual report.

(c) RUS will monitor recipients as the Administrator determines necessary to assure that projects are completed in accordance with the approved scope of work and that funds are expended for approved purposes.

(d) Recipients shall diligently monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Recipients are to submit an original and one copy of all reports submitted to RUS. The project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(3) Objectives and timetable established for the next reporting period.

§ 1703.128 Audit requirements.

The grant and DLT borrower loan recipients will provide an audit report in accordance with 7 CFR part 3015, subpart I. For grant recipients the audit requirements only apply to the year(s) in which grant funds are expended. For DLT borrowers the audit requirements apply until the loan is repaid. Audits must be prepared in accordance with generally accepted government auditing standards (GAGAS) using publication, ''Standards for Audit of Governmental Organization, Programs, Activities and Functions.'' RUS Telecommunications/ Electric borrowers receiving cost of money loans will be subject to the same audit requirements for these loans as are provided for in 7 CFR part 1773.

1703.129 Repayment of loans.

The term of cost of money loans will be based on the life of the facilities to be financed, not to exceed 10 years. If the recipient requests, a one year deferment of principal will be included. In special hardship cases, which the recipient must justify, the Administrator may approve a two year deferment of principal. Interest on the loan will be due and payable during the principal deferral period. RUS will establish uniform debt service payments based on the total amortization period.

§§ 1703.130–1703.134 [Reserved]

§ 1703.135 Grant and loan administration.

(a) The Administrator will review recipients as necessary to determine whether funds were expended for approved purposes. The recipient is responsible for ensuring that the project complies with all applicable regulations, and that the financial assistance is expended only for approved purposes. The recipient is responsible for ensuring that disbursements and expenditures of funds are properly supported by invoices, contracts, bills of sale, canceled checks, or other appropriate forms of evidence, and that such supporting material is provided to the Administrator, upon request, and is otherwise made available, at the recipient's premises, for review by the RUS representatives, the recipient's certified public accountant, the office of Inspector General, U. S. Department of Agriculture, the General Accounting Office and any other officials conducting an audit of the recipient's financial statements or records, and program performance for the funding awarded under this subpart. The recipient will be required to permit RUS to inspect and copy any records and documents that pertain to the project.

(b) Grants provided under this program will be administered under, and are subject to 7 CFR parts 3015 through 3018, as appropriate. 7 CFR parts 3015 and 3016 subject grantees to a number of requirements which cover, among other things, financial reporting, accounting records, budget controls, record retention and audits, bonding and insurance, cash depositories for grant funds, grant related income, use and disposition of real property and/or equipment purchased with grant funds, procurement standards, allowable costs for grant related activities, and grant close-out procedures.

§ 1703.136 Changes in project objectives or scope.

The recipient will obtain prior approval for any material change to the scope or objectives of the approved project, including changes to the scope of work or budget. Failure to obtain prior approval of changes can result in suspension or termination of funds.

§ 1703.137 Grant and loan termination provisions.

(a) *Termination for cause.* The Administrator may terminate any financial assistance in whole, or in part, at any time before the date of completion of funding disbursement, whenever it is determined that the recipient has failed to comply with the conditions of the financial assistance. The Administrator will promptly notify the recipient in writing of the determination and the reasons for the termination, together with the effective date.

(b) *Termination for convenience.* The Administrator or the recipient may terminate financial assistance in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with further expenditure of funds. The two parties will agree upon termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated. The recipient will not incur new obligations for the terminated portion after the effective date, and will cancel as many outstanding obligations as possible. The Administrator will allow full credit to the applicant for the Federal share of the noncancelable obligations, properly incurred by the recipient prior to termination.

§§ 1703.138–1703.139 [Reserved]

§ 1703.140 Expedited telecommunications loans.

General. The Administrator will expedite consideration and determination of an application for a loan or a request for advance of funds submitted by an RUS telecommunications borrower that supports the project seeking financial assistance under this subpart. See 7 CFR part 1737 for loans and 7 CFR part 1744 for advances under this section.

Appendix A to Subpart D of Part 1703—Environmental Questionnaire

Note: It is extremely important to respond to all questions completely to ensure expeditious processing of the Distance Learning and Telemedicine application. The information herein is required by Federal law.

Important: *Any activity related to the project that may adversely affect the environment or limit the choice of reasonable development alternatives shall not be undertaken prior to the completion of Rural Utilities Service's environmental review process.*

Legal Name of Applicant _____

Signature (Type/Sign/Date) _____

The applicant's representative certifies, to the best of his/her knowledge and belief, that the information contained herein is accurate. Any false information may result in disqualification for consideration of the grant or rescission of the grant.

I. Project Description—Detailing construction, including, but not limited to, internal modifications of existing structures, and/or installation of telecommunications transmission facilities (defined in 7 CFR 1703.102), including satellite uplinks or downlinks, microwave transmission towers, and cabling.

1. Describe the portion of the project, and site locations (including legal ownership of real property), involving internal modifications, or equipment additions to buildings or other structures (e.g., relocating interior walls or adding computer facilities) for each site.

2. Describe the portion of the project, and site locations (including legal ownership or real property), involving construction of transmission facilities, including cabling, microwave towers, satellite dishes; or, disturbance of property of .99 acres or greater for *each* project site.

3. Describe the nature of the proposed use of the facilities, and whether any hazardous materials, air emissions, wastewater discharge or solid waste will result.

4. State whether or not any project site(s) contain or are near properties listed or eligible for listing in the National Register of Historic Places, and identify any historic properties (The applicant must supply evidence that the State Historic Preservation Officer (SHPO) has cleared development regarding any historical properties).

5. Provide information whether or not any facility(ies) or site(s) are located in a 100-year floodplain. A National Flood Insurance Map should be included reflecting the location of the project site(s).

II. For projects which involve construction of transmission facilities, including cabling, microwave towers, satellite dishes, or physical disturbance of real property of .99 acres or greater, the following information must be submitted (7 CFR 1703.109(i)(3)).

1. A map (preferably a U.S. Geological Survey map) of the area for each site affected by construction (include as an attachment).

2. A description of the amount of property to be cleared, excavated, fenced or otherwise disturbed by the project and a description of the current land use and zoning and any vegetation for each project site affected by construction.

3. A description of buildings or other structures (i.e., transmission facilities), including dimensions, to be constructed or modified.

4. A description of the presence of wetlands or existing agricultural operations and/or threatened or endangered species or critical habitats on or near the project site(s) affected by construction.

5. Describe any actions taken to mitigate any environmental impacts resulting from the proposed project (use attachment if necessary).

Note: The applicant may submit a copy of any environmental review, study, assessment, report or other document that has been prepared in connection with obtaining permits, approvals or other financing for the proposed project from State, local or other Federal bodies. Such material, to the extent relevant, may be used to meet the requirements herein.

Dated: April 7, 1997.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 97–9422 Filed 4–15–97; 8:45 am]

BILLING CODE 3410–15–P

Federal Register

Wednesday
April 16, 1997

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 357

Regulations Governing Book-Entry Treasury Bonds, Notes and Bills; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

Regulations Governing Book-Entry Treasury Bonds, Notes and Bills

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Department) or (Treasury) is issuing in final form an amendment to its regulations governing book-entry Treasury Bonds, Notes and Bills to reduce the number of days required for processing transaction requests affecting payment instructions, transaction requests affecting reinvestments on Treasury bills, and for the receipt of evidence supporting such transaction requests within the TREASURY DIRECT system from 20 calendar days to 10 business days. This change will benefit the TREASURY DIRECT investor by giving such investor more time prior to a payment or maturity date to submit a transaction request affecting payment instructions, a transaction request affecting reinvestment of a bill, and evidence in support of such transaction requests, and will make the TREASURY DIRECT system a more viable alternative to TRADES, the commercial book-entry system for holding Treasury securities. In addition, Treasury is studying other possible changes to TREASURY DIRECT, including the possibility that investors could hold stripped securities in the TREASURY DIRECT system.

EFFECTIVE DATE: April 16, 1997.

FOR FURTHER INFORMATION CONTACT: Maureen Parker, Director, Division of Securities Systems, Bureau of the Public Debt (304) 480–7761; Susan Klimas, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt (304) 480–5192.

SUPPLEMENTARY INFORMATION: This final rule amends the general regulations governing book-entry Treasury Bonds, Notes and Bills to change the number of days required for the receipt of transaction requests within the TREASURY DIRECT system which affect payment instructions from not less than 20 calendar days to not less than 10 business days preceding the next payment date. This final rule also changes the number of days required by the Department to receive evidence in support of a transaction request before the maturity date of a security from at least 20 calendar days to at least 10 business days. Thirdly, this rule changes the number of days required to receive a transaction request to reinvest the proceeds of a Treasury bill, or a request to revoke a previous direction to reinvest such bill from not less than 20 calendar days to not less than 10 business days prior to the maturity date of the bill. The Department has reserved the right to act on any transaction request or evidence in support of such request received less than 10 calendar days prior to the next payment date if, in its discretion, sufficient time remains for processing.

Procedural Requirements

It has been determined that this final rule does not meet the criteria for a ''significant regulatory action,'' as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This final rule relates to matters of public contract and procedures for U.S. securities. Accordingly, pursuant to 5 U.S.C. 553(a)(2), the notice, public comment and delayed effective date provisions of the Administrative Procedure Act do not apply. As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no new collections of information contained in this final rule, therefore, the Paperwork Reduction Act (44 U.S.C. 3504(h)) does not apply.

List of Subjects in 31 CFR Part 357

Banks, Banking, Bonds, Federal Reserve System, Government securities.

Dated: April 4, 1997.

Gerald Murphy,

Fiscal Assistant Secretary.

For the reasons set out in the preamble, 31 CFR part 357 is amended as follows:

PART 357—GENERAL REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS

1. The authority citation for part 357 continues to read as follows:

Authority: 31 U.S.C. Chapter 31, 5 U.S.C. 301 and 12 U.S.C. 391.

2. Section 357.3 is amended by adding the following definition to read as follows:

§ 357.3 Definitions.

In this part, unless the context indicates otherwise:

* * * * *

Business day means any day other than a Saturday, Sunday, or other day on which the Federal Reserve Banks are not open for business.

* * * * *

3. Section 357.27 is amended by revising paragraph (b), to read as follows:

§ 357.27 Reinvestment.

* * * * *

(b) *Treasury bills.* A request by an owner for a single or successive reinvestment of a Treasury bill must be made in accordance with the terms prescribed on the tender form submitted at the time of purchase of the original bill, or by a subsequent transaction request received not less than ten (10) business days prior to the maturity date of the bill. A request to revoke a direction to reinvest the proceeds of a bill must be received by the Department not less than ten (10) business days prior to the maturity date of the bill. If either a request for reinvestment or revocation of a reinvestment request is received less than ten (10) business days prior to maturity of the original bill, the Department may in its discretion act on such request if sufficient time remains for processing.

* * * * *

4. Section 357.29 is amended by revising the first three sentences to read as follows:

§ 357.29 Time required for processing transaction request.

For purposes of a transaction request affecting payment instructions with respect to a security, a proper request must be received not less than ten (10) business days preceding the next payment date. If a transaction request is received less than ten (10) business days preceding a payment date, the Department may in its discretion act on such request if sufficient time remains for processing. * * *

5. Section 357.30 is amended by revising the first sentence to read as follows:

§ 357.30 Cases of delay or suspension of payment.

If evidence required by the Department in support of a transaction request is not received by the Department at least ten (10) business days before the maturity date of the security, or if payment at maturity has been suspended pursuant to § 357.26(d), then, except as provided in § 357.27, in cases of reinvestment, the Department will redeem the security and hold the redemption proceeds in the same form of registration as the security redeemed, pending further disposition. * * *

[FR Doc. 97–9543 Filed 4–15–97; 8:45 am]

BILLING CODE 4810–39–P

Federal Register

Wednesday
April 16, 1997

Part IV

Environmental Protection Agency

40 CFR Part 80

Fuels and Fuel Additives; Amendments to the Enforcement Exemptions for California Gasoline Refiners; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5812–2]

Fuels and Fuel Additives; Amendments to the Enforcement Exemptions for California Gasoline Refiners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to amend certain requirements of the reformulated gasoline (RFG) regulations which are applicable to California gasoline refiners, importers and oxygenate blenders. These amendments will reduce the burden associated with the overlapping California and federal regulations of gasoline refiners and oxygenate blenders located in California and importers of California gasoline. The first proposed amendment would allow California gasoline refiners, importers, and oxygenate blenders to substitute the California RFG test methods for federal RFG test methods for their production of gasoline used in California and conventional gasoline used outside of California. The second proposed amendment would allow California gasoline refiners, importers and oxygenate blenders to retain the current exemption from various federal recordkeeping, reporting, and other enforcement-related provisions if they produce California RFG, using one of the California ''alternative'' certification methods and containing less oxygen than the federal RFG oxygen standard, if it is supplied to areas within California that are not required to receive federal RFG. The California gasoline refiners, importers and oxygenate blenders would conduct an annual gasoline quality survey for the federally–covered RFG areas of California to ensure the gasoline in each federally–covered RFG area is in compliance with the federal oxygen standard. The third proposed amendment would correct an omission in existing 40 CFR 80.81(e)(1). The fourth proposed amendment would permit a refiner of California gasoline to sample and test at off-site tankage that is approved by the California Air Resources Board (CARB) as part of the refiner's ''production facility'' if certain conditions are met. EPA believes that these proposed changes will grant refiners flexibility without any anticipated adverse environmental impact.

DATES: Comments on this proposed rule must be received by May 16, 1997. EPA does not plan to hold a public hearing on this proposed rule, unless one is requested. If a request by May 1, 1997, a public hearing will be held. If such a hearing is held, comments must be received within 30 days of the date of such hearing.

ADDRESSES: Written comments on this proposed action should be addressed to Public Docket No. A–97–06, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, SW, Washington, D.C. 20460. Documents related to this rule have been placed in public dockets A–97–06 and may be inspected between the hours of 8:00 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material. Those wishing to notify EPA that they request an opportunity for a public hearing on this action should contact Anne-Marie C. Pastorkovich, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 233–9013.

FOR FURTHER INFORMATION CONTACT: Anne-Marie Cooney Pastorkovich, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 233–9013.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Regulated categories and entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Refiners, importers and oxygenate blenders in California.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this action, one should carefully examine the RFG provisions at 40 CFR part 80, particularly § 80.81 dealing specifically with California gasoline. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. RFG Standards and California Covered Areas

Section 211(k) of the Clean Air Act (the Act) requires EPA to establish requirements for reformulated gasoline (RFG) to be used in specified ozone nonattainment areas (federally-covered areas), as well as ''anti-dumping'' requirements for non-reformulated, or conventional, gasoline used in the rest of the country, beginning in January 1995. The RFG covered areas in California are Los Angeles and San Diego, and Sacramento. The Act requires that RFG reduce ozone forming volatile organic compound (VOC) and toxics emissions from motor vehicles, not increase emission of oxides of nitrogen (NO_X), and meet certain content standards for oxygen, benzene and heavy metals. The relevant regulations for RFG and conventional gasoline may be found at 40 CFR part 80, subparts D, E, and F.[1]

B. Exemptions Specifically Related to California Gasoline

On September 18, 1992, the California Air Resources Board (CARB) adopted regulations requiring reformulation of California gasoline. The CARB regulations established a comprehensive set of gasoline specifications designed to achieve reductions in emissions of VOCs, NO_X, carbon monoxide (CO), sulfur dioxide, and toxic air pollutants from gasoline-fueled vehicles.[2] The CARB regulations set standards for eight gasoline parameters—sulfur, benzene, olefins, aromatic hydrocarbons, oxygen, Reid vapor pressure (RVP), and distillation temperatures for the 50 percent and 90 percent evaporation points (T–50 and T–90, respectively)—applicable starting March 1, 1996 for all gasoline in the California distribution network (except for gasoline being exported from California). The CARB regulations also provide for the production and sale of alternative gasoline formulations, with certification under the CARB program based on a predictive model or vehicle emission testing.[3]

During the federal RFG rulemaking, and in response to comments by California refiners, EPA concluded (1) that VOC and toxics emission reductions resulting from the California Phase 2 standards would be equal to or more stringent than the federal Phase I RFG standards (applicable from January

[1] See 59 FR 7812 (February 16, 1994).

[2] See Title 13, California Code of Regulations sections 2250–2272 (as amended January 26, 1996).

[3] *Id.*, sections 2265 and 2266.

1, 1995 through December 31, 1999), (2) that the content standards for oxygen and benzene under California Phase 2 would in practice be equivalent to the federal content standards, and (3) that the CARB's compliance and enforcement program is designed to be sufficiently rigorous.[4] As a result, 40 CFR 80.81 exempts certain refiners, importers and oxygenate blenders of California Phase 2 gasoline (hereafter referred to as ''refiners'') from a number of federal RFG and conventional gasoline provisions intended to demonstrate compliance with the federal standards.[5] While the federal RFG and conventional gasoline standards continue to apply in California, refiners of gasoline sold in California are exempt in most cases from various enforcement-related provisions. California refiners are not exempt from these federal enforcement requirements with regard to gasoline that is delivered for use outside California, because the California Phase 2 standards and the CARB enforcement program do not cover gasoline exported from California.

In letters of June 15, August 3 and November 10, 1995, the Western States Petroleum Association (WSPA), on behalf of gasoline refiners in California, petitioned EPA to revise the exemption provisions at 40 CFR 80.81 to provide additional flexibility. The three principle areas discussed in the petition are the gasoline testing methods, the standard for Reid vapor pressure (RVP), and production of gasoline not meeting the federal standard for oxygen content. In February 1996, EPA notified WSPA that EPA would initiate rulemaking to address these issues.[6] Since the California Phase 2 program was scheduled to begin March 1, 1996, EPA announced that it would grant California refiners temporary relief through specific exemptions from enforcement related to test methods, oxygen content of gasoline not used in the RFG areas, and RVP until the rulemakings could be completed.

A final rule related to the RVP standard was published as a direct final rule in the **Federal Register** on May 8, 1996, and became effective on July 8, 1996.[7]

Today's proposal addresses the remaining two issues: gasoline testing methods and the use in conventional gasoline areas of gasoline certified by California that does not meet the federal RFG standard for oxygen content. EPA is proposing changes similar to the temporary enforcement exemptions granted to the California refiners in its February 1996 letter.

III. Description of Proposed Action

A. Testing Methods

Both the federal RFG and the California Phase 2 programs specify testing methods to demonstrate compliance with the standards applicable under each programs. However, in the case of the tests for four parameters (benzene, sulfur, oxygen, and aromatics) the methods[8] specified under the two programs are different.

The 40 CFR 80.81(h) exemption in the federal RFG regulation allows California refiners to use the California test methods prescribed in Title 13, California Code of Regulations, sections 2260 *et seq.*, instead of the federal test methods prescribed at 40 CFR 80.46, when producing California Phase 2 gasoline that is used in California. Therefore, California refiners may use either the federal or CARB methods for gasoline used within the state. However, under existing federal regulations, California refiners are still required to use the federal test methods prescribed at 40 CFR 80.46 for gasoline that is used outside California, including conventional gasoline subject to the anti-dumping standards specified at 40 CFR 80.101.[9]

WSPA, on behalf of California refiners, has requested that EPA extend the test method exemption at 40 CFR 80.81(h) to also cover the gasoline produced by California refiners that is exported from California to other states. WSPA asked for this change because a refiner who is utilizing the flexibility of the CARB testing methods for gasoline sold within California, would have to implement federal test methods to certify the same gasoline for export to surrounding states.

EPA believes that WSPA has raised a valid concern and that, under certain conditions, it may be appropriate to allow the use of non-federal test methods for gasoline exported from California. Absent such relief, California refiners who export gasoline to other states are required to certify such gasoline using federal testing methods. Both ''downgraded'' RFG and conventional gasoline are exported from California. If a California refiner chooses to utilize the flexibility of the CARB testing methods, they must also implement the federal test methods in order to certify gasoline for distribution outside California.

EPA believes that the standards under the California Phase 2 program are expected to result in lower emissions than will result from federal RFG and, as discussed below, there may be emissions benefits for areas receiving ''downgraded'' California RFG. Moreover CARB is expected to enforce these standards in a comprehensive, aggressive manner that will result in high compliance. The Agency does not believe that any environmental detriment would occur from allowing the use of the CARB test methods for gasoline produced in California, but shipped out of state for use in non-RFG areas. Because some of the gasoline shipped out of California as conventional gasoline may be ''downgraded'' RFG or gasoline meeting California Phase 2 standards, an environmental benefit may be expected for areas receiving such gasoline exported from California. Thus, allowing flexibility in testing method for California refiners might actually produce an environmental benefit to surrounding areas, because such flexibility would make it easier and more economical for California refiners to export cleaner gasoline.

In its February 29, 1996 response to WSPA, EPA indicated its intention to change the federal RFG regulations to allow additional testing flexibility for California refiners and immediately gave California refiners additional flexibility for a limited time. In that letter, EPA stated that it will not enforce the requirement at 40 CFR 80.65(e)(1) and 40 CFR 80.101(i)(1)(i)(A) to test gasoline using the federal test methods specified under 40 CFR 80.46 for benzene, sulfur, oxygen or aromatics,

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[4] See 59 FR 7758, 7759 (February 16, 1994).

[5] Specifically, the federal RFG regulations at § 80.81 provide that, subsequent to March 1, 1996 (the start of the California Phase 2 program), the specified parties are exempt from meeting the enforcement requirements dealing with: compliance surveys (§ 80.68), independent sampling and testing (§ 80.65(f)), designation of gasoline (§ 80.65(d)), marking of conventional gasoline (§§ 80.65(g) and 80.82), downstream oxygenate blending (§ 80.69), record keeping (§§ 80.74 and 80.104), reporting (§§ 80.75 and 80.105), product transfer documents (§ 80.77), parameter value reconciliation requirements (§ 80.65(e)(2)), reformulated gasoline and RBOB compliance requirements (§ 80.65(c)), annual compliance audit requirements (§ 80.65(h)), and compliance attest engagement requirements (subpart F). Various restrictions apply to the exemptions, and the exemptions do not apply after December 31, 1999.

[6] See letter from Mr. Steve Herman, Assistant Administrator for Enforcement and Compliance Assurance, EPA, to Mr. Douglas Henderson, Executive Director, Western States Petroleum Association, dated February 29, 1996. A copy of this letter has been placed in the docket at the location listed in the **ADDRESSES** section.

[7] ''Fuels and Fuel Additives—Reformulated Gasoline Sold in California; Reid Vapor Pressure lower limit adjustment—Direct Final Rule,'' 61 FR 20736 (May 8, 1996).

[8] *See* 40 CFR 80.46(a),(e), (f) and (g) for Federal RFG test method requirements.

[9] EPA estimates that the portion of gasoline exported from California and used in neighboring states is about twelve percent of the total California gasoline production and imports.

with regard to gasoline that is produced in or imported into California but that is used outside California.

In order to qualify for this enforcement relief, the refiner or importer must meet certain conditions, designed to ensure that only gasoline produced by refiners or importers subject to CARB enforcement, and that is sold in Federal conventional gasoline areas outside California, is covered by this flexibility and to ensure that only gasoline meeting RFG standards will actually be sold in Federal RFG areas. Furthermore, it is necessary to establish equivalency between CARB and Federal test method results, since the methods themselves are not necessarily equivalent and therefore different methods (if not correlated) would yield different results. In the absence of correlation, the possibility of one fuel having more than one value associated with it could cause disruption and confusion in the distribution system. EPA believes that the conditions, as described in the next paragraph, are necessary to protect the environmental benefits associated with the Federal RFG and anti-dumping program.

To qualify, the gasoline must be produced at a refinery located in California at which gasoline meeting the California Phase 2 standards and requirements is produced, or the gasoline must be imported into California from outside the United States as California Phase 2 gasoline (i.e., gasoline that meets the standards and requirements of the California Phase 2 program). When exported from California, such gasoline must be classified as federal conventional gasoline, and may not be classified as federal RFG. Furthermore, the refiner must correlate the results from any non-federal test method to the method specified under 40 CFR 80.46 for any gasoline that is used outside California, and such correlation must be demonstrated to EPA upon request.

The temporary enforcement flexibility described above and in EPA's February 29, 1996 letter will expire at the conclusion of this rulemaking (i.e. upon the effective date of the final rule).

EPA is proposing today to amend 40 CFR 80.81 to incorporate the enforcement flexibility regarding test methods that EPA temporarily granted in its February 29, 1996 letter to WSPA. EPA is proposing this action because the Agency believes that it may result in lower compliance costs and greater flexibility for California refiners and because there is no expected adverse environmental impact from this proposed action.

B. Standard for Oxygen

Section 211(k) of the Clean Air Act requires that the RFG standard of 2.0 weight percent (wt%) minimum oxygen must be met in each federally-covered RFG area. When EPA promulgated the California enforcement exemptions at 40 CFR 80.81, the statewide standards for California Phase 2 gasoline would have been equal to or more stringent than all federal RFG standards. With regard to oxygen content, the California Phase 2 standards included a statewide flat limit of 1.8 to 2.2 wt% oxygen that EPA considered, in practice, to be equivalent to the federal standard of 2.0 wt% minimum. As a result, EPA did not need to distinguish between California Phase 2 gasoline used in the federally-covered RFG areas within California from the California Phase 2 gasoline used in the other areas of California, in order to have confidence that RFG standards would be met in each federally covered RFG area in California.

The final California Phase 2 requirements were changed, however, and now allow gasoline that does not meet the federal RFG standard for oxygen. Under two alternative California certification methods, the California predictive model and the vehicle emissions testing method, there is no minimum oxygen content requirement for summertime California Phase 2 gasoline.[10] Under 40 CFR 80.81(e)(2), certain enforcement exemptions are withdrawn if a California refiner uses one of the alternative California certification methods, unless within 30 days of receiving the California certification it notifies EPA and demonstrates that its gasoline meets all federal RFG per-gallon standards, including the 2.0 weight % oxygen standard.

Therefore, in order to retain the enforcement exemptions, 40 CFR 80.81(e)(2) currently requires that all California Phase 2 gasoline produced by a refiner, regardless of whether it is sold in a federally-covered RFG area, must meet the federal RFG standard for oxygen content. Because neither of the two alternative California certification methods ensure that the federal oxygen content standard will be met, except during designated winter months, a refiner that uses an alternative California certification method must either additionally notify and demonstrate to EPA that its gasoline meets the federal RFG standard for oxygen content or lose its eligibility for certain federal exemptions under 40 CFR 80.81. This loss of eligibility applies even if the gasoline not meeting the federal RFG standard for oxygen content is being distributed only to those areas of California that are not federally-covered RFG areas.

In its petition, WSPA asked EPA to amend the enforcement exemption provisions to allow California refiners to supply California Phase 2 gasoline containing less than 2.0 wt% oxygen to markets within California that are not federally-covered RFG areas without having to comply with the notification and demonstration requirements of 40 CFR 80.81(e)(2) and without losing the federal enforcement exemptions. In its February 29, 1996 response to WSPA, EPA said it is appropriate to amend 40 CFR 80.81, provided that annual gasoline quality surveys for oxygen content are conducted in each federally-covered RFG area, in order to ensure the gasoline in each federally-covered RFG area in California is in compliance with the federal oxygen content standard. EPA reached these conclusions because the statewide California Phase 2 standards, with the exception of oxygen content, are more stringent than the standards for federal RFG, including any gasoline formulation certified using the alternative methods. In addition, EPA believes that these standards will be appropriately enforced by CARB. EPA believes that the California Phase 2 program provides emission reductions that equal or exceed that of the federal Phase I RFG program, except for the oxygen content requirements. EPA concluded that the federal RFG oxygen requirements do not have to be met in areas of California that are not subject to the federal RFG standards, in order to ensure compliance with the oxygen requirements for areas that are subject to the federal RFG standards. The annual compliance survey is a more appropriate mechanism to ensure such compliance under these circumstances.

Consistent with, and as described in, the February 29, 1996 letter, EPA is proposing to amend 40 CFR 80.81 to allow refiners to produce California Phase 2 gasoline containing less than 2.0 wt% oxygen for use outside the federally-covered RFG areas in California, provided appropriate annual gasoline quality surveys for oxygen are conducted in each federally-covered RFG area in California. These surveys must show an average oxygen content in each covered area of at least 2.0 wt%. While EPA could require that all gasoline batches being produced for the federally-covered RFG areas be tested for oxygen content at the refinery, or

[10] See Title 13, California Code of Regulations, section 2262.5 for the oxygen standards, section 2265 for the alternative predictive model method, and section 2266 for the alternative vehicle emission testing method.

prior to importation as applicable, such testing would not ensure that all gasoline being sold in the federally-covered RFG areas contains at least 2.0 wt% oxygen. Even though each refinery might meet its refinery gate standard for oxygen on average, some areas might still receive RFG with relatively low oxygen content while others might receive RFG with relatively high oxygen content. The surveys are designed to ensure that all Federal RFG program areas receive RFG that meets at least the minimum required oxygen standard.

As in the federal RFG program outside of California, the compliance surveys appear to be the most practical method to assure that, on average, the federally-covered RFG areas in California receive gasoline that meets the federal standard for oxygen content. The federal RFG program at 40 CFR 80.67 allows refiners, importers, and oxygenate blenders to meet certain federal RFG standards on average, rather than on a per-gallon basis for each batch of gasoline. The requirement must then be met on average, over the entire production, without any averaging for each specific covered area to which the gasoline is distributed.

Refiners, importers and oxygenate blenders producing gasoline to meet standards on average are allowed to produce some batches of gasoline that are less stringent than the averaging standards (within the limits of a per-gallon minimum or maximum standard, as applicable). But they must also produce some batches of gasoline that are more stringent than the averaging standards, such that on average, the applicable averaging standard is met. The averaging standards are somewhat more stringent than the per-gallon standard (e.g., the oxygen content averaging standard is 2.1 wt%, and the per-gallon standard is 2.0 wt%). It is expected that, if all refiners meet either the per-gallon standards or the averaging standards, the covered areas receiving their gasoline should achieve an average oxygen content no lower than would occur without the allowance for such averaging, based on the extensive fungible distribution system for gasoline products.

Because many gasoline distribution systems are fungible, some uncertainty exists as to where each batch of gasoline from each supplier is ultimately distributed, and what batches, or portions of batches, from each supplier that each covered area actually receives. For example, under the averaging program, the possibility still exists that one or more covered areas may receive too many batches of RFG that have a relatively low oxygen content (e.g. greater than or equal to 1.5 wt%, but less than 2.0 wt%), so that the required oxygen levels will not have been achieved in that area.

Consequently, the federal RFG program at 40 CFR 80.67 requires compliance surveys under 40 CFR 80.68 for refiners that elect to meet the standards on average under 40 CFR 80.41(b), (d) or (f), as applicable, rather than to meet the per-gallon standards for each batch of gasoline under 40 CFR 80.41(a), (c), or (e), as applicable. In general, the compliance surveys are to ensure that each covered area receives gasoline that cumulatively (from all suppliers and across time) has the same oxygen content it would have if averaging was not allowed. However, the federal RFG regulations at 40 CFR 80.81(b)(1) exempts refiners of California gasoline (with respect to California gasoline) from the compliance survey provisions at 40 CFR 80.68, for the reasons described earlier.

In response to the WSPA request concerning oxygen content requirements in California and the changes in California Phase 2 standards regarding oxygen content, EPA has reconsidered the limited use application of the compliance survey provisions. EPA believes that a yearly survey program, such as that required under 40 CFR 80.68 for averaging under the federal RFG program, along with other program requirements (such as compliance by each refinery separately), provides the most flexible alternative to refiners and the most assurance to EPA that complying gasoline is actually being sold in the federally-covered RFG areas.

As stated in its February 29, 1996 response to WSPA, EPA decided to allow California refiners to produce gasoline that contains less than 2.0 wt% oxygen for use outside the federally-covered RFG areas, until appropriate amendments to the RFG requirements were been published in the **Federal Register** and become effective. In particular, EPA said it will not enforce the requirement at 40 CFR 81(e)(2) that California refiners must demonstrate that federal RFG per-gallon standards are met on each occasion California Phase 2 gasoline is certified under Title 13, California Code of Regulations, section 2265 (dealing with gasoline certification based on the California predictive model), provided that two conditions are met. First, a program of gasoline quality surveys must be conducted in each RFG covered area in California each year to monitor annual average oxygen content. Second, the surveys must be conducted in accordance with each requirement specified under 40 CFR 80.68(b) and (c), dealing with surveys for RFG quality, and 40 CFR 80.41(o) through (r), dealing with the effects of survey failures, except that the surveys need only evaluate for oxygen content and a minimum of four surveys (a survey series) must be conducted in each covered area each calendar year.

EPA proposes to retain as an option the existing 30-day notification and demonstration provisions at 40 CFR 80.81(e)(2).

Under the existing provision, gasoline certified using an alternative California certification method and not meeting the federal standard for oxygen content may not be marketed anywhere in California without losing the enforcement exemptions listed in paragraph (e)(1). This is because EPA cannot allow non-complying fungible gasoline in California, unless there are adequate enforcement procedures to ensure compliance of the gasoline in the federally-covered RFG areas with the federal standards.

EPA considered whether it should simply eliminate the exemption for compliance surveys at 40 CFR 80.81(b)(1) for California gasoline. However, such an action would impact all refiners of California gasoline, even for those that choose to not certify using one of the alternative California certification procedures, and those that produce, import or blend only California gasoline that meets the federal oxygen content standard. Instead, EPA proposes to offer the compliance surveys as an option for refiners of California gasoline that do not choose the existing notification and demonstration option at 40 CFR 80.81(e)(2), and that do not want to meet the federal oxygen content standard for gasoline being used in areas of California that are not federally-covered RFG areas. Further, EPA proposes some exceptions to the compliance surveys as specified for federally-covered RFG areas outside of California.

First, EPA proposes that surveys conducted under the proposed compliance survey option of the exemption provisions at 40 CFR 80.81(e)(2) not be considered for the purposes of determining the required number of surveys that must be conducted for compliance with the federal RFG program at 40 CFR 80.68. Under 40 CFR 80.68(b), the required number of compliance surveys required in a year for federally-covered RFG areas outside of California depends partly on the number of areas required to be surveyed in the year, the number of surveys conducted the previous year,

and the survey results from the previous year.

EPA believes that the proposed optional surveys for federally-covered RFG areas in California should not impact the required surveys for federally-covered RFG areas outside of California. This is because of the differences in the purpose, scope and desired consequences between the two survey programs. The federal RFG compliance surveys required at 40 CFR 80.68 are designed to detect and apply remedial actions to geographical and temporal noncompliance that may occur due to the combination of averaging and refinery based standards. Parameters for all standards being averaged are required to be measured, and the ultimate consequence of multiple failures of the survey series is to effectively disallow the use of averaging. In contrast, the proposed optional surveys under 40 CFR 80.81(e)(2) are designed to detect and apply remedial actions to geographical and temporal noncompliance with the oxygen content standard that may occur due to the absence of California oxygenate standards and other enforcement requirements intended to ensure the delivery of RFG into RFG areas, such as product transfer documents. The ultimate consequence of multiple failures of the survey series is to either withdraw certain federal enforcement exemptions, or require refiners to produce California gasoline that meets the federal oxygen content standard for all areas within California (see fourth issue of this section).

Second, EPA proposes a fixed number of surveys for the proposed compliance survey option, similar to the temporary enforcement flexibility granted in the February 29, 1996 letter to WSPA. Under 40 CFR 80.68(b), a formula is used to determine the number of surveys required in a year, which depends on a specified schedule, the number of surveys required the previous year, gasoline volume supplied to the covered areas, and results of the survey the previous year. However, EPA believes that a minimum four surveys each year for each federally-covered RFG area is adequate to determine whether the average oxygen content is adequate. Therefore, EPA is proposing that 40 CFR 80.81(e)(2) require only a minimum of four surveys each year for each federally-covered RFG area in California. As with the surveys required under 40 CFR 80.68 for federally-covered areas outside of California, EPA will determine when these optional surveys conducted in California under 40 CFR 80.81(e)(2) shall be conducted.

Third, the proposed consequences of passing and failing an optional survey series in a federally-covered RFG area in California under 40 CFR 80.81(e)(2) is different than the existing consequences of passing and failing a required survey series in federally-covered RFG areas outside of California under 40 CFR 80.68. A failure of an oxygen content compliance survey required at 40 CFR 80.68 for a federally-covered RFG area outside of California will result in the ''ratcheting'' of the minimum per-gallon oxygen standard to be more stringent (i.e., to be closer to the averaging standard) for the following year. As a consequence, the allowable range, and thus the flexibility, for averaging will be reduced. For example, the per-gallon minimum standard under averaging for oxygen content is 1.5 wt%. Under 40 CFR 80.41(o), if a covered area fails the survey series for a year, the per-gallon minimum oxygen content standard for the following year will be increased by 0.1 wt% to 1.6 wt%. If the covered area fails the survey series in a subsequent year, the per-gallon minimum oxygen content standard for the following year will be increased by 0.1 wt% to 1.7 wt%, and so on. If the covered area fails the survey series any five years (consecutive or non-consecutive), the per-gallon minimum oxygen content standard for the years following the fifth failure will be equal to the federal per-gallon oxygen standard of 2.0 wt%. However, a one-time relaxation of the per-gallon minimum standard by 0.1 wt% is allowed following two consecutive years of survey series passes for oxygen content.

For this survey option, EPA proposes that only one year of passing the survey series in a covered area will be needed to initiate relaxation of the minimum oxygen content standard for the following year. EPA proposes that the minimum oxygen content standard be relaxed by 0.1 wt% for each year following a year in which the survey series passes in a federally-covered RFG area in California. However, EPA will not allow the minimum oxygen content standard to be less than 1.5 wt%, the minimum oxygen content standard for federal RFG under averaging. As with failures of survey series required under 40 CFR 80.68 in federally-covered RFG areas outside of California in accordance with 40 CFR 80.41(q)(4), adjusted standards under the compliance survey option of 40 CFR 80.81(e)(2) apply to all averaged gasoline produced by a refiner for use in any federally-covered RFG area. However, the proposed procedures and consequences of the oxygen surveys contained in this notice differ somewhat from the survey coincidences under 40 CFR 80.68. The surveys proposed today are much smaller in scope than the existing, ''general'' survey provisions and the consequences for successive failures, as discussed in greater detail in this section, may be the subject of future Agency rulemaking action to remove some or all of the California enforcement exemptions.

EPA proposes that the ultimate consequence of multiple failures of the optional compliance surveys be withdrawal of the survey option, rather than the effective withdrawal of the averaging option, as with the required compliance surveys conducted under 40 CFR 80.68 for federally-covered RFG areas outside of California. The compliance survey option provides refiners of California gasoline additional flexibility under the federal exemption provisions, conditioned on the premise that those refiners will control the oxygen content of the gasoline being distributed to the federally-covered RFG areas within California. If the refiners do not control the oxygen content of the gasoline going to those areas as determined by the results of the surveys, EPA believes that it may be reasonable to remove the flexibility provided under this option. Consequently, EPA proposes that a failure of a survey series in one federally-covered RFG area in California for three consecutive years, or an equivalent ''net'' failure of three years over any number of years (i.e., number of years the survey series failed subtracted from the number of years the survey series passed), the compliance survey option will no longer be applicable for any federally-covered RFG area in California. In practice, this situation will occur if a survey series fails for a covered area in a year in which the minimum oxygen content standard had been raised to 1.7 wt% due to a survey series failure in that covered area the previous year.

Consistent with the existing compliance survey requirements for federally-covered RFG areas outside of California, EPA proposes to allow the optional compliance survey under 40 CFR 80.81(e)(2) to be conducted either by individual refiners under 40 CFR 80.68(a) or as a group of refiners under 40 CFR 80.68(b). The temporary enforcement flexibility granted by the February 29, 1996 response to WSPA omitted the individual survey option of 40 CFR 80.68(a), because that survey option is not currently being used and is not expected to be used for practical reasons. Under either 80.68(a) or (b), covered refiners are required to actively participate in a survey program. The consequences of any survey failure will

apply to all suppliers serving the failed area.

It should be noted that the California Phase 2 gasoline that does not meet the federal RFG standards, including the oxygen standard, is classified under the federal regulations as conventional gasoline. In addition, the flexibility allowed by today's proposed amendments does not alter the prohibitions under section 211(k)(5) of the Clean Air Act, and 40 CFR 80.78(a)(1) against selling or dispensing conventional gasoline to ultimate consumers in federally-covered RFG areas, and against selling conventional gasoline for resale in federally-covered RFG areas unless the gasoline is segregated and marked as ''conventional gasoline, not for sale to ultimate consumers in a covered area.'' Nothing in today's proposal would change the requirement that refiners and importers in California meet all other Federal RFG standards, including the oxygen standard, for gasoline produced or imported for use in Federal RFG covered areas in California. These standards must be met separately for each refinery and by each importer.

The proposed amendments to 40 CFR 80.81 are generally consistent with the February 29, 1996 letter to WSPA.

C. Correction to 80.81(e)(1)

EPA proposes to correct 40 CFR 80.81(e)(1), which erroneously omits one provision, paragraph (f), from the list of enforcement exemption provisions that would not apply under the conditions of paragraphs (e)(2) or (e)(3). Paragraph (e)(2) specifies that the exemption provisions listed in paragraph (e)(1) do not apply if a refiner certifies California gasoline under one of the alternative California certification procedures, unless the refiner notifies EPA of that alternative certification and demonstrates to EPA that its gasoline meets all federal per-gallon standards. (This proposal adds a compliance survey option to section (e)(2)(ii).) Paragraph (e)(3) specifies that the exemption provisions listed in paragraph (e)(1) do not apply in the case of a refiner of California gasoline that has been assessed a civil, criminal or administrative penalty for certain violations of federal or California regulations, except upon a showing of good cause.

Paragraph (f) specifies that for California phase 2 gasoline (California gasoline that is sold or made available for sale after March 1, 1996) the following federal RFG enforcement requirements are waived: the oxygenated fuels provisions of 80.78(a)(1)(iii), the product transfer provisions of 80.78(a)(1)(iv), the oxygenate blending provisions contained in 80.78(a)(7), and the segregation of simple and complex model certified gasoline provision of 80.78(a)(9). Under the conditions of either paragraph (e)(2) or (e)(3), EPA would need those enforcement provisions to ensure that gasoline being used in federally-covered RFG areas in California complies with the federal standards. Therefore, EPA proposes to amend paragraph 40 CFR 80.81(e)(1) to include paragraph (f) in the list of enforcement exemptions that would become inapplicable under the conditions of paragraphs (e)(2) or (e)(3).

D. Proposed Amendment to Sampling and Testing Requirements for California refiners

Under 40 CFR 80.65(e)(1), a refiner must determine the properties of each batch of RFG it produces prior to the gasoline leaving the refinery.[11] Under the California RFG program, refiners may obtain approval to sample and test gasoline for compliance with California RFG standards at off-site ''production'' tankage. This approval would have to be obtained under Title 13, Section 2260(a)(28) of the California Code of Regulations, which states:

> (28) ''Production facility'' means a facility in California at which gasoline * * * is produced. Upon request of a producer, the executive director [of CARB] may designate, as part of the producer's production facility, a physically separate bulk storage facility which (A) is owned or leased by the producer, and (B) is operated by or at the direction of the producer, and (C) is not used to store or distribute gasoline * * * that is not supplied from the production facility.''

It is EPA's understanding that the third requirement, (C), is interpreted by CARB to require that the gasoline must be transported to the off-site tankage served via a dedicated pipeline.

In this notice, EPA is proposing amendments to 40 CFR 80.81(h), which would allow California refiners who have obtained approval from the State of California to conduct sampling and testing at off-site tankage served by a dedicated pipeline to use this approach under the federal RFG program as well. Specifically, the proposed rule would allow a California refiner who has obtained approval from the State of California to conduct sampling and testing at off-site tankage under California Code of Regulations Title 13, Section 2260(a)(28), to conduct sampling and testing at such approved off-site tankage for purposes of the federal RFG program. The gasoline must be sampled and tested under the terms of a current, valid protocol agreement between the refiner and CARB. The refiner must provide a copy of the current, valid protocol agreement specifying the off-site tankage as part of the production facility, to the EPA Administrator or the Administrator's designated agent, upon request.

EPA believes that this proposed approach is justified because of the unique situation that exists in the case of refiners subject to the California RFG requirements, including the enforcement sampling and testing program that is carried out by the State of California at refineries producing California RFG. EPA also believes that this proposed approach will minimize any unnecessary inconsistencies between the federal and California RFG requirements which do not result in differences in environmental or public health impacts.

IV. Statutory Authority

Section 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

V. Environmental Impact

This rule is expected to have no negative environmental impact. These amendments are intended to eliminate duplicative enforcement requirements, and do not relax the federal standards. EPA has determined that the statewide California Phase 2 program is equal to or more stringent than the federal Phase I RFG program, except for the oxygen standard. In fact, as described above, the California Phase 2 program is designed to, and may result in, greater emissions reductions that the federal RFG program. The additional testing flexibility allowed certain refiners of California gasoline under today's proposed regulation may, in fact, result in an environmental benefit because it would give California refiners flexibility to sell gasoline meeting California Phase 2 standards as federal conventional gasoline in other areas. It is reasonable to expect that such gasoline would be ''cleaner'' than other conventional gasoline and could result in an environmental benefit to the areas receiving it.

VI. Economic Impact

Today's proposed regulation is expected to give refiners of California gasoline additional operational flexibility and is not expected to result in additional compliance costs for regulated parties, including small entities.

[11] Under 40 CFR 80.2 (h), a ''refinery'' is ''a plant where gasoline or diesel fuel is produced.''

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal Agencies examine the impacts of their regulations on small entities. The act requires an Agency to prepare a regulatory flexibility analysis in conjunction with notice and comment rulemaking, unless the Agency head certifies that the rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b). The Administrator certifies that this rule will not have a significant impact on a substantial number of small entities. This rule is not expected to result in any additional compliance cost to regulated parties and may be expected to reduce compliance cost. Specifically, the additional flexibility allowed by permitting use of CARB testing methods for California gasoline exported to surrounding areas, the proposed oxygen survey option, and the proposed off-site sampling and testing allowance would grant all California refiners (regardless of size), additional compliance flexibility and would permit them options that could significantly lower compliance costs. The changes proposed today are expected to be beneficial for all affected industry parties, including affected small entities.

VII. Executive Order 12866

Under Executive Order 12866,[12] the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[13]

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VIII. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), P.L. 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that the rule proposed today does not include a federal mandate as defined in UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

IX. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information Collection Request (ICR) document has been prepared by EPA (ICR NO. 1591.07) covering this and related collections. OMB has approved the remainder of the information collection requirements for the Standards for Reformulated Gasoline Regulations and has assigned OMB control number 2060–0277. A copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washingtion, DC 20460 or by calling (202) 260–2740.

Today's proposal rule includes optional oxygen surveys applicable in RFG program areas located within the state of California. This survey option is necessary to ensure that the environmental and public health benefits of the RFG program are met in California RFG areas and is designed to preserve the California enforcement exemptions contained in 40 CFR 80.81. Specifically, today's proposed rule allows refiners to produce California Phase 2 gasoline containing less than 2.0 weight% oxygen for use outside federally covered areas provided appropriate annual gasoline quality surveys for oxygen are conducted in each covered area in California.

EPA estimates the cost of all the required RFG surveys to be approximately 2.3 million for 1997 and approximately $6.0 million for 1998 and beyond (when complex model standards apply). The vast majority of the cost is attributable to the comprehensive surveys required under 40 CFR 80.68.

Section 80.68 surveys are applicable in all Federal RFG covered areas outside California and cover a broader range of parameters than the proposed California surveys, which are designed to monitor annual average oxygen content only. The proposed California surveys are limited in their number. Four surveys are proposed to be conducted each year in each of three California Federal RFG covered areas, for a total of 12 surveys. Industry has generally welcomed this California survey option, since it grants flexibility and potentially reduces compliance burdens.

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 Ageny. This includes the time needed to review instructions; develop, acquire, install, utilize technology and systems for the purposes of collecting, validating, and verifing information, processing and maintaining information, and disclosing and providing 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.

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 OMG control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W., Washington March 17, 1997 C 20460 and to the

[12] 58 FR 51736 (October 4, 1993).

[13] *Id.* at section 3(f)(1)–(4).

Office of Information and Regulatory Affairs; Office of Management and Budget, 725 17th St., N.W. Washington, DC 20503, marked ''Attention'' Desk Officer for EPA. Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 16, 1997, a comment to OMB is best assured of having its full effect, if OMB receives it by May 16, 1997. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, California exemptions, Gasoline, Reformulated gasoline, Motor vehicle pollution.

Dated: April 9, 1997.

Carol M. Browner,

Administrator.

40 CFR part 80 is proposed to be amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.81 is amended by revising paragraphs (e)(1), (e)(2) and (h) to read as follows:

§ 80.81 Enforcement exemptions for California gasoline.

* * * * *

(e)(1) The exemption provisions contained in paragraphs (b)(2), (b)(3), (c), and (f) of this section shall not apply under the circumstances set forth in paragraphs (e)(2) and (e)(3) of this section.

(2) Such exemption provisions shall not apply to any refiner, importer, or oxygenate blender of California gasoline with regards to any gasoline formulation that it produces or imports is certified under Title 13, California Code of Regulations, section 2265 or section 2266, unless:

(i)(A) *Written notification option.* The refiner, importer, or oxygenate blender, within 30 days of the issuance of such certification:

(*1*) Notifies the Administrator of such certification;

(*2*) Submits to the Administrator copies of the applicable certification order issued by the State of California and the application for certification submitted by the regulated party to the State of California; and

(*3*) Submits to the Administrator a written demonstration that all gasoline formulations produced, imported or blended by the refiner, importer or oxygenate blender for use in California meets each of the complex model per-gallon standards specified in § 80.41(c).

(B) If the Administrator determines that the written demonstration submitted under paragraph (e)(2)(i)(A) of this section does not demonstrate that all certified gasoline formulations meet each of the complex model per-gallon standards specified in § 80.41(c), the Administrator shall provide notice to the party (by first class mail) of such determination and of the date on which the exemption provisions specified in paragraph (e)(1) of this section shall no longer be applicable, which date shall be no earlier than 90 days after the date of the Administrator's notification; or

(ii) *Compliance survey option.* The compliance survey requirements of § 80.68 are met for each covered area in California for which the refiner, importer or oxygenate blender supplies gasoline for use in the covered area, except that:

(A) The survey series must determine compliance only with the oxygen content standard of 2.0 weight-percent;

(B) The survey series must consist of at least four surveys a year for each covered area;

(C) The surveys shall not be included in determining the number of surveys under § 80.68(b)(2);

(D) In the event a survey series conducted under this paragraph (e)(2)(ii) fails in accordance with § 80.68(c)(12), the provisions of §§ 80.41(o), (p) and (q) are applicable, except that if the survey series failure occurs in a year in which the applicable minimum oxygen content is 1.7 weight percent, the compliance survey option of this section shall not be applicable for any future year; and

(E) Not withstanding § 80.41(o), in the event a covered area passes the oxygen content series in a year, the minimum oxygen content standard for that covered area beginning in the year following the passed survey series shall be made less stringent by decreasing the minimum oxygen content standard by 0.1%, except that in no case shall the minimum oxygen content standard be less than that specified in § 80.41(d).

* * * * *

(h)(1) For the purposes of the batch sampling and analysis requirements contained in § 80.65(e)(1), any refiner, importer or oxygenate blender of California gasoline may use a sampling and/or analysis methodology prescribed in Title 13, California Code of Regulations, sections 2260 *et seq.*, in lieu of any applicable methodology specified in § 80.46, with regards to

(i) Such gasoline; or

(ii) That portion of its gasoline produced or imported for use in other areas of the United States, provided that

(A) The gasoline must be produced by a refinery that is located in the state of California that produces California gasoline, or imported by an importer of California gasoline;

(B) The gasoline must be classified as conventional gasoline upon exportation from the California, or upon release or shipment from the refinery if the refinery is located outside of California; and

(C) The refiner or importer must correlate the results from the applicable sampling and /or analysis methodology prescribed in Title 13, California Code of Regulations, sections 2260 *et seq.*, with the method specified at § 80.46, and such correlation must be adequately demonstrated to EPA upon request.

(2) Nothwithstanding the requirements of § 80.65(e)(1) regarding when the properties of a batch of reformulated gasoline must be determined, a refiner of California gasoline may determine the properties of gasoline as specified under § 80.65(e)(1) at off site tankage provided that:

(i) The samples are properly collected under the terms of a current and valid protocol agreement between the refiner and the California Air Resources Board with regard to sampling at the off site tankage and consistent with requirements prescribed in Title 13, California Code of Regulations, sections 2260 *et seq.*; and

(ii) The refiner provides a copy of the protocol agreement to EPA upon request.

* * * * *

[FR Doc. 97–9867 Filed 4–15–97; 8:45 am]

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