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WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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

WASHINGTON, DC

WHEN: June 17, 1997 at 9:00 am

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202-523-4538



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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202-275-1538 or 275-0920.

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Federal Register

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Thursday, June 12, 1997

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

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

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 1997-9]

Adjustments to Civil Monetary Penalty Amounts

AGENCY: Federal Election Commission.

ACTION: Final rules; correction of effective date.

SUMMARY: On March 12, 1997, the Commission published in the **Federal Register** final rules implementing the Debt Collection Improvement Act of 1996 ("DCIA"). The Commission is correcting the effective date of these new regulations to April 29, 1997.

EFFECTIVE DATE: April 29, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: On March 12, 1997, the Commission published in the **Federal Register** final rules implementing the Debt Collection Improvement Act of 1996 ("DCIA"), Public Law 104-134, section 31001(s), 110 Stat. 1321-358, 1321-373 (April 26, 1996). 62 FR 11316. In compliance with this statutory mandate, the rules created a new section 11 CFR 111.24 to increase by regulation the maximum amount of each civil monetary penalty enforced by the Commission by 10%. The DCIA states that the increased civil penalties apply only to violations that occur after the effective date of the new rules.

Because the Commission had no discretion in taking this action, these technical amendments were exempt from the notice and comment requirements of the Administrative Procedure Act at 5 U.S.C. 553(b)(B) and the legislative review requirements of the Federal Election Campaign Act at 2

U.S.C. 438(d). The Commission therefore announced that the new rules would become effective immediately upon publication in the **Federal Register**, i.e., March 12, 1997.

However, 5 U.S.C. 801(a)(4) now provides that final rules do not take effect until the date on which they are submitted to Congress for a congressional review that exists independently of the 2 U.S.C. 438(d) legislative review requirement. These rules were submitted to Congress for purposes of this latter review on April 29, 1997, so they became effective on that date. Therefore, the increased civil penalties apply to any violation that occurs after April 29, 1997.

Correction of Effective Date: 11 CFR 111.24, as published at 62 FR 11316, is effective as of April 29, 1997.

Dated: June 6, 1997.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 97-15238 Filed 6-11-97; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM-138, Special Conditions No. 25-ANM-129]

Special Conditions: Jetstream Aircraft Limited Model 4101 Airplane; Continuous Power Reserve (CPR) System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Jetstream Aircraft Limited Model 4101 airplane. This airplane will have a novel or unusual design feature associated with installation of the CPR system. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of 14 CFR Part 25.

EFFECTIVE DATE: July 14, 1997.

FOR FURTHER INFORMATION CONTACT: William Schroeder, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft

Certification Service, 1601 Lind Avenue SW, Renton, Washington 98055-4056; telephone 425-227-2148; fax 425-227-1149.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1994, Jetstream Aircraft Limited applied for approval of a design change (without a new airplane model designation) to Type Certificate No. A41NM for the installation of a CPR system on the Jetstream Model 4101 airplane. The Jetstream Model 4101 is a 30 passenger, 23,000 pounds maximum take-off weight, transport category airplane with two Allied Signal TPE331-14GR/HR series turbopropeller engines. The CPR system makes a CPR power rating available for the final take-off climb and en route phases of flight after failure of one engine.

The CPR power rating for this engine installation is equivalent to the maximum continuous power rating established for the engine under 14 CFR Part 33. Following engine failure, the CPR system automatically increases the engine maximum exhaust gas temperature (EGT) limit, which permits the operating engine's maximum continuous power rating to be obtained at higher ambient air temperatures. Increased engine hour and cycle maintenance factors apply for CPR power rating operation. Since the CPR power rating will only be available during engine-out conditions, the maximum power normally available with all engines operating will be less than the part 33-certified maximum continuous power rating at certain higher ambient temperature ranges.

The CPR system is novel when compared to those systems envisaged when the applicable regulations in part 25 were promulgated. Therefore, the airworthiness regulations in part 25 do not contain adequate or appropriate safety standards for airplanes with CPR systems installed. Special conditions are therefore prescribed to supplement the certification basis of record for the Jetstream Model 4101 airplane with a CPR system installed.

Type Certification Basis

Under the provisions of 14 CFR § 21.101, Jetstream Aircraft Limited must show that the Jetstream Model 4101, as changed, continues to meet the applicable provisions of the regulations

incorporated by reference in Type Certificate No. A41NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A41NM are part 25 dated February 1, 1965, as amended by Amendments 25-1 through 25-66. The regulations incorporated by reference also include certain special conditions, exemptions, and later amended sections of part 25 that are not relevant to these final special conditions.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the areas of the Jetstream Model 4101 that are affected by the installation of the CPR system must also be shown to comply with all sections of part 25 as amended by Amendments 25-1 through 25-81 in effect on the date of application.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Jetstream Model 4101 because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR § 21.16. In addition to the applicable airworthiness regulations and special conditions, the Jetstream Model 4101 must comply with the fuel vent and exhaust emission requirements of 14 CFR Part 34 and the noise certification requirements of 14 CFR Part 36.

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

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

Novel or Unusual Design Features

The Jetstream Model 4101 will incorporate a CPR system that provides an engine power rating (as defined on the airplane) that is equivalent to the engine's part 33 certified maximum

continuous power rating. Since the CPR power rating will only be available during engine-out conditions, the maximum power available with all engines operating will normally be less than the part 33 certified maximum continuous power rating at certain higher ambient temperatures. The CPR system is integrated into the existing approved Automatic Power Reserve (APR) system. On the Jetstream 4100 airplane, the APR system is equivalent to an Automatic Takeoff Thrust Control System (ATTCS) as defined in Appendix I of Part 25. The currently approved APR system automatically makes additional thermodynamic power and torque available on the operating engine after engine failure during takeoff and for approach climb (go-around). For certain ambient temperature ranges, the proposed CPR system automatically increases the engine's EGT limit and torque available on the operating engine for final take-off climb and en route flight phases after failure of one engine. The CPR-related increased EGT limit, which is above the two-engines-operating EGT maximum continuous power and take-off limits, enables the operating engine to achieve the flat-rated maximum continuous power (torque) level at higher outside air temperature (OAT). Engine operation in the APR and CPR modes requires application of engine hour and cycle maintenance factors as specified in engine Type Certificate Data Sheet E18NE.

Discussion of Comments

Notice of Proposed Special Conditions No. SC-97-1-NM for the Jetstream Aircraft Limited Model 4101 airplane, was published in the **Federal Register** on March 14, 1997. No comments were received.

Applicability

As discussed above, these special conditions are applicable to the Jetstream Aircraft Limited Model 4101 airplane. Should Jetstream Aircraft Limited apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of 14 CFR § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Jetstream Model 4101 airplane.

Installation of a Continuous Power Reserve (CPR) System

(a) General. With the CPR system functioning normally as designed, all applicable requirements of part 25 must be met without requiring any unusual action (other than arming the system prior to dispatch) by the crew to set power or thrust.

(b) Performance and Reliability Requirements.

(1) A CPR failure or combination of failures:

(i) That prevents the automatic insertion of CPR thrust or power must be shown to be an improbable event;

(ii) That prevents the automatic insertion of APR thrust or power during the critical time interval defined in Appendix I of Part 25 must be shown to be an improbable event; and

(iii) Shall not result in the significant loss or reduction in thrust or power, or must be shown to be an extremely improbable event.

(2) All applicable performance requirements of part 25 must be met with an engine failure occurring at the most critical time with the CPR system functioning.

(c) Thrust Setting. The maximum continuous thrust or power setting specified for use with all engines operating may not be less than any of the following:

(1) Ninety (90) percent of the thrust or power set by the CPR system for which AFM performance credit is approved;

(2) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

(3) That shown to be free of hazardous engine response characteristics when thrust or power is advanced from the initial all-engines-operating thrust or power setting to the maximum approved maximum continuous/CPR mode thrust or power setting.

(d) Powerplant Controls.

(1) In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the CPR, including associated systems, may cause the failure of any powerplant function necessary for safety.

(2) The CPR system must be designed to:

(i) In the event of a CPR system failure, permit manual decrease or increase in thrust or power up to the highest maximum continuous thrust or power approved for the airplane under existing conditions through

the use of the power lever. For airplanes equipped with limiters that automatically prevent engine operating limits from being exceeded under existing ambient conditions, other means may be used to increase the thrust or power in the event or a CPR failure provided the means is located on or forward of the power levers; is easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers; and meets the requirements of § 25.777 (a), (b), and (c);

(ii) Provide a means for the flightcrew to deactivate the automatic CPR function. This means must be designed to prevent inadvertent deactivation.

(iii) Provide a means for the flightcrew to verify that the CPR system is in a condition to operate.

(e) Powerplant Instruments. In addition to the requirements of § 25.1305, a means must be provided to indicate when the CPR is in the armed or ready condition.

Issued in Renton, Washington, on June 5, 1997.

Darrell M. Pederson,

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

[FR Doc. 97-15433 Filed 6-11-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-ANE-22-AD; Amendment 39-10046; AD 97-12-04]

RIN 2120-AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company (GE) GE90 series turbofan engines. This action requires initial and repetitive borescope inspections of compressor discharge pressure (CDP) manifolds for cracks, and replacement, if necessary, with an improved design CDP manifold. In addition, this AD requires, as terminating action to the inspections, replacement with an improved design CDP manifold. This amendment is prompted by reports of CDP manifold cracking that has resulted in liberated material causing high pressure compressor (HPC) blade damage. The actions specified in this AD are intended to prevent inflight engine

power loss or shutdown due to HPC blade damage caused by liberated material from the CDP manifold.

DATES: Effective June 27, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 1997.

Comments for inclusion in the Rules Docket must be received on or before August 11, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-ANE-22-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from General Electric Technical Services, Attention: Leader for distribution/microfilm, 10525 Chester Road, Cincinnati, OH 45215; telephone (513) 672-8400 Ext. 114, fax (513) 672-8422. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. **FOR FURTHER INFORMATION CONTACT:** John E. Golinski, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7135, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of cracked compressor discharge pressure (CDP) manifolds, Part Number (P/N) 1686M48G11, installed on General Electric Company (GE) GE90 series turbofan engines. In two reports, the cracked CDP manifold liberated material that resulted in high pressure compressor (HPC) blade damage beyond serviceable limits. The failure investigation has determined that the cause of the crack initiation and propagation is attributed to excessive stresses in the manifold. The cracks may initiate in a localized area around any one of the six outer diameter bolts that attach the CDP manifold to the combustor case. Multiple cracks that initiate can propagate in a direction that allow CDP manifold material to become liberated. This material can enter the

HPC and result in hard body impact damage to the HPC blades. The FAA has determined that an earlier configuration CDP manifold, P/N 1686M48G10, is also susceptible to cracking, which could result in liberated CDP manifold material. This condition, if not corrected, could result in inflight engine power loss or shutdown due to HPC blade damage caused by liberated material from the CDP manifold.

The FAA has reviewed and approved the technical contents of GE Aircraft Engines GE90 Service Bulletin (SB) No. 72-263, dated February 5, 1997, that describes procedures for initial and repetitive borescope inspections for cracks in the CDP manifold, P/Ns 1686M48G10, 1686M48G11, and 1686M48G12. This AD, however, only requires inspection of CDP manifolds, P/Ns 1686M48G10 and 1686M48G11. The FAA has also reviewed and approved the technical contents of GE Aircraft Engines GE90 SB No. 72-126, Revision 1, dated April 29, 1997, that describes procedures for installation of improved design CDP manifolds.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent liberation of CDP manifold material. This AD requires initial and repetitive borescope inspections for cracks in CDP manifolds, P/Ns 1686M48G10 and 1686M48G11. The repetitive inspection intervals, or possible removal and replacement prior to further flight, are defined by the condition of the CDP manifold based on the borescope inspections. In addition, this AD requires, at the next shop visit after the effective date of this AD, installing the improved design CDP manifold, P/N 1686M48G12. Installation of the improved design CDP manifold constitutes terminating action to the inspection requirements of this AD. The actions are required to be accomplished in accordance with the SBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or

arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-ANE-22-AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the

Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97-12-04 **General Electric Company:**
Amendment 39-10046. Docket 97-ANE-22-AD.

Applicability: General Electric Company (GE) Models GE90-76B, -77B, -85B, -90B, and -92B turbofan engines, with compressor discharge pressure (CDP) manifolds, Part Numbers (P/Ns) 1686M48G10 or 1686M48G11, installed. These engines are installed on but not limited to Boeing 777 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent inflight engine power loss or shutdown due to liberated CDP manifold material, accomplish the following:

(a) Perform borescope inspections of the CDP manifold for cracks in accordance with the Accomplishment Instructions of GE90 Service Bulletin (SB) No. 72-263, dated February 5, 1997, as follows:

(1) For engines with greater than 500 total engine cycles (TEC) on the effective date of this AD, inspect within 25 cycles in service (CIS) after the effective date of this AD.

(2) For engines with 500 or less TEC on the effective date of this AD, inspect within 125 CIS after the effective date of this AD, or prior to accumulating 500 TEC, whichever occurs first.

(b) Based on inspections accomplished in paragraph (a) of this AD, accomplish the following:

(1) Prior to further flight, remove those manifolds found with liberated pieces or with cracks that meet or exceed the length or orientation criteria in paragraph C(3)(c) or D(3)(c) of the Accomplishment Instructions of GE90 SB No. 72-263, dated February 5, 1997, and replace with CDP manifolds, P/N 1686M48G12, in accordance with GE90 SB No. 72-126, Revision 1, dated April 29, 1997.

(2) For manifolds found with axial cracks less than or equal to 0.5 inches, thereafter, perform borescope inspections of CDP manifolds daily, remove, if necessary, and replace in accordance with paragraph (b)(1) of this AD.

(3) For manifolds with no visible cracks, accomplish the following:

(i) Perform borescope inspections of CDP manifolds at intervals not to exceed 125 CIS since last inspection, remove, if necessary, and replace in accordance with paragraph (b)(1) of this AD.

(ii) If manifolds are found with axial cracks less than or equal to 0.5 inches, thereafter, perform borescope inspections of CDP manifolds daily, remove, if necessary, and replace in accordance with paragraph (b)(1) of this AD.

(c) At the next shop visit after the effective date of this AD, install an improved CDP manifold, P/N 1686M48G12, in accordance with GE90 SB No. 72-126, Revision 1, dated April 29, 1997. Installation of this CDP manifold constitutes terminating action to the inspection requirements of this AD.

(d) For the purpose of this AD, a shop visit is defined as an engine removal for engine maintenance that cannot be performed while installed on the aircraft and that entails separation of pairs of mating engine flanges.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(g) The actions required by this AD shall be done in accordance with the following GE90 SBs:

Document No.	Revision	Pages	Date
72-263 Total pages: 18.	Original ..	1-18	Feb. 5, 1997.
72-126 Total pages: 8.	1	1-8	Apr. 29, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Technical Services, Attention: Leader for distribution/microfilm, 10525 Chester Road, Cincinnati, OH 45215; telephone (513) 672-8400 Ext. 114, fax (513) 672-8422. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 27, 1997.

Issued in Burlington, Mass., on May 30, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97-14955 Filed 6-11-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-ANE-23-AD; Amendment 39-10047, AD 97-12-05]

RIN 2120-AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company (GE) GE90 series turbofan engines. This action supersedes Telegraphic AD T97-09-51 that currently requires visual checks of the engine Debris Monitoring System (DMS) sensor for bearing debris, and, if necessary, performing procedures for additional maintenance actions. In addition, that AD requires replacing Variable Speed Constant Frequency (VSCF) gearshaft flange ball bearings that may incorporate rivets that are manufactured of improper material with serviceable bearings. This action references a later revision of the applicable Service Bulletin (SB) that

includes additional engine serial numbers; however, these changes do not affect the Applicability or compliance requirements of this AD. This amendment is prompted by the issuance of the new revision to the SB. The actions specified by this AD are intended to prevent a VSCF gearshaft flange ball bearing failure, which could result in an inflight engine shutdown.

DATES: Effective June 27, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 1997.

Comments for inclusion in the Rules Docket must be received on or before August 11, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97-ANE-23, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from General Electric Technical Services, Attention: Leader For Distribution/Microfilm, 10525 Chester Road, Cincinnati, OH 45215; fax (513) 672-8422, telephone (513) 672-8400 Ext. 114. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Golinski, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7135, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: On April 22, 1997, the Federal Aviation Administration (FAA) issued Telegraphic airworthiness directive (AD) T97-09-51, applicable to General Electric Company (GE) GE90 series turbofan engines, which requires visual checks of the engine Debris Monitoring

System (DMS) sensor for bearing debris, and, if necessary, performing procedures for additional maintenance actions. In addition, that AD requires replacing Variable Speed Constant Frequency (VSCF) gearshaft flange ball bearings that may incorporate rivets that are manufactured of improper material with serviceable bearings. That action was prompted by reports of two recent failures of the Accessory Gearbox (AGB) VSCF gearshaft flange ball bearing, Part Number (P/N) 1770M41P01. This ball bearing is installed on the VSCF gearshaft which is located in the AGB and drives the Boeing 777 VSCF generator. The VSCF generator is a backup power supply for the Boeing 777 airplane. The ball bearing that failed is installed in GE90 AGBs, P/Ns 1650M71G03 and 1650M71G04. A third AGB configuration incorporates a different ball bearing design and has no reported service problems. The bearing failure investigation is ongoing; however, there is evidence that suggests the failures may be attributed to bearing operation with insufficient internal radial clearances that results in excessive ball to cage pocket forces causing bearing distress and premature failure. The investigation has also determined that a population of the VSCF gearshaft ball bearings, P/N 1770M41P01, may contain improper cage rivet material. Metallurgical evaluation of the rivets installed in the two failed VSCF gearshaft flange ball bearings has confirmed both bearings contained rivets manufactured from improper material. Results of the engineering analysis and testing suggest the improper rivet material may be a contributor to premature bearing distress when the improper rivets are installed in a bearing that contains insufficient internal radial clearance. That condition, if not corrected, could result in a VSCF gearshaft flange ball bearing failure, which could result in an inflight engine shutdown.

Since the issuance of that Telegraphic AD, GE has issued Revision 4, dated April 17, 1997, to Service Bulletin (SB) No. 72-283, which adds additional engine serial numbers; however, these changes do not affect the Applicability or compliance requirements of this AD. This AD references this revised SB.

The FAA has reviewed and approved the technical contents of GE SB No. 79-

011, dated April 9, 1997, that describes procedures for monitoring the engine lubrication system for bearing debris, and, if necessary, the procedures for additional maintenance actions; GE SB No. 72-280, Revision 3, dated April 15, 1997, that describes procedures for replacement of certain VSCF gearshaft flange ball bearings that may incorporate improper rivet material; GE SB No. 72-283, Revision 4, dated April 17, 1997, that describes the procedures for replacing the 4,500 pound inches gearshaft assembly used in AGBs, P/Ns 1650M71G03 and 1650M71G04, with the 3,500 pound inches gearshaft assembly used in the AGB, P/N 1650M71G02; and GE SB No. 72-286, dated April 14, 1997, that describes procedures for replacing the VSCF gearshaft assembly with a VSCF gearshaft assembly containing a flange ball bearing with a select fit internal radial clearance.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes Telegraphic AD T97-09-51 to require, within 24 hours after the effective date of this AD, a visual check of the engine DMS sensor for bearing debris, and, if necessary, performing procedures for additional maintenance actions. Thereafter, this AD requires visual checks of the engine DMS sensor for bearing debris at staggered one-day intervals for each affected engine on the Boeing 777 (inspecting each engine every other day). In addition, this AD requires replacing VSCF gearshaft flange ball bearings that may incorporate rivets that are manufactured of improper material with serviceable bearings. Replacing the VSCF gearshaft assembly in accordance with GE SB No. 72-283, Revision 4, dated April 17, 1997, or GE SB No. 72-286, dated April 14, 1997, constitutes an acceptable alternative to the replacement of the affected bearing.

This AD defines interim requirements to prevent a VSCF gearshaft flange ball bearing failure. These requirements may be amended in further rulemaking as additional information from the failure investigation is obtained and corrective action is defined. The actions are required to be accomplished in accordance with the SBs described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97-ANE-23." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26,

1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97-12-05 General Electric Company:

Amendment 39-10047. Docket No. 97-ANE-23-AD. Supersedes Telegraphic AD T97-09-51.

Applicability: General Electric Company (GE) GE90 series turbofan engines with Accessory Gearboxes (AGBs) installed, Part Numbers (P/Ns) 1650M71G03 and 1650M71G04. These engines are installed on Boeing 777 aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a Variable Speed Constant Frequency (VSCF) gearshaft flange ball bearing failure, which could result in an inflight engine shutdown, accomplish the following:

(a) Perform a visual check of the engine Debris Monitoring System sensor for debris in accordance with paragraph 2(c) of the

Accomplishment Instructions of GE Service Bulletin (SB) No. 79-011, dated April 9, 1997, as follows:

(1) For aircraft that have two engines installed incorporating AGBs, P/N 1650M71G03 or 1650M71G04, accomplish the following:

(i) Perform an initial visual check on one of the engines installed on the aircraft within 24 clock hours after the effective date of this AD, and thereafter, visually check that engine every other day, at intervals not to exceed 48 clock hours since last visual check.

(ii) Perform an initial visual check on the engine not inspected in accordance with paragraph (a)(1)(i) of this AD installed on the same aircraft on the following day, not to exceed 24 clock hours after the visual check of the engine checked in paragraph (a)(1)(i) of this AD; thereafter, visually check this engine every other day at intervals not to exceed 48 clock hours since last visual check.

(iii) The visual checks for both engines must be staggered at one day intervals for each engine.

(2) For aircraft that have one of the two engines installed incorporating AGBs, P/N 1650M71G03 or 1650M71G04, perform the initial visual check on that engine within 24 clock hours after the effective date of this AD, and thereafter, visually check that engine every other day at intervals not to exceed 48 clock hours since last visual check.

(3) If the visual check indicates that debris is present, perform additional maintenance actions in accordance with paragraph 2(c) of the Accomplishment Instructions of GE SB No. 79-011, dated April 9, 1997, prior to further flight.

(b) For engines that contain VSCF gearshaft flange ball bearings that may incorporate rivets manufactured from improper material, identified by serial numbers: 900-147, 900-149, 900-151, 900-106, and 900-153, within 7 days after the effective date of this AD, and for engines identified by serial numbers: 900-150, 900-156, 900-157, 900-158, prior to entry into revenue service, accomplish one of the following:

(1) Remove from service VSCF gearshaft flange ball bearings and replace with serviceable bearings in accordance with the Accomplishment Instructions of GE SB No. 72-280, Revision 3, dated April 15, 1997; or

(2) Remove and replace the 4,500 pound inches VSCF gearshaft assembly with the 3,500 pound inches gearshaft assembly installed in AGB, P/N 1650M71G02, in accordance with the Accomplishment Instructions of GE SB No. 72-283, Revision 4, dated April 17, 1997. Accomplishment of this option constitutes terminating action to the inspection requirements of paragraph (a) of this AD; or

(3) Remove and replace the 4,500 pound inches VSCF gearshaft assembly with the 4,500 pound inches gearshaft assembly containing select fit internal radial clearance flange ball bearings, in accordance with the Accomplishment Instructions of GE SB No. 72-286, dated April 14, 1997.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit

their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(e) The actions required by this AD shall be accomplished in accordance with the following GE SBs:

Document No.	Page	Revision	Date
72-283	1, 2	4	April 17, 1997.
	3-10	Original	March 12, 1997.
	11, 12	1	March 20, 1997.
	13	Original	March 12, 1997.
Total Pages: 13.			
72-280	1, 2	3	April 15, 1997.
	3-12	2	March 19, 1997.
Total Pages: 12.			
72-286	1-15	Original	April 14, 1997.
Total Pages: 15.			
79-011	1-6	Original	April 9, 1997.
Total Pages: 6.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Technical Services, Attention: Leader For Distribution/Microfilm, 10525 Chester Road, Cincinnati, OH 45215; fax (513) 672-8422, telephone (513) 672-8400 Ext. 114. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment supersedes Telegraphic AD T97-09-51, issued April 22, 1997.

(g) This amendment becomes effective on June 27, 1997.

Issued in Burlington, Mass., on June 2, 1997.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97-14956 Filed 6-11-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28923; Amdt. No. 1802]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from: 1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service,

Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific

changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 30, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective upon publication.

FDC date	State	City	Airport	FDC No.	SIAP
05/13/97	TN	Oneida	Scott Muni	7/2732	NDB or GPS Rwy 23, Amdt 4...
05/14/97	AZ	Grand Canyon	Valle	7/2774	GPS Rwy 1 Orig...
05/15/97	MI	Detroit	Detroit Metropolitan Wayne County	7/2818	ILS Rwy 3L, Amdt 14...
05/15/97	MI	Detroit	Detroit Metropolitan Wayne County	7/2819	NDB or GPS Rwy 3C, Amdt 12...
05/15/97	MI	Detroit	Detroit Metropolitan Wayne County	7/2821	NDB or GPS Rwy 3L, Amdt 10...
05/15/97	MI	Detroit	Detroit Metropolitan Wayne County	7/2825	ILS Rwy 21L, Amdt 8...
05/15/97	MI	Detroit	Detroit Metropolitan Wayne County	7/2826	ILS Rwy 21R, Amdt 26...
05/15/97	MI	Detroit	Detroit Metropolitan Wayne County	7/2829	ILS Rwy 27R, Amdt 10...
05/15/97	MI	Detroit	Detroit Metropolitan Wayne County	7/2832	NDB or GPS Rwy 27R, Amdt 10...
05/15/97	TX	Beeville	Beeville Muni	7/2822	NDB or GPS Rwy 30, Amdt 2...
05/15/97	TX	Beeville	Beeville Muni	7/2823	VOR/DME or GPS Rwy 12, Amdt 5...
05/16/97	OH	Youngstown	Youngstown-Warren Regional	7/2862	VOR or GPS, Rwy 19, Amdt 18...
05/20/97	ME	Belfast	Belfast Muni	7/2937	NDB Rwy 15 Amdt 2A...

FDC date	State	City	Airport	FDC No.	SIAP
05/21/97	KY	Covington	Covington/Cincinnati/Northern Kentucky Intl.	7/2993	ILS Rwy 36L (CAT II and III), Amdt 37A...
05/21/97	KY	Covington	Covington/Cincinnati/Northern Kentucky Intl.	7/2998	ILS Rwy 18R, Amdt 18...
05/21/97	KY	Covington	Covington/Cincinnati/Northern Kentucky Intl.	7/2999	ILS Rwy 18L, Amdt 3...
05/21/97	KY	Covington	Covington/Cincinnati/Northern Kentucky Intl.	7/3000	ILS Rwy 36R (CAT II and III), Amdt 4...
05/21/97	KY	Covington	Covington/Cincinnati/Northern Kentucky Intl.	7/3001	ILS Rwy 9, Amdt 15A...
05/21/97	KY	Covington	Covington/Cincinnati/Northern Kentucky Intl.	7/3002	NDB or GPS Rwy 9, Amdt 13A...
05/21/97	KY	Covington	Covington/Cincinnati/Northern Kentucky Intl.	7/3003	ILS Rwy 27, Amdt 15...
05/22/97	LA	Marksville	Marksville Muni	7/3065	VOR/DME or GPS-A, Amdt 3...
05/26/97	FL	Leesburg	Leesburg Muni	7/3083	NDB Rwy 31, Orig...
05/26/97	FL	Leesburg	Leesburg Muni	7/3084	GPS Rwy 31, Orig...
05/26/97	MN	Orr	Orr Regional	7/3103	NDB or GPS Rwy 13, Amdt 7...
05/26/97	SC	Greer	Greenville-Spartanburg	7/3086	ILS Rwy 21, Amdt 2B...
05/27/97	AR	El Dorado	South Arkansas Regional at Goodwin Field.	7/3151	VOR Rwy 22, Amdt 13A...
05/27/97	AR	Mountain Home	Baxter County Regional	7/3150	GPS Rwy 5, Orig...

[FR Doc. 97-15430 Filed 6-11-97; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 28922; Amdt. No. 1801]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
 2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.
For Purchase—Individual SIAP copies may be obtained from: 1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
 2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulation (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5

U.S.C. 552(a), 1 CFR part 51, and §97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the

remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on May 30, 1997.

Thomas E. Stuckey,
Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective June 19, 1997

Boise, ID, Boise Air Terminal/Gowen Fld, GPS RWY 10L, Orig
Nampa, ID, Nampa Muni, NDB or GPS RWY 11, Amdt 2, CANCELLED
Nampa, ID, Nampa Muni, NDB-A, Orig
Lawrence, IL, Lawrenceville-Vincennes Intl, VOR or GPS RWY 18, Amdt 11, CANCELLED
Lawrence, IL, Lawrenceville-Vincennes Intl, VOR or GPS RWY 36, Amdt 11, CANCELLED
Lawrence, IL, Lawrenceville-Vincennes Intl, VOR RWY 18, Orig
Lawrence, IL, Lawrenceville-Vincennes Intl, VOR RWY 36, Orig

* * * Effective July 17, 1997

Grand Canyon, AZ, Valle, VOR/DME RWY 19, Orig
Grand Canyon, AZ, Valle, GPS RWY 13, Orig
Atwater, CA, Castle, GPS RWY 13, Orig
Atwater, CA, Castle, GPS RWY 31, Orig
Apalachicola, FL, Apalachicola Muni, GPS RWY 13, Orig
Apalachicola, FL, Apalachicola Muni, GPS RWY 31, Orig
Lake City, FL, Lake City Muni, GPS RWY 10, Orig
Lake City, FL, Lake City Muni, GPS RWY 28, Orig
Crawfordsville, IN, Crawfordsville Muni, NDB RWY 4, Amdt 5
Crawfordsville, IN, Crawfordsville Muni, GPS RWY 4, Orig
Monticello, KY, Wayne County, NDB or GPS RWY 21, Amdt 1, CANCELLED
Northampton, MA, Northampton, GPS RWY 14, Orig
Bigfork, MN, Bigfork Muni, NDB RWY 15, Orig
Battle Mountain, NV, Battle Mountain, GPS RWY 3, Orig
Claremont, NH, Claremont Muni, GPS RWY 29, Amdt 1
Manchester, NH, Manchester, NDB RWY 6, Amdt 1, CANCELLED
Glens Falls, NY, Warren County, VOR RWY 1, Amdt 10, CANCELLED
Glens Falls, NY, Warren County, VOR/DME RWY 1, Amdt 4, CANCELLED
Glens Falls, NY, Warren County, RNAV RWY 1, Amdt 2, CANCELLED
Saranac Lake, NY, Adirondack Regional, NDB RWY 23, Amdt 5, CANCELLED
Holdenville, OK, Holdenville Muni, GPS RWY 17, Amdt 1
Holdenville, OK, Holdenville Muni, GPS RWY 35, Amdt 1
Idabel, OK, Idabel, GPS RWY 17, Orig
Houston, TX, Houston Gulf, VOR OR GPS RWY 13, Amdt 2A, CANCELLED
Marion/Wytheville, VA, Mountain Empire, GPS RWY 26, Orig

* * * Effective September 11, 1997

Seattle, WA, Seattle-Tacoma Intl, ILS/DME RWY 34L, Amdt 1
Keene, NH, Dillant-Hopkins, VOR RWY 2, Amdt 12
Keene, NH, Dillant-Hopkins, GPS RWY 2, Orig

[FR Doc. 97-15429 Filed 6-11-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 123

RIN 1515-AB90

[T.D. 97-48]

Port Passenger Acceleration Service System (PORTPASS) Program

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reference certain Immigration and Naturalization Service (INS) Regulations that provide for land-border inspection programs that were jointly developed with Customs. These land-border inspection programs—collectively known as Port Passenger Acceleration Service System (PORTPASS)—are designed to facilitate the processing of certain identified, pre-registered, low-risk travelers along the United States border who frequently cross at certain areas by exempting them from normal report of arrival and presentation for inspection requirements, while still safeguarding the integrity of the United States land border. Participation in PORTPASS is voluntary and annual application fees are charged by the INS.

EFFECTIVE DATE: July 14, 1997.

FOR FURTHER INFORMATION CONTACT: Kimberly Sellers, Office of Field Operations, Passenger Operations Division, (202) 927-0531.

SUPPLEMENTARY INFORMATION:

Background

To facilitate the entry processing of certain low-risk land-border travelers, Customs and the Immigration and Naturalization Service (INS) developed certain technologically-innovative land-border inspection programs, collectively known as the Port Passenger Accelerated Service System (PORTPASS). (See INS document at 60 FR 50386, September 29, 1995, implementing land-border facilitating programs, codified at 8 CFR 235.13). Two land-border entry facilitation programs have been developed thus far

under the PORTPASS: one concerns travelers that enter the U.S. through designated lanes at busy Port of Entry (POE) crossings (the Dedicated Commuter Lane (DCL) program); the other concerns local residents who enter the U.S. at remote land border crossings (the Automated Permit Port (APP) program). Participation in PORTPASS is voluntary and, because such participation constitutes an exception to the normal reporting and presentation for inspection requirements contained at 19 CFR 123.1, participants must agree to abide by certain conditions and restrictions.

Because PORTPASS program specifics are provided for under the INS Regulations (title 8 of the Code of Federal Regulations), Customs decided to provide notice of PORTPASS by cross referencing those INS Regulations in the Customs Regulations. Accordingly, on September 12, 1996, Customs published a notice of proposed rulemaking in the **Federal Register** (61 FR 48100) that solicited comments concerning a proposal to amend § 123.1 of the Customs Regulations (19 CFR 123.1) to reference §§ 235.13 and 286.8 of the INS regulations (8 CFR 235.13 and 286.8) which provide for the PORTPASS.

The public comment period for the proposed amendment closed November 12, 1996. One comment was received, which, although discussed below, was not within the scope of the proposed amendment to the Customs Regulations. Accordingly, Customs has decided to adopt the proposed amendment to Part 123 of the Customs Regulations without change.

Discussion of Comment

Comment: One comment was received from the Air Transport Association of America which, while applauding Customs effort to facilitate the low risk land-border traveler, inquired if such innovations would be expanded to the airport inspection environment.

Customs response: A number of initiatives unique to the air environment are available to benefit the air passenger. The preclearance program is designed to expedite entry into the United States for air passengers traveling directly into the United States from Canada and the Caribbean; the Advanced Passenger Information System is designed to facilitate entry into the United States for passengers on participating carriers; and the General Aviation Telephonic Entry Program, currently being tested (see, 61 FR 46902), which provides telephonic entry into the United States for qualifying general aviation aircraft entering the United States from Canada has been developed for private aircraft.

Other additional methods to further expedite air passengers are currently under consideration as part of the National Performance Review (NPR).

Inapplicability of the Regulatory Flexibility Act and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities, as the amendment concerns the entry status of individuals. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 123

Administrative practice and procedure, Aliens, Canada, Customs duties and inspection, Fees, Forms, Immigration, Imports, Mexico, Reporting and recordkeeping requirements, Test programs.

Amendment to the Regulations

For the reasons stated above, part 123 of the Customs Regulations (19 CFR part 123) is amended as set forth below:

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1624.
* * * * *

2. In § 123.1, the first sentence in paragraph (a) is amended by adding the words ", unless excepted by voluntary enrollment in and compliance with PORTPASS—a joint Customs Service/ Immigration and Naturalization Service facilitated entry program (See, Immigration and Naturalization Regulations at 8 CFR 235.13)," after the words "Individuals arriving in the United States"; and, paragraph (b) is amended by removing the second and third sentences and adding, in their place, the sentence that reads as follows:

§ 123.1 Report of arrival from Canada or Mexico and permission to proceed.

* * * * *

(b) *Vehicles.* * * * Upon arrival of the vehicle in the U.S., the driver, unless he or she and all of the vehicle's occupants are excepted by enrollment in, and in compliance with, PORTPASS—a joint Customs Service/ Immigration and Naturalization Service facilitated entry program (See, Immigration and Naturalization Regulations at 8 CFR 235.1 and 286.8), immediately shall report such arrival to Customs, and shall not depart or discharge any passenger or merchandise (including baggage) without authorization by the appropriate Customs officer.

* * * * *

George J. Weise,
Commissioner of Customs.

Approved: May 21, 1997.

Dennis M. O'Connell,
Acting Deputy Assistant Secretary of the Treasury.
[FR Doc. 97-15329 Filed 6-11-97; 8:45 am]
BILLING CODE 4820-02-P

DEPARTMENT OF JUSTICE

28 CFR Part 0

[DEA-157F]

Redelegation of Functions; Delegation of Authority to Drug Enforcement Administration Official

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA), Department of Justice, is amending the appendix to the Justice Department regulations which redelegate certain functions and authorities vested in the Attorney General by the Controlled Substances Act and the Chemical Diversion and Trafficking Act of 1988 and are redelegated to the Administrator of the Drug Enforcement Administration to make technical corrections to reflect changes in position titles and to add listed chemicals, tableting machines and encapsulating machines to the things which a subpoena may regard.

EFFECTIVE DATE: June 12, 1997.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC, Telephone (202) 307-7297.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) and subsequent

amendments establishes a comprehensive system of controls over the manufacture, distribution, dispensing, importation and exportation of controlled substances, listed chemicals, tableting machines and encapsulating machines. The CSA and subsequent amendments allow the Attorney General to subpoena witnesses, compel the attendance and testimony of witnesses, and the production of records which the Attorney General finds relevant or material in any investigation relating to the Attorney General's functions under the CSA (21 U.S.C. 875 and 876).

The Attorney General has delegated her functions under the CSA to the Administrator of the Drug Enforcement Administration and authorized the Administrator to redelegate any of his functions to any of his subordinates. See 21 U.S.C. 871(a), 28 CFR 0.100(b) and 28 CFR 0.104. To further enhance the administration of the CSA and its attendant regulations the Administrator has further redelegated to the Deputy Administrator the authority to carry out or to redelegate any of the functions which may be vested in the Administrator which are not specifically assigned or reserved by him. The Acting Deputy Administrator is amending the Appendix to Subpart R Section 4(a) of 28 CFR 0.104 to properly identify previously designated officials who have been assigned new job titles, and is adding individuals with newly titled positions with the delegated authority to sign and issue subpoenas under 21 U.S.C. 875 and 876. The Acting Deputy Administrator is also amending the Appendix to Subpart R Section 4(a) to add listed chemicals, tableting machines and encapsulating machines to the list of materials to which a subpoena may refer, thereby incorporating the additions made by the Chemical Diversion and Trafficking Act of 1988.

The Acting Deputy Administrator certifies that this action will have no impact on entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This action relates only to the organization of functions within DEA. As such, it is not a significant regulatory action under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget and does not require certification under Executive Order 12778. This action has been analyzed in accordance with Executive Order 12616. It has been determined that this matter has no federalism implications which would require preparation of a federalism assessment.

List of Subjects in 28 CFR Part 0

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

For the reasons set forth above, and pursuant to the authority vested in the Deputy Administrator of the Drug Enforcement Administration by 28 CFR 0.100 and 0.104 and 21 U.S.C. 871, Title 28 of the Code of Federal Regulations, part 0, appendix to Subpart R, Redelegation of Functions, is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 3151; 28 U.S.C. 509, 510, 515–519.

2. The Appendix to Subpart R is amended by revising Section 4(a) to read as follows:

Appendix to Subpart R—Redelegation of Functions

* * * * *

Sec. 4. Issuance of subpoenas. (a) The Chief Inspector of the DEA; the Deputy Chief Inspector and Associate Deputy Chief Inspector of the Office of Professional Responsibility of the DEA; all Special Agents-in-Charge of the DEA and the FBI; DEA Inspectors assigned to the Inspection Division; DEA Associate Special Agents-in-Charge; DEA and FBI Assistant Special Agents-in-Charge; DEA Resident Agents-in-Charge; DEA Diversion Program Managers; and FBI Supervisory Senior Resident Agents are authorized to sign and issue subpoenas with respect to controlled substances, listed chemicals, tableting machines and/or encapsulating machines under 21 U.S.C. 875 and 876 in regard to matters within their respective jurisdictions.

* * * * *

Dated: June 4, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97-15316 Filed 6-11-97; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 356 and 357

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes and Bonds (Department of the Treasury Circular, Public Debt Series No. 1-93); Regulations Governing Book-Entry Treasury Bonds, Notes and Bills (Department of the Treasury Circular, Public Debt Series No. 2-86); Corrections

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: The Fiscal Service published in the **Federal Register** of August 23, 1996, January 6, 1997 and April 11, 1997, documents revising regulations concerning book-entry Treasury bills, notes and bonds. This document corrects the amendatory instructions for two revisions to 31 CFR Part 356 and one in 31 CFR Part 357. This correction clarifies which provisions of 31 CFR 356.12(b), 356.17(b) and 357.20 are amended.

EFFECTIVE DATES: The correction to § 356.17 is effective on January 1, 1997; the correction to § 356.12 is effective January 6, 1997; the correction to § 357.20 is effective March 10, 1997.

FOR FURTHER INFORMATION CONTACT: Jacqueline L. Jackson, Attorney, Office of the Chief Counsel, Bureau of the Public Debt (202) 219-3485.

SUPPLEMENTARY INFORMATION: The Fiscal Service published documents in the issues of the **Federal Register** for August 23, 1996 (61 FR 43636), and January 6, 1997 (62 FR 846), revising text in Sections 356.12(b)(2) and 356.17(b) and April 11, 1997 (62 FR 18004) revising text in Section 357.20. This correction clarifies the amendatory instructions that described the intended revisions.

Correction

§ 356.17 [Corrected]

A. In final rule document 96-21488, beginning on page 43636 in the **Federal Register** issue of August 23, 1996, make the following correction. On page 43637, in the third column, correct instruction No. 12 to read as follows:

12. In § 356.17(b), the introductory paragraph is revised to read as follows:

§ 356.12 [Corrected]

B. In final rule document 96-33396, beginning on page 846 in the **Federal Register** issue of January 6, 1997, make the following corrections. On page 851,

the second column, correct instruction No. 6 to read as follows:

6. Section 356.12 is amended by revising the first sentence of paragraph (a) and the first sentence of paragraph (b)(2); revising paragraphs (c)(1) (i) and (ii); and adding a new paragraph (c)(1)(iii) to read as follows:

§ 357.20 [Corrected]

C. In final rule document 97-9332, beginning on page 18004 in the **Federal Register** issue of April 11, 1997, make the following correction. On page 18004, in the third column, correct instruction No. 2 to read as follows:

2. Section 357.20 is amended by revising the introductory text of paragraph (e) and paragraphs (e)(1) through (3), by adding a new paragraph (e)(4), and by revising the third sentence of the concluding text of paragraph (e); by redesignating paragraph (f) as paragraph (g); and by adding a new paragraph (f) to read as follows:

Dated: June 9, 1997.

Richard L. Gregg,

Commissioner of the Public Debt.

[FR Doc. 97-15419 Filed 6-11-97; 8:45 am]

BILLING CODE 4810-39-P-W

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[FRL-5840-3]

Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP); Delegation of Authority to the States of Iowa; Kansas; Missouri; Nebraska; Lincoln-Lancaster County, Nebraska; and City of Omaha, Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The states of Iowa, Kansas, Missouri, Nebraska, and the local agencies of Lincoln-Lancaster County, Nebraska, and city of Omaha, Nebraska, have submitted updated regulations for delegation of the EPA authority for implementation and enforcement of NSPS and NESHAP. The submissions cover new EPA standards and, in some instances, revisions to standards previously delegated. The EPA's review of the pertinent regulations shows that they contain adequate and effective procedures for the implementation and enforcement of these Federal standards. This notice informs the public of delegations to the above mentioned agencies.

DATES: The dates of delegation can be found in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Effective immediately, all requests, applications, reports, and other correspondence required pursuant to the newly delegated standards and revisions identified in this notice should be submitted to the Region VII office, and, with respect to sources located in the jurisdictions identified in this notice, to the following addresses:
 Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Urbandale, Iowa 50322.
 Kansas Department of Health and Environment, Bureau of Air Quality and Radiation, Building 283, Forbes Field, Topeka, Kansas 66620.
 Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, P.O. Box 176, Jefferson City, Missouri 65102.

Nebraska Department of Environmental Quality, Air and Waste Management Division, P.O. Box 98922, Statehouse Station, Lincoln, Nebraska 68509.

Lincoln-Lancaster County Air Pollution Control Agency, Division of Environmental Health, 3140 "N" Street, Lincoln, Nebraska 68510.

City of Omaha, Public Works Department, Air Quality Control Division, 5600 South 10th Street, Omaha, Nebraska 68510.

FOR FURTHER INFORMATION CONTACT: John Pawlowski, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7920.

SUPPLEMENTARY INFORMATION: Section 111(c)(1) of the Clean Air Act (CAA) as amended November 15, 1990, authorizes the EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorize the EPA to delegate authority to any state or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants.

The following table is an update of 40 CFR part 60 NSPS subparts previously delegated to the states. The states have adopted by reference the subparts of 40 CFR part 60 amended as of the first date in each cell shown in the table. The second date in the table is the current effective date of the state regulation for which the EPA is providing delegation. The EPA has delegated various authorities under 40 CFR part 60 as listed in the following table. The EPA regulations effective after the first date specified in each cell have not been delegated, and authority for implementation of these regulations is retained solely by the EPA.

DELEGATION OF AUTHORITY—PART 60 NSPS—REGION VII

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
A	General Provisions	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
D	Fossil-Fuel Fired Steam Generators for Which Construction is Commenced After August 17, 1971.	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
Da	Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
Db	Industrial-Commercial-Institutional Steam Generating Units	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
Dc	Small Industrial-Commercial-Institutional Steam Generating Units	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
E	Incinerators	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
Ea	Municipal Waste Combustors	12/15/94 07/12/95	07/01/94 01/23/95	..... .....	07/01/92 05/29/95

DELEGATION OF AUTHORITY—PART 60 NSPS—REGION VII—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
F	Portland Cement Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
G	Nitric Acid Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
H	Sulfuric Acid Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
I	Asphaltic Concrete Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
J	Petroleum Refineries	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
K	Storage Vessels for Petroleum Liquid for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
Ka	Storage Vessels for Petroleum Liquid for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
Kb	Volatile Organic Liquid Storage Vessels for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
L	Secondary Lead Smelters	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
M	Brass & Bronze Production Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
N	Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
Na	Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
O	Sewage Treatment Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
P	Primary Copper Smelters	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
Q	Primary Zinc Smelters	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
R	Primary Lead Smelters	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
S	Primary Aluminum Reduction Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
T	Wet Process Phosphoric Acid Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
U	Superphosphoric Acid Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
V	Diammonium Phosphate Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
W	Triple Superphosphate Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
X	Granular Triple Superphosphate Storage Facilities	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
Y	Coal Preparation Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
Z	Ferroalloy Production Facilities	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
AA	Steel Plant Electric Arc Furnaces Constructed After October 21, 1974, and on or Before August 17, 1983.	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
AAa	Steel Plant Electric Arc Furnaces & Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
BB	Kraft Pulp Mills	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	.....
CC	Glass Manufacturing Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
DD	Grain Elevators	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
EE	Surface Coating of Metal Furniture	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
GG	Stationary Gas Turbines	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
HH	Lime Manufacturing Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
KK	Lead-Acid Battery Manufacturing Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
LL	Metallic Mineral Processing Plants	12/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95
MM	Auto & Light-Duty Truck Surface Coating Operations	12/15/94	07/01/94	07/01/94	07/01/92

DELEGATION OF AUTHORITY—PART 60 NSPS—REGION VII—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
NN	Phosphate Rock Plants	07/12/95	01/23/95	05/30/96	05/29/95
		12/15/94	07/01/94	07/01/94	07/01/92
PP	Ammonium Sulfate Manufacture	07/12/95	01/23/95	05/30/96	05/29/95
		12/15/94	07/01/94	07/01/94	07/01/92
QQ	Graphic Arts Industry: Publication Rotogravure Printing	07/12/95	01/23/95	05/30/96	05/29/95
		12/15/94	07/01/94	07/01/94	07/01/92
RR	Pressure Sensitive Tape & Label Surface Coating Operations	07/12/95	01/23/95	05/30/96	05/29/95
		12/15/94	07/01/94	07/01/94	07/01/92
SS	Industrial Surface Coating: Large Appliances	07/12/95	1/23/95	05/30/96	05/29/95
		12/15/94	07/01/94	07/01/94	07/01/92
TT	Metal Coil Surface Coating	07/12/95	01/23/95	05/30/96	05/29/95
		12/15/94	07/01/94	07/01/94	07/01/92
UU	Asphalt Processing & Asphalt Roofing Manufacture	07/12/95	01/23/95	05/30/96	05/29/95
		12/15/94	07/01/94	07/01/94	07/01/92
VV	SOCMI Equipment Leaks (VOC)	07/12/95	01/23/95	05/30/96	05/29/95
		12/15/94	07/01/94	07/01/94	07/01/92
WW	Beverage Can Surface Coating Industry	07/12/95	01/23/95	05/30/96	05/29/95
		12/15/94	07/01/94	07/01/94	07/01/92
XX	Bulk Gasoline Terminals	07/12/95	01/23/95	05/30/96	05/29/95
		12/15/94	07/01/94	07/01/94	07/01/92
AAA	New Residential Wood Heaters	08/31/93	07/01/94	07/01/94	.....
		07/12/95	01/23/95	05/30/96	.....
BBB	Rubber Tire Manufacturing Industry	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95
DDD	Polymer Manufacturing Industry (VOC)	12/15/94	07/01/94	.....	.....
		07/12/94	01/23/95	.....	.....
FFF	Flexible Vinyl and Urethane Coating and Printing	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95
GGG	Equipment Leaks of VOC in Petroleum Refineries	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95
HHH	Synthetic Fiber Production Facilities	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95
III	SOCMI AIR Oxidation Unit Processes	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95
JJJ	Petroleum Dry Cleaners	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95
KKK	VOC Leaks from Onshore Natural Gas Processing Plants	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95
LLL	Onshore Natural Gas Processing: SO ₂ Emissions	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95
NNN	VOC Emissions from SOCMI Distillation Operations	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95
OOO	Nonmetallic Mineral Processing Plants	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95
PPP	Wool Fiberglass Insulation Manufacturing Plants	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95
QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95
RRR	VOC Emissions from SOCMI Reactor Processes	12/15/94	07/01/94	07/01/94	.....
		07/12/95	01/23/95	05/30/96	.....
SSS	Magnetic Tape Coating Facilities	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95
TTT	Surface Coating of Plastic Parts for Business Machines	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95
UUU	Calciners & Dryers in Mineral Industries	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95
VVV	Polymeric Coating of Supporting Substrates Facilities	12/15/94	07/01/94	07/01/94	07/01/92
		07/12/95	01/23/95	05/30/96	05/29/95

The following table is an update of 40 CFR part 61 NESHAP subparts previously delegated to the states and local agencies. The states and local agencies have adopted by reference the subparts of 40 CFR part 61 amended as

of the first date in each cell shown in the table. The second date in the table is the current effective date of the state regulation for which the EPA is providing delegation. The EPA has delegated various authorities under 40

CFR part 61 as listed in the following table. The EPA regulations effective after the first date specified in each cell have not been delegated, and authority for implementation of these regulations is retained solely by the EPA.

DELEGATION OF AUTHORITY—PART 61 NESHAP—REGION VII

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	07/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95	07/01/92 05/16/95	07/01/92 05/29/95
B	Radon Emissions from Underground Uranium Mines.		07/01/94 01/23/95				
C	Beryllium	07/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95	07/01/92 05/16/95	07/01/92 05/29/95
D	Beryllium Rocket Motor Firing	07/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95	07/01/92 05/16/95	07/01/92 05/29/95
E	Mercury	07/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95	07/01/92 05/16/95	07/01/92 05/29/95
F	Vinyl Chloride	07/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95	07/01/92 05/16/95	07/01/92 05/29/95
J	Equipment Leaks (Fugitive Emission Sources) of Benzene.	07/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95	07/01/92 05/16/95	07/01/92 05/29/95
L	Benzene Emissions from Coke By-Product Recovery Plants.	07/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95	07/01/92 05/16/95	07/01/92 05/29/95
M	Asbestos	07/15/94 07/12/95	07/01/94 01/23/95	07/01/88 05/30/96	07/01/92 05/29/95	07/01/92 05/16/95	07/01/92 05/29/95
N	Inorganic Arsenic Emissions from Glass Manufacturing Plants.	07/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95	07/01/92 05/16/95	07/01/92 05/29/95
O	Inorganic Arsenic Emissions from Primary Copper Smelters.	07/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95	07/01/92 05/16/95	07/01/92 05/29/95
P	Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.	07/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95	07/01/92 05/16/95	07/01/92 05/29/95
Q	Radon Emissions from Department of Energy Facilities.		07/01/94 01/23/95				
R	Radon Emissions from Phosphogypsum Stacks.		07/01/94 01/23/95				
T	Radon Emissions from the Disposal of Uranium Mill Tailings.		07/01/94 01/23/95				
V	Equipment Leaks (Fugitive Emission Sources).	07/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95	07/01/92 05/16/95	07/01/92 05/29/95
W	Radon Emissions from Operating Mill Tailings.		07/01/94 01/23/95				
Y	Benzene Emissions from Benzene Storage Vessels.	07/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95	07/01/92 05/16/95	07/01/92 05/29/95
BB	Benzene Emissions from Benzene Transfer Operations.	07/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95	07/01/92 05/16/95	07/01/92 05/29/95
FF	Benzene Waste Operations	07/15/94 07/12/95	07/01/94 01/23/95	07/01/94 05/30/96	07/01/92 05/29/95	07/01/92 05/16/95	07/01/92 05/29/95

The following table is an update of 40 CFR part 63 NESHAP subparts previously delegated to the states and local agencies. The states and local agencies have adopted by reference the subparts of 40 CFR part 63 amended as

of the first date in each cell shown in the table. The second date in the table is the current effective date of the state regulation for which the EPA is providing delegation. The EPA has delegated various authorities under 40

CFR part 63 as listed in the following table. The EPA regulations effective after the first date specified in each cell have not been delegated, and authority for implementation of these regulations is retained solely by the EPA.

DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION VII

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	03/08/95 10/18/95	07/01/94 02/29/96	12/31/95 12/30/96	..... .....	03/16/94 11/17/95	..........
B	Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Section 112(j).	03/08/95 10/18/95	07/01/94 02/29/96	12/31/95 12/30/96	..........	..........	..........
D	Compliance Extensions for Early Reductions of Hazardous Air Pollutants.	03/08/95 10/18/95	07/01/94 02/29/96	12/31/95 12/30/96	12/29/92 11/17/95	12/29/92 11/17/95	12/29/92 11/17/95
F	Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	03/08/95 10/18/95	07/01/94 02/29/96	12/31/95 12/30/96	..... .....	04/22/94 11/17/95	..........
G	Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	03/08/95 10/18/95	07/01/94 02/29/96	12/31/95 12/30/96	..... .....	04/22/94 11/17/95	..........
H	Organic Hazardous Air Pollutants for Equipment Leaks.	03/08/95 10/18/95	07/01/94 02/29/96	12/31/95 12/30/96	..... .....	04/22/94 11/17/95	..........
I	Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	03/08/95 10/18/95	07/01/94 02/29/96	12/31/95 12/30/96	..... .....	04/22/94 11/17/95	..........
L	Coke Oven Batteries	03/08/95 10/18/95	07/01/94 02/29/96	12/31/95 12/30/96	..........	..........	..........
M	Perchloroethylene Emissions from Dry Cleaning Facilities.	03/08/95 10/18/95	07/01/94 02/29/96	12/31/95 12/30/96	09/22/93 11/17/95	12/20/93 11/17/95	09/22/93 11/17/95
N	Chromium Emissions from Hard and Decorative Chromium Electroplating Anodizing Tanks.	03/08/95 10/18/95	..... .....	12/31/95 12/30/96	..... .....	01/25/95 11/17/95	..........
O	Ethylene Oxide Sterilization Facilities	03/08/95 10/18/95	..... .....	12/31/95 12/30/96	..... .....	12/06/94 11/17/95	..........
Q	Industrial Process Cooling Towers	03/08/95 10/18/95	..... .....	12/31/95 12/30/96	..... .....	09/08/94 11/17/95	..........
	Gasoline Distribution Facilities	03/08/95 10/18/95	..... .....	12/31/95 12/30/96	..... .....	12/14/94 11/17/95	..........
T	Halogenated Solvent Cleaning	03/08/95 10/18/95	..... .....	12/31/95 12/30/96	..... .....	12/02/94 11/17/95	..........
W	Epoxy Resins and Non-Nylon Polyamides Production.	03/08/95 10/18/95	..... .....	12/31/95 12/30/96	..........	..........	..........
X	Secondary Lead Smelting	..... .....	..... .....	12/31/95 12/30/96	..........	..........	..........
Y	Marine Tank Vessel Loading Operations	..... .....	..... .....	12/31/95 12/30/96	..........	..........	..........
CC	Petroleum Refineries	..... .....	..... .....	12/31/95 12/30/96	..........	..........	..........
EE	Magnetic Tape Manufacturing	03/08/95 10/18/95	..... .....	12/31/95 12/30/96	..... .....	12/15/94 11/17/95	..........
GG	Aerospace Manufacturing and Rework Facilities.	..... .....	..... .....	12/31/95 12/30/96	..........	..........	..........
II	Shipbuilding and Ship Repair	..... .....	..... .....	12/31/95 12/30/96	..........	..........	..........
JJ	Wood Furniture Manufacturing Operations	..... .....	..... .....	12/31/95 12/30/96	..........	..........	..........

After a review of the submissions, the Regional Administrator determined that delegation was appropriate for the source categories with the conditions set forth in the original NSPS and NESHAP delegation agreements, and the limitations in all applicable regulations, including 40 CFR parts 60, 61, and 63. The reader should refer to the applicable agreements and regulations to determine specific provisions which are not delegated. All sources subject to the requirements of 40 CFR parts 60, 61, and 63 are also subject to the equivalent requirements of the above-mentioned state or local agencies.

Since review of the pertinent laws, rules, and regulations of these state or local agencies has shown them to be adequate for the implementation and enforcement of the listed NSPS and NESHAP categories, the EPA hereby notifies the public that it has delegated the authority for the source categories listed as of the dates specified in the above tables.

Notice is also provided that the delegation document for the state of Kansas dated May 15, 1987 (52 FR 18357), which retained for the EPA certain delegation authority regarding asbestos removal by building owners, is superseded by delegation of the part 61, subpart M program as provided in this document.

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

Authority: This notice is issued under the authority of sections 101, 110, 111, 112 and 301 of the CAA, as amended (42 U.S.C. 7401, 7410, 7411, 7412 and 7601).

Dated: May 16, 1997.

William Rice,

Acting Regional Administrator.

[FR Doc. 97-15417 Filed 6-11-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 76

[FRL-5840-1]

RIN 2060-AF48

Acid Rain Program; Nitrogen Oxides Emissions Reduction Program; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On December 19, 1996 (61 FR 67112), the Environmental Protection Agency (EPA) promulgated emission limitations for the second phase of the Nitrogen Oxides Reductions Program under Title IV of the Clean Air Act. These emission limitations will reduce the serious adverse effects of NO_x emissions on human health, visibility, ecosystems, and materials. This action corrects an inadvertent, drafting error in the December 19, 1996 document.

EFFECTIVE DATE: June 12, 1997.

FOR FURTHER INFORMATION CONTACT: Peter Tsirogotis, Source Assessment Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460 (for technical matters) (202-233-9620); or Dwight C. Alpern (same address) (for legal matters) (202-233-9151).

SUPPLEMENTARY INFORMATION: On December 19, 1996 (61 FR 67112), EPA promulgated emission limitations for the second phase of the Nitrogen Oxides Reduction Program under Title IV of the Clean Air Act. Subsequent to the publication of the December 19, 1996 rule, EPA identified an inadvertent, drafting error in the December 19, 1996 document. Today's action corrects this error.

Section 76.6 of the December 19, 1996 rule sets emission limits for Group 2 coal-fired boilers, i.e., for cell burners, cyclones, wet bottoms and vertically fired boilers. The language in section 76.6(a) stating that the limits for these boiler categories applies to owners or operators of "Group 2, Phase II" coal-fired boilers, is an inadvertent, drafting error.

In issuing the December 19, 1996 NO_x rule, EPA clearly intended to set revised limits for Group 1 boilers (i.e., dry bottom wall fired and tangentially fired boilers) not subject to the initial Group 1 limits and to set new emission limits for Group 2 boilers, regardless of whether Group 2 boilers are Phase I or Phase II boilers. This intent was explicit in the preamble of the December 19, 1996 rule, where EPA stated that it was setting emission limits for Group 2 boilers and made no distinction between Phase I and Phase II boilers. Nowhere in the preamble did EPA state that the emission limits apply only to Group 2, Phase II boilers or that the limits do not apply to Group 2, Phase I boilers.¹ For example, in summarizing the rule, EPA stated that it was

¹ This is consistent with other provisions of part 76 that treat both Phase I and Phase II units as subject to emission limits for Group 2 boilers. For example, section 76.9(b)(2) sets a January 1, 1998, deadline for submission of compliance plans for NO_x emissions for "a Phase I or Phase II unit with a Group 2 boiler or a Phase II unit with a Group 1 boiler." 40 CFR 76.9(b)(2). See also 40 CFR 76.10(a)(1) and (2)(D) (stating requirements for applying for an alternative emission limitation for "Group 2 boilers", without distinguishing between Phase I and Phase II boilers).

“promulgating new emission limitations for nitrogen oxides * * * emissions for wall-fired and tangentially fired boilers (Group 1 boilers) and for certain other boilers (Group 2 boilers).” 61 FR 67113. See also 61 FR 67114 (explaining how the emission limit was selected for “the particular category of Group 2 boiler” and estimating the NO_x reductions that result from applying the limit to each Group 2 boiler category, including both Phase I and Phase II boilers), 67120 (explaining that EPA is exercising its discretion to “revise the Phase II, Group 1 emission limitations” and is adopting “Group 2 emission limitations”), 67148–67149 (discussing costs of selective catalytic reduction (SCR) applied to Merrimack unit 2, a Group 2, Phase I boiler), 67152–67153 (stating that EPA is setting specified limits for “cell burners,” “cyclone boilers greater than 155 MW,” “wet bottom boilers greater than 65 MW,” and “vertically fired boilers”). Moreover, in discussing the economic impact of the final rule, EPA presented several regulatory options and stated that the final rule adopted the option (identified as “Option 4”) under which limits are set “for all Group 2 boilers except cyclones with capacity of 155 MWe or less, wet bottoms with capacity of 65 MWe or less, stokers, and [fluidized bed combustion] boilers.” 61 FR 67160; see also Docket Item V-B, “Regulatory Impact Analysis of NO_x Regulations” at 6–1 (October 24, 1996).

The Agency’s analyses supporting the final rule were also based on the application of the Group 2 limits to both Phase I and Phase II boilers. For example, the study estimating the boiler-specific cost effectiveness of NO_x control technologies set forth cost effectiveness estimates for Group 2 boilers that included both Phase I and Phase II boilers. Docket Item IV-A-14 (November 1996). Similarly, the Regulatory Impact Analysis for the final rule analyzed the impact of the application of the Group 1 and Group 2 limits to a total of 1,044 boilers. These boilers were listed in the report and included both Group 2, Phase I boilers and Group 2, Phase II boilers. Docket

Item V-B-1, “Regulatory Impact Analysis of NO_x Regulations” (October 24, 1996) at 2–1 and 2–2 and Appendix A. See also Docket Item IV-A-15 (November 26, 1996) (load vs. time plots of selected cyclones and wet bottoms (including Phase I and Phase II boilers) subject to the Group 2 limits); and Docket Item V-B-1, “Unfunded Mandates Reform Act Analysis for the Nitrogen Oxides Emission Reduction Program Under the Clean Air Act Amendments Title IV” (October 24, 1996) at 11 (stating the number of cyclones and wet bottoms (including Phase I and Phase II boilers) subject to the Group 2 limits).

EPA notes that the erroneous language in § 76.6(a) of the final rule was also used in the January 19, 1996 proposed rule. (See 61 FR 1442 and 61 FR 1480 (1996)). However, like the final rule preamble, the preamble of the proposed rule described the establishment of limits for Group 2 boilers, without distinguishing between Phase I and Phase II boilers. See, e.g., 61 FR 1467, 61 FR 1471, 61 FR 1474, and 61 FR 1476 (setting the limit for each boiler category and estimating NO_x reductions that result from applying the limit to Phase I and Phase II boilers in each category). In addition, consistent with the preamble of the proposed rule, the commenters interpreted the proposed Group 2 limits as applying without distinction between Phase I and Phase II boilers. See, e.g., Comments of the Utility Air Regulatory Group and the National Mining Association, Docket Item IV-D-065 (March 19, 1996) at i and 3 (describing proposal as setting limits for “Group 2 boilers”), 98 (stating proposed limit for cell burners), 101 (objecting to application of cell burner limit to five 3-cell burner boilers including J.H. Campbell Unit 2, a Group 2, Phase 1 boiler), 106 (stating that proposal sets limit for 38 wet bottoms, including both Phase I (such as Kyger Creek unit 5) and Phase II boilers), 107–8 (citing Sargent and Lundy report and claiming that there is no technology on which to base Group 2 limits for certain Phase I wet bottoms (Big Bend units 1, 2, and 3)), 110 (stating proposed limit

for cyclone boilers), and 128–29 (stating that proposal applies to about 175 Group 2 boilers, which includes Phase I and Phase II boilers). See also Docket Item II-A-2 at A-5 (August 1995) (listing 39 wet bottoms covered by limit in proposed rule, including Phase I boilers (Clifty Creek units 1, 2, 3, 4, 5, and 6, Kyger Creek units 1, 2, 3, 4, and 5, and Big Bend units 1, 2, and 3)); and Docket Item IV-D-032 (March 18, 1996) (Sargent and Lundy report at ES-2 through ES-5 and ES-7 (discussing lack of technology for Big Bend units 1, 2, and 3)).

Consistent with these comments on the proposal, the petitioners’ briefs filed in *Appalachian Power v. U.S. EPA*, No. 96-1497 (D.C. Cir. 1997), challenging the December 19, 1996 rule stated that limits are set for Group 2 boilers and did not distinguish between Phase I and Phase II boilers. Brief of Petitioners Appalachian Power Company, *et al.* (April 18, 1997) at 9 and 21 (stating that proposed and final rules apply to over 1,000 boilers, including Group 2 boilers that are Phase I and Phase II boilers), 19 n.60 and 34 n.105 (objecting to the cell burner emission limit because it applies to “five 3-cell burner boilers,” one of which is a Phase I boiler (J.H. Campbell unit 2)), and 47 n.157 and 52 n.176 (objecting to EPA’s estimates of the costs of applying SCR to specific Group 2, Phase I boilers (Paradise unit 3, Allen units 1–3, Kyger Creek units, and Clifty Creek units)). See also Brief of Petitioner Arizona Public Service Company (May 2, 1997) at 3 (stating that final rule set limits for “Group 1, Phase II boilers, and * * * all Group 2 boilers”).

EPA concludes that the language in the current § 76.6(a) is contrary to the clear intent of the Agency—as expressed in the final rule preamble and the record—to set emission limits for Group 2 boilers, including both Phase I and Phase II boilers. EPA is therefore correcting today this inadvertent, drafting error in the December 19, 1996 document.

For the reasons discussed above, this action is not a “significant regulatory

action" and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735 (October 4, 1993)). For the same reasons, this action does not impose annual costs of \$100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. With regard to this action, the Agency thus has no obligations under sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4). Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, the action is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

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 document and any other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this document in today's **Federal Register**. This action is not a "major rule" as defined 5 U.S.C. 804(2).

Dated: June 6, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

Accordingly, for the reason set out above, the publication on December 19, 1996 of the final rule (FR Doc. 96-31839) at 61 FR 67112 is corrected as follows:

§ 76.6 [Corrected]

1. On page 67162, in the third column, in § 76.6, paragraph (a) introductory text is corrected in lines 6 and 7 by removing the words ", Phase II".

[FR Doc. 97-15413 Filed 6-11-97; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 356, 370 and 379

RIN 2125-AE12

Motor Carrier Routing Regulations; Disposition of Loss and Damage Claims and Processing Salvage; Preservation of Records

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document adds to 49 CFR chapter III certain motor carrier transportation regulations, also codified in 49 CFR chapter X, which involve functions delegated to both the FHWA and the Surface Transportation Board (STB). These regulations govern motor carrier routing, the processing of claims for loss or damage, and the preservation of records. The Interstate Commerce Commission Termination Act of 1995 (ICCTA) abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the STB and the DOT. The Secretary of Transportation delegated to the FHWA certain motor carrier functions which were transferred to the DOT from the ICC. On October 21, 1996, the FHWA and the STB issued a final rule which transferred and redesignated those regulations in 49 CFR chapter X involving functions exclusively within the jurisdiction of the FHWA. 61 FR 54706. This document completes the transfer process. Technical changes have been made to the regulations, where appropriate, to conform with current statutory citations and definitions and the transfer of regulatory functions to the Department of Transportation.

EFFECTIVE DATE: June 12, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Grimm, Director, Office of Motor Carrier Information Analysis, (202) 366-4039, or Mr. Michael Falk, Motor Carrier Law Division, Office of the Chief Counsel, (202) 366-1384, at 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This document adopts certain motor carrier transportation regulations codified in 49 CFR chapter X and incorporates them, with appropriate technical changes, into 49 CFR chapter III. These regulations involve motor carrier routing, processing of claims for loss and damage, and preservation of records. The ICCTA, Pub. L. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the ICC and transferred certain functions and proceedings to the STB and the DOT. Certain motor carrier functions previously under the jurisdiction of the ICC were transferred to the Secretary of Transportation, who subsequently delegated those functions to the FHWA. Implementing regulations for those motor carrier functions delegated exclusively to the FHWA have already been redesignated and transferred to 49 CFR chapter III, where regulations under the authority of the

FHWA are codified. 61 FR 54706 (October 21, 1996).

Unlike the transfer and redesignation procedure employed in that proceeding, the regulations embraced by this proceeding will be added to chapter III but not removed from chapter X. No substantive changes are being made to the regulations at this time. Consequently, prior notice and opportunity for comment are unnecessary.

Summary of Technical Changes From 49 CFR Chapter X Regulations

The regulations being added to chapter III in this proceeding have been modified to reflect current statutory citations, jurisdictional delegations, and regulatory responsibilities. Accordingly, references to the "Interstate Commerce Act" in the chapter X regulations have been changed to "49 U.S.C. subtitle IV, part B" and references to the "ICC" or "Commission" have been changed to either the "Secretary" or "FHWA", where appropriate. Other differences between the chapter X regulations and the regulations being added to chapter III in this proceeding are discussed below.

Interpretations and Routing Regulations (Part 356)

These regulations are currently found in 49 CFR part 1004 and are being added to chapter III as part 356 with the changes noted below.

All references to "household goods" appearing in 49 CFR part 1004 have been deleted from part 356 to reflect the Secretary's registration jurisdiction, which embraces all freight forwarders. Since the part 356 regulations are essentially interpretive and impose no affirmative compliance requirements, including all freight forwarders within this part is not a substantive regulatory change.

The FHWA is not incorporating 49 CFR 1004.26 into part 356 because that section involves claims and disputes relating to the lawfulness of shipment routing, matters which are within the jurisdiction of the Surface Transportation Board under 49 U.S.C. 13701.

Principles and Practices for the Investigation and Voluntary Disposition of Loss and Damage Claims and Processing Salvage (Part 370)

These regulations are currently found in 49 CFR part 1005 and are being added to chapter III as part 370 with the changes noted below.

Section 370.1 does not include the words "railroad" and "express company", which are contained in 49

CFR 1005.1. Inasmuch as 49 CFR 1005.7 pertains solely to rail transportation, it has not been incorporated into part 370.

Preservation of Records (Part 379)

These regulations are currently found in 49 CFR part 1220 and are being added to chapter III as part 379 with the changes noted below.

The words "railroad companies", "electric railway companies", "express companies", "persons furnishing cars to railroads", "ratemaking organizations", and "demurrage and car service bureaus" which appear in 49 CFR 1220 have not been incorporated into part 379. Appendix A does not contain requirements regarding the preservation of records relating to tariffs and rates and rail transportation since such matters fall within the jurisdiction of the STB.

Rulemaking Analyses and Notices

Because the amendments made by this document relate to departmental management, organization, procedure, and practice, prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(A). In addition, prior notice and opportunity for comment are unnecessary pursuant to 5 U.S.C. 553(b)(3)(B) because the process of incorporating existing regulations into chapter III is merely technical in nature and proposes no substantive changes to which public comment could be solicited. Issuing this document as a final rule is also in the public interest because, once codified in chapter III, the sections now under the FHWA's jurisdiction may be modified or removed readily to correspond with the FHWA's new functions.

This final rule is made effective upon publication in the **Federal Register**. The FHWA believes that good cause exists for this final rule to be exempt from the 30-day delayed effective date requirement of 5 U.S.C. 553(d) for the above reason and because the process of adding the motor carrier transportation regulations to chapter III makes no substantive changes to the regulations. In fact, the sooner the regulations are incorporated into chapter III, the more quickly the FHWA can begin the process of updating those regulations and making necessary changes to them.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of

Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. This final rule simply provides notice to the public that certain motor carrier transportation regulations currently found in 49 CFR chapter X are being incorporated into 49 CFR chapter III. No substantive changes are being made to the existing regulations. The regulations are simply being added to chapter III of title 49 of the Code of Federal Regulations so that the FHWA may administer and execute those motor carrier functions transferred to it from the ICC by the ICCTA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. As noted above, this final rule simply provides notice to the public that certain motor carrier transportation regulations currently found in 49 CFR chapter X are being incorporated into 49 CFR chapter III. No substantive changes are being made to the regulations which will affect small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* In the course of its ongoing regulatory review process, the FHWA will be reviewing these regulations in the near future and, where appropriate, may propose substantive changes. At that point in time, the FHWA intends to solicit public comment on the

information collection burdens associated with these regulations, and to seek and obtain Office of Management and Budget approval.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 356

Administrative practice and procedure, Freight forwarders, Highways and roads, Motor carriers.

49 CFR Part 370

Claims for property transported, Freight forwarders, Motor carriers.

49 CFR Part 379

Brokers, Freight forwarders, Motor carriers, Recordkeeping requirements.

Issued on: June 4, 1997.

Jane Garvey,

Acting Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, chapter III, by adding parts 356, 370 and 379 as set forth below:

1. Chapter III is amended by adding part 356 to read as follows:

PART 356—MOTOR CARRIER ROUTING REGULATIONS

Sec.

- 356.1 Authority to serve a particular area—construction.
- 356.3 Regular route motor passenger service.
- 356.5 Traversal authority.
- 356.7 Tacking.
- 356.9 Elimination of routing restrictions—regular route carriers.
- 356.11 Elimination of gateways—regular and irregular route carriers.
- 356.13 Redesignated highways.

Authority: 49 U.S.C. 13301 and 13902; 5 U.S.C. 553; 49 CFR 1.48.

§ 356.1 Authority to serve a particular area—construction.

(a) *Service at municipality.* A motor carrier of property, motor passenger

carrier of express, and freight forwarder authorized to serve a municipality may serve all points within that municipality's commercial zone not beyond the territorial limits, if any, fixed in such authority.

(b) *Service at unincorporated community.* A motor carrier of property, motor passenger carrier of express, and freight forwarder, authorized to serve an unincorporated community having a post office of the same name, may serve all points in the United States not beyond the territorial limits, if any, fixed in such authority, as follows:

(1) All points within 3 miles of the post office in such unincorporated community if it has a population of less than 2,500; within 4 miles if it has a population of 2,500 but less than 25,000; and within 6 miles if it has a population of 25,000 or more;

(2) At all points in any municipality any part of which is within the limits described in paragraph (b)(1) of this section; and

(3) At all points in any municipality wholly surrounded, or so surrounded except for a water boundary, by any municipality included under the terms of paragraph (b)(2) of this section.

§ 356.3 Regular route motor passenger service.

(a) A motor common carrier authorized to transport passengers over regular routes may serve:

(1) All points on its authorized route;

(2) All municipalities wholly within one airline mile of its authorized route;

(3) All unincorporated areas within one airline mile of its authorized route; and

(4) All military posts, airports, schools, and similar establishments that may be entered within one airline mile of its authorized route, but operations within any part of such establishment more than one airline mile from such authorized route may not be over a public road.

(b) This section does not apply to those motor passenger common carriers authorized to operate within:

(1) New York, NY;

(2) Rockland, Westchester, Orange, or Nassau Counties, NY;

(3) Fairfield County, CT; and

(4) Passaic, Bergen, Essex, Hudson, Union, Morris, Somerset, Middlesex, or Monmouth Counties, NJ.

§ 356.5 Traversal authority.

(a) *Scope.* An irregular route motor carrier may operate between authorized service points over any reasonably direct or logical route unless expressly prohibited.

(b) *Requirements.* Before commencing operations, the carrier must, regarding each State traversed:

(1) Notify the State regulatory body in writing, attaching a copy of its operating rights;

(2) Designate a process agent; and

(3) Comply with 49 CFR 387.315.

§ 356.7 Tacking.

Unless expressly prohibited, a motor common carrier of property holding separate authorities which have common service points may join, or *tack*, those authorities at the common point, or *gateway*, for the purpose of performing through service as follows:

(a) Regular route authorities may be tacked with one another;

(b) Regular route authority may be tacked with irregular route authority;

(c) Irregular route authorities may be tacked with one another if the authorities were granted pursuant to application filed on or before November 23, 1973, and the distance between the points at which service is provided, when measured through the gateway point, is 300 miles or less; and

(d) Irregular route authorities may be tacked with one another if the authorities involved contain a specific provision granting the right to tack.

§ 356.9 Elimination of routing restrictions—regular route carriers.

(a) *Regular route authorities—construction.* All certificates that, either singly or in combination, authorize the transportation by a motor common carrier of property over:

(1) A single regular route or;

(2) Over two or more regular routes that can lawfully be tacked at a common service point, shall be construed as authorizing transportation between authorized service points over any available route.

(b) *Service at authorized points.* A common carrier departing from its authorized service routes under paragraph (a) of this section shall continue to serve points authorized to be served on or in connection with its authorized service routes.

(c) *Intermediate point service.* A common carrier conducting operations under paragraph (a) of this section may serve points on, and within one airline mile of, an alternative route it elects to use if all the following conditions are met:

(1) The carrier is authorized to serve all intermediate points (without regard to nominal restrictions) on the underlying service route;

(2) The alternative route involves the use of a superhighway (i.e., a limited access highway with split-level crossings);

(3) The alternative superhighway route, including highways connecting the superhighway portion of the route with the carrier's authorized service route,

(i) Extends in the same general direction as the carrier's authorized service route and

(ii) Is wholly within 25 airline miles of the carrier's authorized service route; and

(4) Service is provided in the same manner as, and subject to any restrictions that apply to, service over the authorized service route.

§ 356.11 Elimination of gateways—regular and irregular route carriers.

A motor common carrier of property holding separate grants of authority (including regular route authority), one or more of which authorizes transportation over irregular routes, where the authorities have a common service point at which they can lawfully be tacked to perform through service, may perform such through service over any available route.

§ 356.13 Redesignated highways.

Where a highway over which a regular route motor common carrier of property is authorized to operate is assigned a new designation, such as a new number, letter, or name, the carrier shall advise the FHWA by letter, and shall provide information concerning the new and the old designation, the points between which the highway is redesignated, and each place where the highway is referred to in the carrier's authority. The new designation of the highway will be shown in the carrier's certificate when the FHWA has occasion to reissue it.

2. Chapter III is amended by adding part 370 to read as follows:

PART 370—PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE

Sec.

370.1 Applicability of regulations.

370.3 Filing of claims.

370.5 Acknowledgment of claims.

370.7 Investigation of claims.

370.9 Disposition of claims.

370.11 Processing of salvage.

Authority: 49 U.S.C. 13301 and 14706; 49 CFR 1.48.

§ 370.1 Applicability of regulations.

The regulations set forth in this part shall govern the processing of claims for loss, damage, injury, or delay to property transported or accepted for transportation, in interstate or foreign commerce, by each motor carrier, water

carrier, and freight forwarder (hereinafter called carrier), subject to 49 U.S.C. subtitle IV, part B.

§ 370.3 Filing of claims.

(a) *Compliance with regulations.* A claim for loss or damage to baggage or for loss, damage, injury, or delay to cargo, shall not be voluntarily paid by a carrier unless filed, as provided in paragraph (b) of this section, with the receiving or delivering carrier, or carrier issuing the bill of lading, receipt, ticket, or baggage check, or carrier on whose line the alleged loss, damage, injury, or delay occurred, within the specified time limits applicable thereto and as otherwise may be required by law, the terms of the bill of lading or other contract of carriage, and all tariff provisions applicable thereto.

(b) *Minimum filing requirements.* A written or electronic communication (when agreed to by the carrier and shipper or receiver involved) from a claimant, filed with a proper carrier within the time limits specified in the bill of lading or contract of carriage or transportation and:

- (1) Containing facts sufficient to identify the baggage or shipment (or shipments) of property,
- (2) Asserting liability for alleged loss, damage, injury, or delay, and
- (3) Making claim for the payment of a specified or determinable amount of money, shall be considered as sufficient compliance with the provisions for filing claims embraced in the bill of lading or other contract of carriage; *Provided, however,* That where claims are electronically handled, procedures are established to ensure reasonable carrier access to supporting documents.

(c) *Documents not constituting claims.* Bad order reports, appraisal reports of damage, notations of shortage or damage, or both, on freight bills, delivery receipts, or other documents, or inspection reports issued by carriers or their inspection agencies, whether the extent of loss or damage is indicated in dollars and cents or otherwise, shall, standing alone, not be considered by carriers as sufficient to comply with the minimum claim filing requirements specified in paragraph (b) of this section.

(d) *Claims filed for uncertain amounts.* Whenever a claim is presented against a proper carrier for an uncertain amount, such as "\$100 more or less," the carrier against whom such claim is filed shall determine the condition of the baggage or shipment involved at the time of delivery by it, if it was delivered, and shall ascertain as nearly as possible the extent, if any, of the loss or damage for which it may be

responsible. It shall not, however, voluntarily pay a claim under such circumstances unless and until a formal claim in writing for a specified or determinable amount of money shall have been filed in accordance with the provisions of paragraph (b) of this section.

(e) *Other claims.* If investigation of a claim develops that one or more other carriers has been presented with a similar claim on the same shipment, the carrier investigating such claim shall communicate with each such other carrier and, prior to any agreement entered into between or among them as to the proper disposition of such claim or claims, shall notify all claimants of the receipt of conflicting or overlapping claims and shall require further substantiation, on the part of each claimant of his/her title to the property involved or his/her right with respect to such claim.

§ 370.5 Acknowledgment of claims.

(a) Each carrier shall, upon receipt in writing or by electronic transmission of a proper claim in the manner and form described in the regulations in the past, acknowledge the receipt of such claim in writing or electronically to the claimant within 30 days after the date of its receipt by the carrier unless the carrier shall have paid or declined such claim in writing or electronically within 30 days of the receipt thereof. The carrier shall indicate in its acknowledgment to the claimant what, if any, additional documentary evidence or other pertinent information may be required by it further to process the claim as its preliminary examination of the claim, as filed, may have revealed.

(b) The carrier shall at the time each claim is received create a separate file and assign thereto a successive claim file number and note that number on all documents filed in support of the claim and all records and correspondence with respect to the claim, including the acknowledgment of receipt. At the time such claim is received the carrier shall cause the date of receipt to be recorded on the face of the claim document, and the date of receipt shall also appear in the carrier's acknowledgment of receipt to the claimant. The carrier shall also cause the claim file number to be noted on the shipping order, if in its possession, and the delivery receipt, if any, covering such shipment, unless the carrier has established an orderly and consistent internal procedure for assuring:

(1) That all information contained in shipping orders, delivery receipts, tally sheets, and all other pertinent records made with respect to the transportation

of the shipment on which claim is made, is available for examination upon receipt of a claim;

(2) That all such records and documents (or true and complete reproductions thereof) are in fact examined in the course of the investigation of the claim (and an appropriate record is made that such examination has in fact taken place); and

(3) That such procedures prevent the duplicate or otherwise unlawful payment of claims.

§ 370.7 Investigation of claims.

(a) *Prompt investigation required.* Each claim filed against a carrier in the manner prescribed in this part shall be promptly and thoroughly investigated if investigation has not already been made prior to receipt of the claim.

(b) *Supporting documents.* When a necessary part of an investigation, each claim shall be supported by the original bill of lading, evidence of the freight charges, if any, and either the original invoice, a photographic copy of the original invoice, or an exact copy thereof or any extract made therefrom, certified by the claimant to be true and correct with respect to the property and value involved in the claim; or certification of prices or values, with trade or other discounts, allowance, or deductions, of any nature whatsoever and the terms thereof, or depreciation reflected thereon; *Provided, however,* That where property involved in a claim has not been invoiced to the consignee shown on the bill of lading or where an invoice does not show price or value, or where the property involved has been sold, or where the property has been transferred at bookkeeping values only, the carrier shall, before voluntarily paying a claim, require the claimant to establish the destination value in the quantity, shipped, transported, or involved; *Provided, further,* That when supporting documents are determined to be a necessary part of an investigation, the supporting documents are retained by the carriers for possible FHWA inspection.

(c) *Verification of loss.* When an asserted claim for loss of an entire package or an entire shipment cannot be otherwise authenticated upon investigation, the carrier shall obtain from the consignee of the shipment involved a certified statement in writing that the property for which the claim is filed has not been received from any other source.

§ 370.9 Disposition of claims.

(a) Each carrier subject to 49 U.S.C. subtitle IV, part B which receives a

written or electronically transmitted claim for loss or damage to baggage or for loss, damage, injury, or delay to property transported shall pay, decline, or make a firm compromise settlement offer in writing or electronically to the claimant within 120 days after receipt of the claim by the carrier; *Provided, however,* That, if the claim cannot be processed and disposed of within 120 days after the receipt thereof, the carrier shall at that time and at the expiration of each succeeding 60-day period while the claim remains pending, advise the claimant in writing or electronically of the status of the claim and the reason for the delay in making final disposition thereof and it shall retain a copy of such advice to the claimant in its claim file thereon.

(b) When settling a claim for loss or damage, a common carrier by motor vehicle of household goods as defined in § 375.1(b)(1) of this chapter shall use the replacement costs of the lost or damaged item as a base to apply a depreciation factor to arrive at the current actual value of the lost or damaged item: *Provided,* That where an item cannot be replaced or no suitable replacement is obtainable, the proper measure of damages shall be the original costs, augmented by a factor derived from a consumer price index, and adjusted downward by a factor depreciation over average useful life.

§ 370.11 Processing of salvage.

(a) Whenever baggage or material, goods, or other property transported by a carrier subject to the provisions in this part is damaged or alleged to be damaged and is, as a consequence thereof, not delivered or is rejected or refused upon tender thereof to the owner, consignee, or person entitled to receive such property, the carrier, after giving due notice, whenever practicable to do so, to the owner and other parties that may have an interest therein, and unless advised to the contrary after giving such notice, shall undertake to sell or dispose of such property directly or by the employment of a competent salvage agent. The carrier shall only dispose of the property in a manner that will fairly and equally protect the best interests of all persons having an interest therein. The carrier shall make an itemized record sufficient to identify the property involved so as to be able to correlate it to the shipment or transportation involved, and claim, if any, filed thereon. The carrier also shall assign to each lot of such property a successive lot number and note that lot number on its record of shipment and claim, if any claim is filed thereon.

(b) Whenever disposition of salvage material or goods shall be made directly to an agent or employee of a carrier or through a salvage agent or company in which the carrier or one or more of its directors, officers, or managers has any interest, financial or otherwise, that carrier's salvage records shall fully reflect the particulars of each such transaction or relationship, or both, as the case may be.

(c) Upon receipt of a claim on a shipment on which salvage has been processed in the manner prescribed in this section, the carrier shall record in its claim file thereon the lot number assigned, the amount of money recovered, if any, from the disposition of such property, and the date of transmittal of such money to the person or persons lawfully entitled to receive the same.

3. Chapter III is amended by adding part 379 to read as follows:

PART 379—PRESERVATION OF RECORDS

Sec.

- 379.1 Applicability.
- 379.3 Records required to be retained.
- 379.5 Protection and storage of records.
- 379.7 Preservation of records.
- 379.9 Companies going out of business.
- 379.11 Waiver of requirements of the regulations in this part.
- 379.13 Disposition and retention of records.

Appendix A to Part 379—Schedule of Records and Periods of Retention

Authority: 49 U.S.C. 13301, 14122 and 14123; 49 CFR 1.48.

§ 379.1 Applicability.

(a) The preservation of record rules contained in this part shall apply to the following:

- (1) Motor carriers and brokers;
- (2) Water carriers; and
- (3) Household goods freight forwarders.

(b) This part applies also to the preservation of accounts, records and memoranda of traffic associations, weighing and inspection bureaus, and other joint activities maintained by or on behalf of companies listed in paragraph (a) of this section.

§ 379.3 Records required to be retained.

Companies subject to this part shall retain records for the minimum retention periods provided in appendix A to this part. After the required retention periods, the records may be destroyed at the discretion of each company's management. It shall be the obligation of the subject company to maintain records that adequately support financial and operational data required by the Secretary. The company

may request a ruling from the Secretary on the retention of any record. The provisions of this part shall not be construed as excusing compliance with the lawful requirements of any other governmental body prescribing longer retention periods for any category of records.

§ 379.5 Protection and storage of records.

(a) The company shall protect records subject to this part from fires, floods, and other hazards, and safeguard the records from unnecessary exposure to deterioration from excessive humidity, dryness, or lack of ventilation.

(b) The company shall notify the Secretary if prescribed records are substantially destroyed or damaged before the term of the prescribed retention periods.

§ 379.7 Preservation of records.

(a) All records may be preserved by any technology that is immune to alteration, modification, or erasure of the underlying data and will enable production of an accurate and unaltered paper copy.

(b) Records not originally preserved on hard copy shall be accompanied by a statement executed by a person having personal knowledge of the facts indicating the type of data included within the records. One comprehensive statement may be executed in lieu of individual statements for multiple records if the type of data included in the multiple records is common to all such records. The records shall be indexed and retained in such a manner as will render them readily accessible. The company shall have facilities available to locate, identify and produce legible paper copies of the records.

(c) Any significant characteristic, feature or other attribute that a particular medium will not preserve shall be clearly indicated at the beginning of the applicable records as appropriate.

(d) The printed side of forms, such as instructions, need not be preserved for each record as long as the printed matter is common to all such forms and an identified specimen of the form is maintained on the medium for reference.

§ 379.9 Companies going out of business.

The records referred to in the regulations in this part may be destroyed after business is discontinued and the company is completely liquidated. The records may not be destroyed until dissolution is final and all pending transactions and claims are completed. When a company is merged with another company under

jurisdiction of the Secretary, the successor company shall preserve records of the merged company in accordance with the regulations in this part.

§ 379.11 Waiver of requirements of the regulations in this part.

A waiver from any provision of the regulations in this part may be made by the Secretary upon his/her own initiative or upon submission of a written request by the company. Each

request for waiver shall demonstrate that unusual circumstances warrant a departure from prescribed retention periods, procedures, or techniques, or that compliance with such prescribed requirements would impose an unreasonable burden on the company.

§ 379.13 Disposition and retention of records.

The schedule in appendix A to this part shows periods that designated records shall be preserved. The

descriptions specified under the various general headings are for convenient reference and identification, and are intended to apply to the items named regardless of what the records are called in individual companies and regardless of the record media. The retention periods represent the prescribed number of years from the date of the document and not calendar years. Records not listed in appendix A to this part shall be retained as determined by the management of each company.

Appendix A to Part 379

SCHEDULE OF RECORDS AND PERIODS OF RETENTION

Item and category of records	Retention period
A. Corporate and General	
1. Incorporation and reorganization:	
(a) Charter or certificate of incorporation and amendments	Note A.
(b) Legal documents related to mergers, consolidations, reorganization, receiverships and similar actions which affect the identity or organization of the company.	Note A.
2. Minutes of Directors, Executive Committees, Stockholders and other corporate meetings	Note A.
3. Titles, franchises and authorities:	
(a) Certificates of public convenience and necessity issued by regulating bodies	Until expiration or cancellation.
(b) Operating authorizations and exemptions to operate	Until expiration or cancellation.
(c) Copies of formal orders of regulatory bodies served upon the company	Note A.
(d) Deeds, charters, and other title papers	Until disposition of property.
(e) Patents and patent records	Note A.
4. Annual reports or statements to stockholders	3 years.
5. Contracts and agreements:	
(a) Service contracts, such as for operational management, accounting, financial or legal services, and agreements with agents.	Until expiration or termination plus 3 years.
(b) Contracts and other agreements relating to the construction, acquisition or sale of real property and equipment except as otherwise provided in (a) above.	Until expiration or termination plus 3 years.
(c) Contracts for the purchase or sale of material and supplies except as provided in (a) above	Until expiration.
(d) Shipping contracts for transportation or caretakers of freight	Until expiration.
(e) Contracts with employees and employee bargaining groups	Until expiration.
(f) Contracts, leases and agreements, not specifically provided for in this section	Until expiration or termination plus 1 year.
6. Accountant's auditor's, and inspector's reports:	
(a) Certifications and reports of examinations and audits conducted by public accountants	3 years.
(b) Reports of examinations and audits conducted by internal auditors, time inspectors, and others	3 years.
7. Other	Note A.
B. Treasury	
1. Capital stock records:	
(a) Capital stock ledger	Note A.
(b) Capital stock certificates, records of or stubs of	Note A.
(c) Stock transfer register	Note A.
2. Long-term debt records:	
(a) Bond indentures, underwritings, mortgages, and other long-term credit agreements	Until redemption plus 3 years.
(b) Registered bonds and debenture ledgers	Until redemption plus 3 years.
(c) Stubs or similar records of bonds or other long-term debt issued	Note A.
3. Authorizations from regulatory bodies for issuance of securities including applications, reports, and supporting papers.	Note A.
4. Records of securities owned, in treasury, or held by custodians, detailed ledgers and journals, or their equivalent.	Until the securities are sold, redeemed or otherwise disposed of.
5. Other	Note A.
C. Financial and Accounting	
1. Ledgers:	
(a) General and subsidiary ledgers with indexes	Until discontinuance of use plus 3 years.
(b) Balance sheets and trial balance sheets of general and subsidiary ledgers	3 years.
2. Journals:	
(a) General journals	Until discontinuance of use plus 3 years.
(b) Subsidiary journals and any supporting data, except as otherwise provided for, necessary to explain journal entries.	3 years.
3. Cash books:	

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item and category of records	Retention period
(a) General cash books	Until discontinuance of use plus 3 years.
(b) Subsidiary cash books	3 years.
4. Vouchers:	
(a) Voucher registers, indexes, or equivalent	3 years.
(b) Paid and canceled vouchers, expenditure authorizations, detailed distribution sheets and other supporting data including original bills and invoices, if not provided for elsewhere.	3 years.
(c) Paid drafts, paid checks, and receipts for cash paid out	3 years.
5. Accounts receivable:	
(a) Record or register of accounts receivable, indexes thereto, and summaries of distribution	3 years after settlement.
(b) Bills issued for collection and supporting data	3 years after settlement.
(c) Authorization for writing off receivables	1 year.
(d) Reports and statements showing age and status of receivables	1 year.
6. Records of accounting codes and instructions	3 years after discontinuance.
7. Other	Note A.
D. Property and Equipment	
Note.—All accounts, records, and memoranda necessary for making a complete analysis of the cost or value of property shall be retained for the periods shown. If any of the records elsewhere provided for in this schedule are of this character, they shall be retained for the periods shown below, regardless of any lesser retention period assigned.	
1. Property records:	
(a) Records which maintain complete information on cost or other value of all real and personal property or equipment.	3 years after disposition of property.
(b) Records of additions and betterments made to property and equipment	3 years after disposition of property.
(c) Records pertaining to retirements and replacements of property and equipment	3 years after disposition of property.
(d) Records pertaining to depreciation	3 years after disposition of property.
(e) Records of equipment number changes	3 years after disposition of property.
(f) Records of motor and engine changes	3 years after disposition of property.
(g) Records of equipment lightweighed and stenciled	Only current or latest records.
2. Engineering records of property changes actually made	3 years after disposition of property.
3. Other	Note A.
E. Personnel and Payroll	
1. Personnel and payroll records	1 year.
F. Insurance and Claims	
1. Insurance records:	
(a) Schedules of insurance against fire, storms, and other hazards and records of premium payments	Until expiration plus 1 year.
(b) Records of losses and recoveries from insurance companies and supporting papers	1 year after settlement.
(c) Insurance policies	Until expiration of coverage plus 1 year.
2. Claims records:	
(a) Claim registers, card or book indexes, and other records which record personal injury, fire and other claims against the company, together with all supporting data.	1 year after settlement.
(b) Claims registers, card or book indexes, and other records which record overcharges, damages, and other claims filed by the company against others, together with all supporting data.	1 year after settlement.
(c) Records giving the details of authorities issued to agents, carriers, and others for participation in freight claims.	3 years.
(d) Reports, statements and other data pertaining to personal injuries or damage to property when not necessary to support claims or vouchers.	3 years.
(e) Reports, statements, tracers, and other data pertaining to unclaimed, over, short, damaged, and refused freight, when not necessary to support claims or vouchers.	1 year.
(f) Authorities for disposal of unclaimed, damaged, and refused freight	3 years.
3. Other	Note A.
G. Taxes	
1. Taxes.	Note A.
H. Purchases and Stores	
1. Purchases and stores.	Note A.
I. Shipping and Agency Documents	
1. Bills of lading and releases:	
(a) Consignors' shipping orders, consignors' shipping tickets, and copies of bills of lading, freight bills from other carriers and other similar documents furnished the carrier for movement of freight.	1 year.
(b) Shippers' order-to-notify bills of lading taken up and canceled	1 year.
2. Freight waybills:	
(a) Local waybills	1 year.
(b) Interline waybills received from and made to other carriers	1 year.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item and category of records	Retention period
(c) Company freight waybills	1 year.
(d) Express waybills	1 year.
3. Freight bills and settlements:	
(a) Paid copy of freight bill retained to support receipt of freight charges:	
(1) Bus express freight bills provided no claim has been filed	1 year.
(2) All other freight bills	1 year.
(b) Paid copy of freight bill retained to support payment of freight charges to other carriers:	
(1) Bus express freight bills provided no claim has been filed	1 year.
(2) All other freight bills	1 year.
(c) Records of unsettled freight bills and supporting papers	1 year after disposition.
(d) Records and reports of correction notices	1 year.
4. Other freight records:	
(a) Records of freight received, forwarded, and delivered	1 year.
(b) Notice to consignees of arrival of freight; tender of delivery	1 year.
5. Agency records (to include conductors, pursers, stewards, and others):	
(a) Cash books	1 year.
(b) Remittance records, bank deposit slips and supporting papers	1 year.
(c) Balance sheets and supporting papers	1 year.
(d) Statements of corrections in agents' accounts	1 year.
(e) Other records and reports pertaining to ticket sales, baggage handled, miscellaneous collections, re-funds, adjustments, etc..	1 year.
J. Transportation	
1. Records pertaining to transportation of household goods:	
(a) Estimate of charges	1 year.
(b) Order for service	1 year.
(c) Vehicle-load manifest	1 year.
(d) Descriptive inventory	1 year.
2. Records and reports pertaining to operation of marine and floating equipment:	
(a) Ship log	3 years.
(b) Ship articles	3 years.
(c) Passenger and room list	3 years.
(d) Floatmen's barge, lighter, and escrow captain's reports, demurrage records, towing reports and checks sheets.	2 years.
3. Dispatchers' sheets, registers, and other records pertaining to movement of transportation equipment	3 years.
4. Import and export records including bonded freight and steamship engagements	2 years.
5. Records, reports, orders and tickets pertaining to weighting of freight	3 years.
6. Records of loading and unloading of transportation equipment	2 years.
7. Records pertaining to the diversion or reconsignment of freight, including requests, tracers, and correspondence.	2 years.
8. Other	Note A.
K. Supporting Data for Reports and Statistics	
1. Supporting data for reports filed with the Federal Highway Administration, the Surface Transportation Board, the Department of Transportation's Bureau of Transportation Statistics and regulatory bodies:	
(a) Supporting data for annual financial, operating and statistical reports	3 years.
(b) Supporting data for periodical reports of operating revenues, expenses, and income	3 years.
(c) Supporting data for reports detailing use of proceeds from issuance or sale of company securities	3 years.
(d) Supporting data for valuation inventory reports and records. This includes related notes, maps and sketches, underlying engineering, land, and accounting reports, pricing schedules, summary or collection sheets, yearly reports of changes and other miscellaneous data, all relating to the valuation of the company's property by the Federal Highway Administration, the Surface Transportation Board, the Department of Transportation's Bureau of Transportation Statistics or other regulatory body.	3 years after disposition of the property.
2. Supporting data for periodical reports of accidents, inspections, tests, hours of service, repairs, etc.	3 years.
3. Supporting data for periodical statistical of operating results or performance by tonnage, mileage, passengers carried, piggyback traffic, commodities, costs, analyses of increases and decreases, or otherwise.	3 years.
M. Miscellaneous	
1. Index of records	Until revised as record structure changes.
2. Statement listing records prematurely destroyed or lost	For the remainder of the period as prescribed for records destroyed.

Note A.—Records referenced to this note shall be maintained as determined by the designated records supervisory official. Companies should be mindful of the record retention requirements of the Internal Revenue Service, Securities and Exchange Commission, State and local jurisdictions, and other regulatory agencies. Companies shall exercise reasonable care in choosing retention periods, and the choice of retention periods shall reflect past experiences, company needs, pending litigation, and regulatory requirements.

[FR Doc. 97-15441 Filed 6-11-97; 8:45 am]
BILLING CODE 4910-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 970429101-7101-01; I.D. 060397A]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Closure from Cape Arago, OR, to the Oregon-California Border

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

ACTION: Closure.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from Cape Arago, OR, to the Oregon-California border was closed at 2400 hours, May 28, 1997. The Regional Administrator, Northwest Region, NMFS (Regional Administrator), has determined that the commercial quota of 5,300 chinook salmon has been reached. This action is necessary to conform to the 1997 management measures and is intended to ensure conservation of chinook salmon.

DATES: Effective 2400 hours local time, May 28, 1997, through 2400 hours local time May 31, 1997, at which time the season remains closed under the terms of the 1997 management measures. Comments will be accepted through June 26, 1997.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070. Information relevant to this action is available for public review during business hours at the office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION:

Regulations governing the ocean salmon fisheries at 50 CFR 660.409(a)(1) state that when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Administrator to be reached on or by a certain date, the Secretary will, by an inseason action issued under 50 CFR 660.411, close the commercial or recreational fishery, or

both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In the 1997 management measures for ocean salmon fisheries (62 FR 24355, May 5, 1997), NMFS announced that the commercial fishery in the area between Cape Arago, OR, and the Oregon-California border would open on April 15 and continue through May 31 or attainment of the 5,300 chinook salmon quota, whichever occurred first.

The best available information on May 27 indicated that the chinook salmon quota had been reached based on catch and effort data and projections. To provide for an orderly shutdown of the commercial fishery in this area, closure was made effective at 2400 hours, May 28. The Regional Administrator consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife. The State of Oregon will manage the commercial fishery in state waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. As provided by the inseason notification procedures of 50 CFR 660.411, actual notice to fishermen of this action was given prior to 2400 hours local time, May 28, 1997, by telephone hotline number 206-526-6667 and 800-662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to stop the fishery upon achievement of the quota, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

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

Dated: June 6, 1997.

Rebecca Lent,

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

[FR Doc. 97-15361 Filed 6-11-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334-7025-02; I.D. 053097F]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the Gulf of Alaska Statistical Area 620

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second seasonal allowance of total allowable catch (TAC) for pollock in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 9, 1997, until 1200 hrs, A.l.t., September 1, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907-486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-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 final specification of pollock TAC in Statistical Area 620 of the GOA was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) as 31,250 mt, determined in accordance with § 679.20(a)(5)(ii)(A). In accordance with § 679.20(a)(5)(ii)(B) and § 679.20(a)(5)(ii)(B)(2) the second seasonal allowance of pollock TAC in Statistical Area 620 is 7,231 mt. As of May 24, 1997, 9,556 mt of pollock has been harvested from Statistical Area 620. This amount represents a combination of the amounts taken during the first season and into the second.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal allowance of TAC for pollock in Statistical Area 620 soon will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,031 mt, and is

setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is closing directed fishing for pollock in Statistical Area 620 June 9, 1997, until 1200 hrs, A.I.t., September 1, 1997.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1997 second seasonal allowance of TAC for pollock in Statistical Area 620. The fleet will soon take the second seasonal allowance of TAC for pollock. Further delay would only result in overharvest which would disrupt the FMP's objective of apportioning seasonal pollock harvests throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: June 6, 1997.

Rebecca Lent,

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

[FR Doc. 97-15362 Filed 6-9-97; 10:26 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334-7025-02; I.D. 053097C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting the directed fishery for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second seasonal

allowance of total allowable catch (TAC) for pollock in this area.

DATES: Effective 1200 hrs, Alaska local time (A.I.t.), June 9, 1997, until 1200 hrs, A.I.t., September 1, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907-486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the GOA (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 600 and 50 CFR part 679.

The final specification of pollock TAC in Statistical Area 630 of the GOA was established by Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) as 24,550 metric tons (mt), determined in accordance with § 679.20(a)(5)(ii)(A). In accordance with § 679.20(a)(5)(ii)(B) and § 679.20(a)(5)(ii)(B)(2), the second seasonal allowance of pollock TAC in Statistical Area 630 is 5,265 mt. As of May 24, 1997, 8,754 mt of pollock has been harvested from Statistical Area 630. This amount represents a combination of the amounts taken during the first season and into the second.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal allowance of TAC for pollock in Statistical Area 630 soon will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,065 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 from June 9, 1997, until 1200 hours, A.I.t., September 1, 1997.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting of the 1997 second seasonal allowance of TAC for pollock in Statistical Area 630. The fleet will

soon take the second seasonal directed fishing allowance of TAC for pollock. Further delay would only result in overharvest which would disrupt the FMP's objective of apportioning seasonal pollock harvests throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: June 6, 1997.

Rebecca Lent,

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

[FR Doc. 97-15359 Filed 6-9-97; 10:26 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961126334; I.D. 060697B]

Fisheries of the Exclusive Economic Zone Off Alaska, Nearshore Pelagic Shelf Rockfish in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for nearshore pelagic shelf rockfish in the Central Regulatory Area in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the nearshore pelagic shelf rockfish total allowable catch (TAC) in the Central Regulatory Area.

DATES: Effective 1200 hrs, Alaska local time (A.I.t.), June 7, 1997, until 2400 hrs, A.I.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907-486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-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 final specification of nearshore pelagic shelf rockfish total allowable catch in the Central Regulatory Area of the Gulf of Alaska was established by the Final 1997 Harvest Specifications for Groundfish of the GOA (62 FR 8179, February 24, 1997) as 260 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administration), has determined that the nearshore pelagic shelf rockfish TAC in the Central Regulatory Area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 160 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with

§ 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for the nearshore pelagic shelf rockfish in the Central Regulatory Area. The nearshore pelagic shelf rockfish assemblage consists of black rockfish and blue rockfish.

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

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting of the 1997 TAC for nearshore pelagic shelf rockfish in the Central Regulatory Area. A delay in the effective date is impracticable and contrary to public interest. The fleet will soon take the directed fishing allowance for nearshore pelagic shelf rockfish.

Further delay would only result in overharvest and disrupt the FMP's objective of allowing incidental catch to be retained throughout the year. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: June 6, 1997.

Rebecca Lent,

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

[FR Doc. 97-15378 Filed 6-9-97; 10:26 am]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 62, No. 113

Thursday, June 12, 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

Animal and Plant Health Inspection Service

9 CFR Parts 94 and 96

[Docket No. 97-002-1]

Change in Disease Status of Italy, Except the Island of Sardinia, Because of African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare Italy, with the exception of the island of Sardinia, free of African swine fever. This proposed action appears to be appropriate because there have been no confirmed outbreaks of African swine fever in Italy, except on the island Sardinia, since 1983. This proposed action would relieve certain restrictions on the importation into the United States of pork and pork products from all regions of Italy except Sardinia. However, because hog cholera and swine vesicular disease exist in Italy, and because Italy, as a member state of the European Union, has certain trade practices regarding live swine and pork and pork products that are less restrictive than are acceptable to the United States, the importation into the United States of live swine and pork and pork products from Italy would continue to be subject to certain restrictions.

DATES: Consideration will be given only to comments received on or before August 11, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97-002-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 97-002-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW.,

Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737-1231, (301) 734-8695; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, swine vesicular disease, hog cholera, and African swine fever (ASF). These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.8 of the regulations states that ASF exists or is reasonably believed to exist in all the countries of Africa and in Brazil, Cuba, Haiti, Italy, Malta, and Portugal. Paragraph (a) of § 94.8 provides that no pork or pork products may be imported into the United States from those countries (referred to below as ASF countries) unless the pork or pork product:

- Is fully cooked in accordance with § 94.8(a)(1); or
- Is not otherwise prohibited importation into the United States and is consigned directly from the U.S. port of entry to an approved establishment for further processing, as provided by § 94.8(a)(2); or
- Is derived from swine raised and slaughtered in a country where ASF is not known or believed to exist and is handled and processed in accordance with § 94.8(a)(3).

Also, § 94.17 provides, in part, that dry-cured pork products may be imported into the United States from ASF countries if the dry-cured pork products meet the conditions specified in that section.

In addition to the restrictions on pork and pork products contained in the regulations in part 94, live domestic

swine from ASF countries may not be imported into the United States because the regulations in 9 CFR 92.505(a) require, among other things, that live domestic swine be accompanied by a certificate showing that the entire country of origin of the swine is free of ASF and other specified diseases. The importation of swine casings from ASF countries is likewise prohibited by 9 CFR 96.2(a) unless the swine casings originated in a country free of ASF and were processed in the ASF country at a facility that meets the criteria of § 94.8(a)(3)(iv) of the regulations.

The Government of Italy has requested that the U.S. Department of Agriculture recognize Italy, with the exception of the island of Sardinia, as free of ASF. We will consider declaring a country free of ASF if there have been no reported cases of the disease in that country for at least the previous 1-year period. The last case of ASF in Italy, outside of the island of Sardinia, occurred in 1983.

The Animal and Plant Health Inspection Service (APHIS) has reviewed the documentation submitted by the Government of Italy in support of its request, and a team of APHIS officials traveled to Italy in February 1997 to conduct an on-site evaluation of Italy's animal health program with regard to ASF. The evaluation consisted of a review of Italy's veterinary services, laboratory and diagnostic procedures, vaccination practices, and administration of laws and regulations intended to prevent the introduction of communicable animal diseases into Italy, and from Sardinia into the rest of Italy. (Details concerning the February 1997 on-site evaluation are available upon written request from the person listed under **FOR FURTHER INFORMATION CONTACT**.) After reviewing the documentation provided by Italy and the data gathered during the on-site visit by APHIS officials, we believe that Italy, with the exception of Sardinia, qualifies to be recognized as free of ASF.

Therefore, we are proposing to amend § 94.8 of the regulations by removing Italy, except the island of Sardinia, from the list of ASF countries. This proposed action would result in pork and pork products from all parts of Italy except Sardinia no longer being subject to the restrictions found in § 94.8 of the regulations. Another effect of this proposed action would be that swine

casings that originated in or were processed in any region of Italy other than Sardinia would no longer be subject to the restrictions in 9 CFR 96.2(a).

However, Italy is still considered to be affected with hog cholera and swine vesicular disease, so pork and pork products from anywhere in Italy offered for importation into the United States would remain subject to the restrictions in § 94.9 for hog cholera and in § 94.12 for swine vesicular disease. Similarly, dry-cured pork products from Italy would continue to be subject to the regulations in § 94.17 due to hog cholera and swine vesicular disease. In addition, pork and pork products from Italy would continue to be subject to the restrictions in § 94.11 because Italy is one of the countries listed in § 94.11(a) that have been declared free of rinderpest and FMD, but from which the importation of all meat and other animal products is restricted due to the nature of their trade with countries affected with rinderpest or FMD or because they have a common land border with a country affected with rinderpest or FMD. Finally, declaring all of Italy except Sardinia free of ASF would not relieve any of the current restrictions in 9 CFR part 92 on the importation into the United States of live swine from Italy because Italy remains affected with hog cholera and swine vesicular disease.

Miscellaneous

The regulations in § 94.8 and § 96.2 refer in several instances to "a country" or "any country" listed in § 94.8 as being affected with ASF. Because this proposed rule would designate only a portion of Italy—i.e., the island of Sardinia—as being affected with ASF, it would no longer be accurate to refer to "countries" listed in § 94.8. Therefore, for the purposes of accuracy and consistency, we would amend those sections to include the words "or part of a country" after each reference to countries listed in § 94.8.

We are also proposing to redesignate the footnotes in part 94 so that the footnotes would be numbered consecutively by part, rather than by section. We are also proposing to amend § 94.17(a) to correct a reference to "paragraph (i) of this subpart" by replacing it with a reference to "paragraph (i) of this section."

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The 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.

This proposed rule would amend the regulations in part 94 by removing Italy, except the island of Sardinia, from the list of countries where ASF exists or is reasonably believed to exist. This action would relieve certain restrictions on the importation of pork and pork products into the United States from all areas of Italy except the island of Sardinia. However, because hog cholera and swine vesicular disease exist in Italy, and because Italy, as a member state of the European Union, has certain trade practices regarding live swine and pork and pork products that are less restrictive than are acceptable to the United States, the importation into the United States of live swine and pork and pork products from Italy would continue to be subject to restrictions. For this reason, no live swine, or fresh, chilled, or frozen pork would be imported from Italy as a result of this rule change.

Entities in the United States likely to be affected by this proposed rule are those entities engaged in the production of swine and processed pork products. According to the Small Business Administration (SBA) definition, a "small entity" in the production of swine is an entity whose total annual sales are less than \$0.5 million. Under this definition, approximately 96.3 percent of domestic producers are considered to be small entities. According to the SBA definition, a small entity in the production of pork products, including meat packing plants, is an entity employing fewer than 500 workers. In 1992, the most recent year for which complete figures are available, over 95 percent of pork processors of all types were considered small entities.

It is possible that imports of processed pork products would be affected if this proposed rule is adopted, but we believe any change would be minimal. Italy has not been declared free of swine vesicular disease or hog cholera, so there would continue to be restrictions on the importation into the United States of pork and pork products, including dry-cured pork products, from anywhere in Italy. Given those continuing restrictions, we believe any potential increase in imports of processed pork products derived from Italian swine would be minimal. The economic impact of a slight increase in those imports on U.S. swine producers and processors of pork and pork products is likewise expected to be minimal.

Under these circumstances, the Administrator of the Animal and Plant

Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 96

Imports, Livestock, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 94 and 96 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.4 [Amended]

2. In § 94.4, in the introductory text of paragraph (b)(8) and in paragraph (b)(8)(i)(C), footnotes 1 and 2 and their references in the text would be redesignated as footnotes 2 and 3, respectively.

§ 94.6 [Amended]

3. Section 94.6 would be amended as follows:

a. In paragraph (c)(2), footnote 1 and its reference in the text would be redesignated as footnote 4.

b. In the introductory text of paragraph (d), footnote 2 and its

reference in the text would be redesignated as footnote 5.

c. In paragraph (d)(1)(ix)(C)(1), footnote 3 and its reference in the text would be redesignated as footnote 6.

§ 94.8 [Amended]

4. Section 94.8 would be amended as follows:

a. In the introductory text of the section, footnote 1 and its reference in the text would be redesignated as footnote 7, and, in the text of newly redesignated footnote 7, the words "or a part of a country" would be added after the word "country" the first time it appears.

b. In the introductory text of the section, the words "All the countries of Africa, Brazil, Cuba, Haiti, Italy, Malta, and Portugal" would be removed and the words "All the countries of Africa; Brazil, Cuba, Haiti, Malta, and Portugal; and the island of Sardinia, Italy" would be added in their place.

c. In the introductory text of paragraph (a), the words "or part of a country" would be added after the word "country".

d. In paragraph (a)(3)(i)(A), the words "or part of a country" would be added after the word "country".

e. In paragraph (a)(3)(i)(B), footnote 2 and its reference in the text would be redesignated as footnote 8, and the words "country listed" would be removed and the words "country or part of a country listed" would be added in their place.

f. In paragraph (a)(3)(iv)(A), the words "or parts of countries" would be added after the word "countries".

g. In paragraph (a)(3)(v), the words "or part of a country" would be added after the word "country".

h. In paragraph (c), the words "or part of a country" would be added after the word "country".

§ 94.9 [Amended]

5. In § 94.9, paragraph (a), footnote 1 and its reference in the text would be redesignated as footnote 9, and in paragraph (b)(3) footnote 2 and its reference in the text would be redesignated as footnote 10.

§ 94.12 [Amended]

6. In § 94.12, paragraph (b)(1)(iii)(B), footnote 1 and its reference in the text would be redesignated as footnote 11, and in paragraph (b)(3) footnote 2 and its reference in the text would be redesignated as footnote 12.

§ 94.16 [Amended]

7. In § 94.16, paragraph (b)(2), footnote 1 and its eight references in the text would be redesignated as footnote 13.

§ 94.17 [Amended]

8. In § 94.17, in paragraph (a), the word "subpart" would be removed and the word "section" would be added in its place, and in paragraph (e), footnote 1 and its reference in the text would be redesignated as footnote 14.

§ 94.18 [Amended]

9. In § 94.18, in paragraph (c)(2), footnote 1 and its reference in the text would be redesignated as footnote 15, and in paragraph (d)(1), footnote 2 and its reference in the text would be redesignated as footnote 16.

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

10. The authority citation for part 96 would continue to read as follows:

Authority: 21 U.S.C. 111, 136, and 136a; 7 CFR 2.22, 2.80, and 371.2(d).

§ 96.2 [Amended]

11. In § 96.2, paragraph (a) would be amended by adding the words "or part of a country" after the word "country" each time it appears.

Done in Washington, DC, this 5th day of June 1997.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-15436 Filed 6-11-97; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 304, 308, 310, 320, 327, 381, 416, and 417

[Docket No. 97-025N]

Generic HACCP Models and Guidance Materials Available for Review and Comment

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) has developed 13 generic Hazard Analysis and Critical Control Point (HACCP) models and has revised its Guidebook for the Preparation of HACCP Plans and its Hazards and Controls Guide for Meat and Poultry Products to assist meat and poultry establishments in the development of their HACCP systems. The models, Guidebook, and Guide will be available for review and study by interested members of the public. FSIS

is soliciting public comments on the models and other guidance materials to determine their appropriateness and useability, especially by owners of "small" and "very small" establishments.

DATES: Written comments on the models, Guidebook, and Guide must be submitted on or before August 11, 1997.

ADDRESSES: The models, Guidebook, and Guide may be viewed in the FSIS Docket Reading Room, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250-3700 and at Government Depository Libraries throughout the country. Comments on the models and other documents should be directed to Ms. Diane Moore, FSIS Docket Clerk, at the above address. Paper copies of the complete set of materials are available from the Public Outreach Office, Room 1180, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250-3700. To obtain a paper copy of the Guidebook, Guide, and appropriate model(s), please mail your request indicating the number and title of the document to the Public Outreach Office at the above address; or FAX to (202) 720-9063.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia F. Stolfa, Assistant Deputy Administrator, Regulations & Inspection, in the Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, at (202) 205-0699, FAX (202) 401-1760.

SUPPLEMENTARY INFORMATION: On July 25, 1996, FSIS published a final rule, "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" (61 FR 38806). This rule introduces sweeping changes to the meat and poultry inspection system and directly targets pathogenic organisms on those products that can cause foodborne illness. In the preamble to the proposed rule, FSIS announced that it would develop 13 generic HACCP models to facilitate preparation of mandated HACCP plans, especially by "small" and "very small" establishments, and to reduce costs associated with developing HACCP plans. FSIS said that the models would be available in draft form for public comment, and in final form at least six months before HACCP implementation. HACCP will be implemented in "small" and "very small" plants in the years 1999 and 2000 respectively.

The following generic HACCP models and guidance materials are available: HACCP-1, Guidebook for the Preparation of HACCP Plans; HACCP-2, Meat and Poultry Products Hazards and Control Guide; HACCP-3, Generic

HACCP Model for Raw, Ground Meat and Poultry Products; HACCP-4, Generic HACCP Model for Raw, Not Ground Meat and Poultry Products; HACCP-5, Generic HACCP Model for Poultry Slaughter; HACCP-6, Generic HACCP Model for Mechanically Separated (Species)/Mechanically Deboned Poultry; HACCP-7, Generic HACCP Model for Thermally Processed Commercially Sterile Meat and Poultry Products; HACCP-8, Generic HACCP Model for Irradiation; HACCP-9, Generic HACCP Model for Meat and Poultry Products with Secondary Inhibitors, Not Shelf-Stable; HACCP-10, Generic HACCP Model for Heat Treated, Shelf-Stable Meat and Poultry Products; HACCP-11, Generic HACCP Model for Not Shelf-Stable Heat Treated, Not Fully Cooked Meat and Poultry Products; HACCP-12, Generic HACCP Model for Fully Cooked, Not Shelf-Stable Meat and Poultry Products; HACCP-13, Generic HACCP Model for Beef Slaughter; HACCP-14, Generic HACCP Model for Pork Slaughter; and HACCP-15, Generic HACCP Model for Not Heat Treated, Shelf-Stable Meat and Poultry Products.

Ten of the models were developed by the International Meat and Poultry HACCP Alliance, a consortium of academics, industry, and consumer group representatives, on a contractual basis with FSIS. The remaining three models were developed in-house at FSIS in consultation with representatives from other Federal agencies, academia, and industry, who peer reviewed the models. The previously published Guidebook and Guide have been revised and are being reissued for public comment with the HACCP models.

Since each HACCP system should be developed by an individual establishment for its specific processes and practices, the generic models are meant to serve as illustrations and were developed as conceptual, informational models. They are not intended and should not serve as blueprints for a specific plant's HACCP plan. Interested persons are invited to evaluate the materials in the 13 generic HACCP models and comment on their use and adaptability, especially by "small" and "very small" establishments in developing their own plant-specific HACCP plans. Comments are invited on: (a) whether the materials clearly are appropriate as generic models and not blueprints; (b) whether the language conveys unequivocally throughout the document that these are models; (c) whether the models are "user friendly" to the extent that they will guide plant

owners in developing their own plans at reduced costs; and (d) whether the methodology and the technical assumptions used in the models have validity and utility as guidelines for plant owners. In addition, FSIS is interested in comments on the preferred format for publication of these guidance materials.

Done at Washington, DC, on: June 4, 1997.

Thomas J. Billy,
Administrator.

[FR Doc. 97-15333 Filed 6-11-97; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 150

[Docket No. 28149]

Proposed Final Policy on Part 150 Approval and Funding of Noise Mitigation Measures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Final Policy on Part 150 Approval and Funding of Noise Mitigation Measures, and request for supplemental comment on its Impacts on Passenger Facility Charges; correction.

SUMMARY: This document contains a correction to the notice of proposed policy and request for supplementary comments published in the **Federal Register** (62 FR 28816) on May 28, 1997. The address to which comments should be sent was omitted from the notice. The notice announces that the Federal Aviation Administration (FAA) has prepared for issuance a final policy concerning approval and eligibility for Federal funding of certain noise mitigation measures. Under this policy, as of January 1, 1998, the FAA will approve under 14 CFR part 150 (part 150) only remedial noise mitigation measures for existing noncompatible development and only preventive noise mitigation measures in areas of potential new noncompatible development. As of the same effective date, eligibility for Airport Improvement Program (AIP) funding under the noise set-aside will be determined using criteria consistent with this policy. This policy also applies to projects that are eligible for noise set-aside funds without a part 150 program. This change in AIP eligibility will change in a similar way the eligibility of noise projects for passenger facility charge (PFC) funding. FAA is requesting supplemental comment on

the impact of its limitations on PFC eligibility, and will consider any comments on PFC eligibility thus received and revise the policy as may be appropriate prior to issuing the final policy.

DATES: Comments are due on or before June 27, 1997. This policy will be effective January 1, 1998.

ADDRESSES: Send comments on the impacts of this policy's limitations on PFC eligibility to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC-10), Docket No. 28149, 800 Independence Avenue, S.W., Room 915G, Washington, DC 20591. Comments may also be submitted electronically to the following internet address: nprmcmts@mail.hq.faa.gov. Comments may be inspected in Room 915G between 8:30 a.m. and 5 p.m. weekdays, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. William W. Albee (202-267-3553).

Correction of Publication

In the Notice of proposed final policy (FR Doc. 97-13953) on page 28816 in the issue of Wednesday, May 28, 1997, the address to which comments should be sent was omitted. Please make the following correction: On page 28816, column 2, after the **DATES** paragraph and before the heading **FOR FURTHER INFORMATION CONTACT**, insert **ADDRESSES** paragraph as set forth above.

Issued in Washington, DC on June 6, 1997.

Michael E. Chase,

Acting Assistant Chief Counsel.

[FR Doc. 97-15431 Filed 6-11-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-208288-90]

RIN 1545-AP36

Filing Requirements for Returns Claiming the Foreign Tax Credit; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the substantiation requirements for taxpayers claiming foreign tax credits.

DATES: The public hearing originally scheduled for June 18, 1997, beginning at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Evangelista C. Lee of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed amendments to the Income Tax Regulations under section 905 of the Internal Revenue Code. A notice of public hearing on proposed rulemaking appearing in the **Federal Register** on Thursday, April 17, 1997 (62 FR 18730), announced that a public hearing would be held on Wednesday, June 18, 1997, beginning at 10 a.m., in room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC 20224.

The public hearing scheduled for Wednesday, June 18, 1997, is cancelled.

Cynthia E. Grigsby,
Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97-15443 Filed 6-11-97; 8:45 am]

BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[W175-01-7304; FRL-5840-7]

Approval and Promulgation of Implementation Plan; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve Wisconsin's request to grant an exemption for the Milwaukee severe and Manitowoc County moderate ozone nonattainment areas from the applicable Oxides of Nitrogen (NO_x) transportation conformity requirements. On July 10, 1996, the Wisconsin Department of Natural Resource (WDNR) submitted to the EPA a State Implementation Plan (SIP) revision request for an exemption under section 182(b)(1) of the Clean Air Act (Act) from the transportation conformity requirements for NO_x for the Milwaukee severe and Manitowoc County moderate ozone nonattainment areas. The request is based on the urban airshed modeling (UAM) conducted for the attainment demonstration for the Lake Michigan Ozone Study (LMOS) modeling domain. The rationale for this proposed approval is set forth in **SUPPLEMENTARY INFORMATION;** additional

information is available at the address indicated.

DATES: Comments on this proposed action must be received by July 14, 1997.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Copies of the SIP revision, public comments and EPA's responses are available for inspection at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Michael Leslie at (312) 353-6680 before visiting the Region 5 Office.)

A copy of this SIP revision is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260-7548.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353-6680.

SUPPLEMENTARY INFORMATION:

I. Background

Clean Air Act section 176(c)(3)(A)(iii) requires, in order to demonstrate conformity with the applicable SIP, that transportation plans and Transportation Improvement Programs (TIPs) contribute to emissions reductions in ozone and carbon monoxide nonattainment areas during the period before control strategy SIPs are approved by USEPA. This requirement is implemented in 40 CFR 51.436 through 51.440 (and §§ 93.122 through 93.124), which establishes the so-called "build/no-build test." This test requires a demonstration that the "Action" scenario (representing the implementation of the proposed transportation plan/TIP) will result in lower motor vehicle emissions than the "Baseline" scenario (representing the implementation of the current transportation plan/TIP). In addition, the "Action" scenario must result in emissions lower than 1990 levels.

The November 24, 1993, final transportation conformity rule¹ does not require the build/no-build test and less-than-1990 test for NO_x as an ozone precursor in ozone nonattainment areas, where the Administrator determines that additional reductions of NO_x would not contribute to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. Clean Air Act section 176(c)(3)(A)(iii), which is the conformity provision requiring contributions to emission reductions before SIPs with emissions budgets can be approved, specifically references Clean Air Act section 182(b)(1). That section requires submission of State plans that, among other things, provide for specific annual reductions of volatile organic compounds (VOCs) and NO_x emissions "as necessary" to attain the ozone standard by the applicable attainment date. Section 182(b)(1) further states that its requirements do not apply in the case of NO_x for those ozone nonattainment areas for which USEPA determines that additional reductions of NO_x would not contribute to ozone attainment.

For ozone nonattainment areas, the process for submitting waiver requests and the criteria used to evaluate them are explained in the December 1993 USEPA document "Guidelines for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)," and the May 27, 1994, and February 8, 1995, memoranda from John S. Seitz, Director of the Office of Air Quality Planning and Standards, to Regional Air Division Directors, titled "Section 182(f) NO_x Exemptions—Revised Process and Criteria."

On July 13, 1994, the States of Illinois, Indiana, Michigan, and Wisconsin (the States) submitted to the USEPA a petition for an exemption from the requirements of section 182(f) of the Clean Air Act (Act). The States, acting through the Lake Michigan Air Directors Consortium (LADCo), petitioned for an exemption from the Reasonably Available Control Technology (RACT) and New Source Review (NSR) requirements for major stationary sources of NO_x. The petition also asked for an exemption from the transportation and general conformity requirements for NO_x in all ozone nonattainment areas in the Region.

On March 6, 1995, the USEPA published a rulemaking proposing approval of the NO_x exemption petition

¹ "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act" November 24, 1993 (58 FR 62188).

for the RACT, NSR and transportation and general conformity requirements. A number of comments were received on the proposal. Several commenters argued that NO_x exemptions are provided for in two separate parts of the Act, in sections 182(b)(1) and 182(f), but that the Act's transportation conformity provisions in section 176(c)(3) explicitly reference section 182(b)(1). In April 1995, the USEPA entered into an agreement to change the procedural mechanism through which a NO_x exemption from transportation conformity would be granted (*EDF et al. v. USEPA*, No. 94-1044, U.S. Court of Appeals, D.C. Circuit). Instead of a petition under 182(f), transportation conformity NO_x exemptions for ozone nonattainment areas that are subject to section 182(b)(1) now need to be submitted as a SIP revision request. The Milwaukee and the Manitowoc ozone nonattainment areas are classified as moderate or above and, thus, are subject to section 182(b)(1).

The transportation conformity requirements are found at sections 176(c) (2), (3), and (4). The conformity requirements apply on an areawide basis in all nonattainment and maintenance areas. The USEPA's transportation conformity rule was amended on August 29, 1995 (60 FR 44762) to reference section 182(b)(1) rather than 182(f) as the means for exempting areas subject to section 182(b)(1) from the transportation conformity NO_x requirements.

The July 10, 1996, SIP revision request from Wisconsin was submitted to meet the requirements in accordance with 182(b)(1). Public hearings on this SIP revision request were held on January 11 and 12, 1995.

In evaluating the 182(b) SIP revision request, the USEPA considered whether additional NO_x reductions would contribute to attainment of the standard in Milwaukee severe and Manitowoc County moderate ozone nonattainment areas and also in the downwind areas of the LMOS modeling domain.

The role that NO_x emissions play in producing ozone at any given place and time is complex. NO_x primarily represents a sum of two oxides of nitrogen, namely nitrogen oxide (NO) and nitrogen dioxide (NO₂). In the presence of sunlight, NO_x photo-dissociates into NO and a single oxygen atom. The oxygen atom reacts with molecular oxygen (O₂) to form ozone (O₃). NO, on the other hand, near its source area readily reacts with ozone to form O₂ and NO₂. The generated NO₂ is then free to photo-dissociate and lead to ozone formation further downwind. The reaction of NO with ozone, which

locally reduces ozone concentrations, is referred to as ozone scavenging and is one of the primary local sinks for ozone in the lower atmosphere in and near NO source areas. Since emissions of NO_x from fuel combustion sources, whether internal combustion engines or stationary combustion sources, such as industrial boilers, contain significant amounts of NO, it is expected that ozone concentrations immediately downwind of such NO_x sources will be reduced through ozone scavenging. Therefore, reducing NO_x emissions can lead to increased ozone concentrations in the vicinity of the controlled NO_x emission sources, whereas reducing NO_x emissions may lead to reduction in ozone concentrations further downwind. Reducing NO_x emissions in VOC-limited areas (areas with low VOC emissions relative to NO_x emissions) may produce minimal ozone reductions or even ozone increases.

As outlined in relevant USEPA guidance, the use of photochemical grid modeling is the recommended approach for testing the contribution of NO_x emission reductions to attainment of the ozone standard. This approach simulates conditions over the modeling domain that may be expected at the attainment deadline for three emission reduction scenarios: (1) Substantial VOC reductions, (2) substantial NO_x reductions, and (3) both VOC and NO_x reductions. If the areawide predicted maximum one-hour ozone concentration for each day modeled under scenario (1) is less than or equal to those from scenarios (2) and (3) for the corresponding days, the test is passed and the section 182(f) NO_x emissions reduction requirements would not apply.

In making this determination under section 182(b)(1) that the NO_x requirements do not apply, or may be limited in the Lake Michigan area, the USEPA has considered the national study of ozone precursors completed pursuant to section 185B of the Act. The USEPA has based its decision on the demonstration and the supporting information provided in the SIP revision request.

II. Summary of Submittal

On July 10, 1996, the State of Wisconsin submitted as a revision to the SIP, a request for a waiver from the transportation conformity NO_x requirements. The submittal included the LMOS UAM modeling for the attainment demonstration for 3 ozone episodes during 1991. The modeling supported the request by documenting that NO_x reductions in the LMOS modeling domain would not contribute

to attainment and, in fact, would be detrimental to the goal of reaching attainment. The WDNR held public hearings on the submittal on January 11 and 12, 1995.

Pursuant to 40 CFR Part 93, Subpart A, 40 CFR Part 51, Subpart T, the SIP revision request seeks an exemption from the transportation conformity requirements for NO_x in the Milwaukee severe and Manitowoc moderate ozone nonattainment area. The States have utilized the UAM to demonstrate that reductions in NO_x in the LMOS modeling domain will not contribute to attainment of the standard. To conduct the modeling analysis, the following steps were followed: (a) Emissions were projected to 1996 (the deadline for implementation of the 15 percent reasonable further progress reduction) and 2007 (the attainment deadline for the severe nonattainment areas) from the 1990 base year, (b) it was assumed that a 40 percent VOC emission reduction beyond that achieved as a result of emission controls mandated by the Act would be necessary to attain the ozone standard in the LMOS modeling domain, (c) a 40 percent NO_x emission reduction in grid B (that portion of the LMOS modeling domain that is essentially composed of the ozone nonattainment areas within the modeling domain) beyond the projected emission levels was assumed for all anthropogenic NO_x emissions, (d) a 40 percent VOC emission reduction and a 40 percent NO_x reduction in grid B beyond projected emission levels were assumed for all anthropogenic VOC and NO_x emissions and (e), the ozone modeling results for (b), (c), and (d) were compared considering the modeled domain-wide peak ozone concentrations and temporal and spatial extent of modeled ozone concentrations above 120 parts per billion (ppb).

For all modeled days using 1996 and 2007 conditions, domain-wide peak ozone concentrations for "VOC-only" controls were found to be lower than or equal to those for "NO_x-only" controls or those for "VOC plus NO_x" controls. In addition, consideration of daily peak ozone isopleth maps (these maps are included in the documentation of the section 182(b) SIP revision request) shows that the "VOC-only" control scenario leads to the smallest areas with predicted peak ozone concentrations exceeding 120 ppb.

Additional sensitivity tests were conducted for a 40 percent NO_x emission reduction that was applied only to point sources in Grid B for episode 2 and 1996 conditions for both an assumed NO_x reduction alone and a 40 percent reduction in both VOCs and

NO_x. These sensitivity tests compared to the scenarios with across the board anthropogenic NO_x reductions demonstrated that control of ground level NO_x sources (such as transportation sources) did not contribute to attainment of the standard and in fact increased the domain wide peak ozone concentrations exceeding 120 ppb and the number of hours that exceeded 120 ppb. This result was more pronounced than with the point source only NO_x control.

III. Analysis of the Submittal

Review of the modeling results show a very definite directional signal indicating that application of NO_x controls in the Milwaukee severe and Manitowoc County moderate ozone nonattainment areas would exacerbate peak ozone concentrations not in the LMOS modeling domain. The LMOS modeling domain includes Chicago, Northwest Indiana, Western Michigan and Eastern Wisconsin. The States and LADCo have now completed the validation process for the UAM modeling system used in the demonstration of attainment for the LMOS modeling domain. Therefore, documentation supporting the validity of the modeling results has been submitted with the SIP revision request.

It is noted that the use of simple, area-wide emission projection factors raises some uncertainty in the modeling results for 1996 and 2007. Some changes in modeling results may be expected if area-specific and source category-specific projection factors are used instead of the average factors used in these analyses. These more detailed projection factors will be used in the final demonstration of attainment for the LMOS domain. These changes, however, are not expected to reverse the directional signal of the modeling done to date, which shows that NO_x reductions will not contribute to attainment in Milwaukee severe and Manitowoc County moderate ozone nonattainment areas and throughout the LMOS domain.

Although ozone concentrations modeled further downwind from the urban source areas increase as a result of increased NO_x point source emissions, this is not the case with the ground level NO_x sources. LADCo and the States view the potential increase in outflow ozone concentrations with increasing NO_x point source emissions to be marginal. More importantly, the SIP revision request demonstrates that additional reductions in NO_x would not contribute to attainment of the ozone standard in the LMOS domain. These results are believed to be consistent

with USEPA's section 185B report to Congress. Therefore, based on the report's conformance with USEPA guidance, the USEPA believes the State of Wisconsin's demonstration is adequate, and thus is proposing to approve the transportation conformity waiver request. It is noted by LADCo, however, that subsequent modeling analyses may lead to an ozone attainment plan which includes, for specified portions of the LMOS domain only, both NO_x and VOC emission controls. The modeling indicates that these NO_x emission controls most likely will be limited to rural areas, will not be required in the Wisconsin nonattainment area and will not be applied to ground level sources.

Monitoring data such as concentrations of non-methane hydrocarbons and NO_x and derived/monitored ozone production potentials of air parcels, collected for the urban source areas during the 1991 field study, generally supports the approval of the NO_x waiver. However, the primary basis for approval of the NO_x waiver is the modeling results submitted in support of the waiver. The 1991 field data by themselves do not provide adequate support for the waiver, since these data are limited in nature and do not assess the impacts of post-1991 NO_x controls on LMOS modeling domain peak ozone concentrations.

VOC and NO_x emission reductions were found to produce different impacts spatially. In and downwind of major urban areas, within the ozone nonattainment areas, VOC reductions were effective in lowering peak ozone concentrations, while NO_x emission reductions resulted in increased peak ozone concentrations. Farther downwind, within attainment areas, VOC emissions reductions became less effective for reducing ozone concentrations, while NO_x emission reductions were effective in lowering ozone concentrations. The magnitude of ozone decreases farther downwind due to NO_x emission reductions was less than the magnitude of ozone increases in the ozone nonattainment areas as a result of the same NO_x emission reductions.

Analyses of ambient data by LMOS contractors provided results which corroborated the modeling results. These analyses identified areas of VOC and NO_x-limited conditions (VOC-limited conditions would imply a greater sensitivity of ozone concentrations to changes in VOC emissions; the reverse would be true for NO_x-limited conditions) and tracked the ozone and ozone precursor concentrations in the urban plumes as

they moved downwind. The analyses indicated VOC-limited conditions in the Chicago/Northwest Indiana and Milwaukee areas and NO_x-limited conditions further downwind. These results imply that VOC controls in the Chicago/Northwest Indiana, Milwaukee, and Western Michigan areas would be more effective at reducing peak ozone concentrations within the Lake Michigan ozone nonattainment areas.

The consistency between the modeling results and the ambient data analysis results for all episodes with joint data supports the view that the UAM modeling system developed in the LMOS may be used to investigate the relative merits of VOC versus NO_x emission controls. The UAM-V results for all modeled episodes point to the benefits of VOC controls versus NO_x controls in reducing the modeled domain peak ozone concentrations.

For a more detailed analysis of the modeling analysis results, please see the August 22, 1994 memorandum entitled "Technical Review of a Four State Request for a Section 182(f) Exemption from Oxides of Nitrogen (NO_x) Reasonably Available Control Technology (RACT) and New Source Review (NSR) Requirements", which is contained in the docket for this action.

The USEPA believes LADCo's UAM application has adequately met the requirement to demonstrate that NO_x controls within the Milwaukee severe and Manitowoc County moderate ozone nonattainment areas and throughout the LMOS domain will not contribute, but instead will interfere with attainment of the ozone standard.

IV. EPA Action

The EPA is proposing approval of the transportation conformity NO_x waiver SIP revision for the State of Wisconsin. In light of the modeling completed thus far and considering the importance of the Ozone Transport Assessment Group (OTAG) process and attainment plan modeling efforts, EPA proposes to approve this NO_x waiver on a contingent basis. When the results of OTAG technical work are available, EPA intends to require appropriate States to submit SIP measures to ensure emissions reductions of ozone precursors needed to prevent significant transport of ozone. The EPA will evaluate the OTAG technical work, along with EPA's emissions reduction requirements, to determine whether the NO_x waiver should be continued, altered, or removed.

The EPA also reserves the right to require NO_x emission controls for transportation sources under section 110(a)(2)(D) of the Act if future ozone

modeling demonstrates that such controls are needed to achieve the ozone standard in downwind areas.

V. Miscellaneous

A. Applicability to Future SIP Decisions

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

B. 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 has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

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 economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not impose any requirements on small entities. Therefore, I certify that this action does not have a significant economic impact on any small entities.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the 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 of \$100 million or more to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, the 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 the EPA to establish a plan for

informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval proposed 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 document does not impose any Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Oxides of Nitrogen, Transportation conformity, Transportation—air quality planning, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: May 30, 1997.

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 97-15412 Filed 6-11-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI51-01-7259; FRL-5840-6]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve Michigan's request to grant an exemption for the Muskegon County ozone nonattainment area from the applicable Oxides of Nitrogen (NO_x) transportation conformity requirements. On November 22, 1995, the Michigan Department of Environmental Quality (MDEQ) submitted to the EPA a State Implementation Plan (SIP) revision request for an exemption under section 182(b)(1) of the Clean Air Act (Act) from the transportation conformity requirements for NO_x for the Muskegon ozone nonattainment area, which is classified as moderate. The request is based on the urban airshed modeling (UAM) conducted for the attainment demonstration for the Lake Michigan Ozone Study (LMOS) modeling domain. The rationale for this proposed approval is set forth in **SUPPLEMENTARY INFORMATION**; additional information is available at the address indicated.

DATES: Comments on this proposed action must be received by July 14, 1997.

ADDRESSES: *Written comments should be sent to:* Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. *Copies of the SIP revision, public comments and EPA's responses are available for inspection at the following address:* United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Michael Leslie at (312) 353-6680 before visiting the Region 5 Office.)

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FOR FURTHER INFORMATION CONTACT:

Michael G. Leslie, Regulation Development Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353-6680.

SUPPLEMENTARY INFORMATION:

I. Background

Clean Air Act section 176(c)(3)(A)(iii) requires, in order to demonstrate conformity with the applicable SIP, that transportation plans and Transportation Improvement Programs (TIPs) contribute to emissions reductions in ozone and carbon monoxide nonattainment areas during the period before control strategy SIPs are approved by EPA. This requirement is implemented in 40 CFR 51.436 through 51.440 (and §§ 93.122 through 93.124), which establishes the so-called "build/no-build test." This test requires a demonstration that the "Action" scenario (representing the implementation of the proposed transportation plan/TIP) will result in lower motor vehicle emissions than the "Baseline" scenario (representing the implementation of the current transportation plan/TIP). In addition, the "Action" scenario must result in emissions lower than 1990 levels.

The November 24, 1993, final transportation conformity rule¹ does not

¹ "Criteria and Procedures for Determining Conformity to State or Federal Implementation

require the build/no-build test and less-than-1990 test for NO_x as an ozone precursor in ozone nonattainment areas, where the Administrator determines that additional reductions of NO_x would not contribute to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. Clean Air Act section 176(c)(3)(A)(iii), which is the conformity provision requiring contributions to emission reductions before SIPs with emissions budgets can be approved, specifically references Clean Air Act section 182(b)(1). That section requires submission of State plans that, among other things, provide for specific annual reductions of volatile organic compounds (VOCs) and NO_x emissions "as necessary" to attain the ozone standard by the applicable attainment date. Section 182(b)(1) further states that its requirements do not apply in the case of NO_x for those ozone nonattainment areas for which EPA determines that additional reductions of NO_x would not contribute to ozone attainment.

For ozone nonattainment areas, the process for submitting waiver requests and the criteria used to evaluate them are explained in the December 1993 EPA document "Guidelines for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)," and the May 27, 1994, and February 8, 1995, memoranda from John S. Seitz, Director of the Office of Air Quality Planning and Standards, to Regional Air Division Directors, titled "Section 182(f) NO_x Exemptions—Revised Process and Criteria."

On July 13, 1994, the States of Illinois, Indiana, Michigan, and Wisconsin (the States) submitted to the EPA a petition for an exemption from the requirements of section 182(f) of the Clean Air Act (Act). The States, acting through the Lake Michigan Air Directors Consortium (LADCo), petitioned for an exemption from the Reasonably Available Control Technology (RACT) and New Source Review (NSR) requirements for major stationary sources of NO_x. The petition also asked for an exemption from the transportation and general conformity requirements for NO_x in all ozone nonattainment areas in the Region.

On March 6, 1995, the EPA published a rulemaking proposing approval of the NO_x exemption petition for the RACT, NSR and transportation and general conformity requirements. A number of comments were received on the proposal. Several commenters argued

that NO_x exemptions are provided for in two separate parts of the Act, in sections 182(b)(1) and 182(f), but that the Act's transportation conformity provisions in section 176(c)(3) explicitly reference section 182(b)(1). In April 1995, the EPA entered into an agreement to change the procedural mechanism through which a NO_x exemption from transportation conformity would be granted (*EDF et al. v. EPA*, No. 94-1044, U.S. Court of Appeals, D.C. Circuit). Instead of a petition under 182(f), transportation conformity NO_x exemptions for ozone nonattainment areas that are subject to section 182(b)(1) now need to be submitted as a SIP revision request. The Muskegon ozone nonattainment area is classified as moderate and, thus, is subject to section 182(b)(1).

The transportation conformity requirements are found at sections 176(c)(2), (3), and (4). The conformity requirements apply on an area wide basis in all nonattainment and maintenance areas. The EPA's transportation conformity rule was amended on August 29, 1995 (60 FR 44762) to reference section 182(b)(1) rather than 182(f) as the means for exempting areas subject to section 182(b)(1) from the transportation conformity NO_x requirements.

The November 22, 1995, SIP revision request from Michigan, was submitted to meet the requirements in accordance with 182(b)(1). A public hearing on this SIP revision request was held on September 6, 1995. The EPA issued a finding of completeness on January 17, 1996.

In evaluating the 182(b) SIP revision request, the EPA considered whether additional NO_x reductions would contribute to attainment of the standard in Muskegon County and also in the downwind areas of the LMOS modeling domain.

The role that NO_x emissions play in producing ozone at any given place and time is complex. NO_x primarily represents a sum of two oxides of nitrogen, namely nitrogen oxide (NO) and nitrogen dioxide (NO₂). In the presence of sunlight, NO₂ photo-dissociates into NO and a single oxygen atom. The oxygen atom reacts with molecular oxygen (O₂) to form ozone (O₃). NO, on the other hand, near its source area readily reacts with ozone to form O₂ and NO. The generated NO₂ is then free to photo-dissociate and lead to ozone formation further downwind. The reaction of NO with ozone, which locally reduces ozone concentrations, is referred to as ozone scavenging and is one of the primary local sinks for ozone in the lower atmosphere in and near NO source areas. Since emissions of NO_x

from fuel combustion sources, whether internal combustion engines or stationary combustion sources, such as industrial boilers, contain significant amounts of NO, it is expected that ozone concentrations immediately downwind of such NO_x sources will be reduced through ozone scavenging. Therefore, reducing NO_x emissions can lead to increased ozone concentrations in the vicinity of the controlled NO_x emission sources, whereas reducing NO_x emissions may lead to reduction in ozone concentrations further downwind. Reducing NO_x emissions in VOC-limited areas (areas with low VOC emissions relative to NO_x emissions) may produce minimal ozone reductions or even ozone increases.

As outlined in relevant EPA guidance, the use of photochemical grid modeling is the recommended approach for testing the contribution of NO_x emission reductions to attainment of the ozone standard. This approach simulates conditions over the modeling domain that may be expected at the attainment deadline for three emission reduction scenarios: (1) Substantial VOC reductions, (2) substantial NO_x reductions, and (3) both VOC and NO_x reductions. If the area wide predicted maximum one-hour ozone concentration for each day modeled under scenario (1) is less than or equal to those from scenarios (2) and (3) for the corresponding days, the test is passed and the section 182(f) NO_x emissions reduction requirements would not apply.

In making this determination under section 182(b)(1) that the NO_x requirements do not apply, or may be limited in the Lake Michigan area, the EPA has considered the national study of ozone precursors completed pursuant to section 185B of the Act. The EPA has based its decision on the demonstration and the supporting information provided in the SIP revision request.

II. Summary of Submittal

On November 22, 1995, the State of Michigan submitted as a revision to the SIP, a request for a waiver from the transportation conformity NO_x requirements. The submittal included the LMOS UAM modeling for the attainment demonstration for 3 ozone episodes during 1991. The modeling supported the request by documenting that NO_x reductions in the LMOS modeling domain would not contribute to attainment and, in fact, would be detrimental to the goal of reaching attainment. The MDEQ held a public hearing on the submittal on September 6, 1996.

Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act" November 24, 1993 (58 FR 62188).

Pursuant to 40 CFR Part 93, Subpart A, and 40 CFR Part 51, Subpart T, the SIP revision request seeks an exemption from the transportation conformity requirements for NO_x in the Muskegon County ozone nonattainment area. The States' have utilized the UAM to demonstrate that reductions in NO_x in the LMOS modeling domain will not contribute to attainment of the standard. To conduct the modeling analysis, the following steps were followed: (a) Emissions were projected to 1996 (the deadline for implementation of the 15 percent reasonable further progress reduction) and 2007 (the attainment deadline for the severe nonattainment areas) from the 1990 base year, (b) it was assumed that a 40 percent VOC emission reduction beyond that achieved as a result of emission controls mandated by the Act would be necessary to attain the ozone standard in the LMOS modeling domain, (c) a 40 percent NO_x emission reduction in grid B (that portion of the LMOS modeling domain that is essentially composed of the ozone nonattainment areas within the modeling domain) beyond the projected emission levels was assumed for all anthropogenic NO_x emissions, (d) a 40 percent VOC emission reduction and a 40 percent NO_x reduction in grid B beyond projected emission levels were assumed for all anthropogenic VOC and NO_x emissions, and (e) the ozone modeling results for (b), (c), and (d) were compared considering the modeled domain-wide peak ozone concentrations and temporal and spatial extent of modeled ozone concentrations above 120 parts per billion (ppb).

For all modeled days using 1996 and 2007 conditions, domain-wide peak ozone concentrations for "VOC-only" controls were found to be lower than or equal to those for "NO_x-only" controls or those for "VOC plus NO_x" controls. In addition, consideration of daily peak ozone isopleth maps (these maps are included in the documentation of the section 182(b) SIP revision request) shows that the "VOC-only" control scenario leads to the smallest areas with predicted peak ozone concentrations exceeding 120 ppb.

Additional sensitivity tests were conducted for a 40 percent NO_x emission reduction that was applied only to point sources in Grid B for episode 2 and 1996 conditions for both an assumed NO_x reduction alone and a 40 percent reduction in both VOCs and NO_x. These sensitivity tests compared to the scenarios with across the board anthropogenic NO_x reductions demonstrated that control of ground level NO_x sources (such as transportation sources) did not

contribute to attainment of the standard and in fact increased the domain wide peak ozone concentrations exceeding 120 ppb and the number of hours that exceeded 120 ppb. This result was more pronounced than with the point source only NO_x control.

III. Analysis of the Submittal

Review of the modeling results show a very definite directional signal indicating that application of NO_x controls in the Muskegon County ozone nonattainment area would exacerbate peak ozone concentrations not in the LMOS modeling domain. The LMOS modeling domain includes Chicago, Northwest Indiana, Western Michigan and Eastern Wisconsin. The States and LADCo have now completed the validation process for the UAM modeling system to be used in the demonstration of attainment for the LMOS modeling domain. Therefore, documentation supporting the validity of the modeling results has been submitted with the SIP revision request.

It is noted that the use of simple, area-wide emission projection factors raises some uncertainty in the modeling results for 1996 and 2007. Some changes in modeling results may be expected if area-specific and source category-specific projection factors are used instead of the average factors used in these analyses. These more detailed projection factors will be used in the final demonstration of attainment for the LMOS domain. These changes, however, are not expected to reverse the directional signal of the modeling done to date, which shows that NO_x reductions will not contribute to attainment in Muskegon County ozone nonattainment and throughout the LMOS domain.

Although ozone concentrations modeled further downwind from the urban source areas increase as a result of increased NO_x point source emissions, this is not the case with the ground level NO_x sources. LADCo and the States view the potential increase in outflow ozone concentrations with increasing NO_x point source emissions to be marginal. More importantly, the SIP revision request demonstrates that additional reductions in NO_x would not contribute to attainment of the ozone standard in the LMOS domain. These results are believed to be consistent with EPA's section 185B report to Congress. Therefore, based on it's conformance with EPA guidance, the EPA believes the State of Michigan's demonstration is adequate, and thus is approving the transportation conformity waiver request. It is noted by LADCo, however, that subsequent modeling

analyses may lead to an ozone attainment plan which includes, for specified portions of the LMOS domain only, both NO_x and VOC emission controls. The modeling indicates that these NO_x emission controls will most likely be limited to rural areas, but would not be required in the Michigan nonattainment area and will also not likely be applied to ground level sources.

Monitoring data such as concentrations of non-methane hydrocarbons and NO_x and derived/monitored ozone production potentials of air parcels, collected for the urban source areas during the 1991 field study support the approval of the NO_x waiver. However, the primary basis for the approval of the NO_x waiver is the modeling results submitted in support of the waiver. The 1991 field data by themselves may not be an adequate support for the waiver since these data are limited in nature and do not assess the impacts of post-1991 NO_x controls on LMOS modeling domain peak ozone concentrations.

VOC and NO_x emission reductions were found to produce different impacts spatially. In and downwind of major urban areas, within the ozone nonattainment areas, VOC reductions were effective in lowering peak ozone concentrations, while NO_x emission reductions resulted in increased peak ozone concentrations. Farther downwind, within attainment areas, VOC emissions reductions became less effective for reducing ozone concentrations, while NO_x emission reductions were effective in lowering ozone concentrations. It must be noted, however, that the magnitude of ozone decreases farther downwind due to NO_x emission reductions was less than the magnitude of ozone increases in the ozone nonattainment areas as a result of the same NO_x emission reductions.

Analyses of ambient data by LMOS contractors provided results which corroborated the modeling results. These analyses identified areas of VOC- and NO_x-limited conditions (VOC-limited conditions would imply a greater sensitivity of ozone concentrations to changes in VOC emissions; the reverse would be true for NO_x-limited conditions) and tracked the ozone and ozone precursor concentrations in the urban plumes as they moved downwind. The analyses indicated VOC-limited conditions in the Chicago/Northwest Indiana and Milwaukee areas and NO_x-limited conditions further downwind. These results imply that VOC controls in the Chicago/Northwest Indiana, Milwaukee, and Western Michigan areas would be

more effective at reducing peak ozone concentrations within the Lake Michigan ozone nonattainment areas.

The consistency between the modeling results and the ambient data analysis results for all episodes with joint data supports the view that the UAM modeling system developed in the LMOS may be used to investigate the relative merits of VOC versus NO_x emission controls. The UAM-V results for all modeled episodes point to the benefits of VOC controls versus NO_x controls in reducing the modeled domain peak ozone concentrations.

For a more detailed analysis of the modeling analysis results, please see the August 22, 1994 "Technical Review of a Four State Request for a Section 182(f) Exemption from Oxides of Nitrogen (NO_x) Reasonably Available Control Technology (RACT) and New Source Review (NSR) Requirements" memorandum contained in the docket for this action.

The EPA believes LADCo's UAM application has adequately met the requirement to demonstrate that NO_x controls within the Muskegon County ozone nonattainment area and throughout the LMOS domain will not contribute, but instead will interfere with attainment of the ozone standard.

IV. EPA Action

The EPA is proposing approval of the transportation conformity NO_x waiver SIP revision for the State of Michigan. In light of the modeling completed thus far and considering the importance of the Ozone Transport Assessment Group (OTAG) process and attainment plan modeling efforts, EPA proposes to approve this NO_x waiver on a contingent basis. When the results of OTAG technical work are available, EPA intends to require appropriate States to submit SIP measures to ensure emissions reductions of ozone precursors needed to prevent significant transport of ozone. The EPA will evaluate the OTAG technical work, along with EPA's emissions reduction requirements, to determine whether the NO_x waiver should be continued, altered, or removed.

The EPA also reserves the right to require NO_x emission controls for transportation sources under section 110(a)(2)(D) of the Act if future ozone modeling demonstrates that such controls are needed to achieve the ozone standard in downwind areas.

V. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or

establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. 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 has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

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 economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not impose any requirements on small entities. Therefore, I certify that this action does not have a significant economic impact on any small entities.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the 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 of \$100 million or more to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval proposed 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 document does not impose any Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Oxides of Nitrogen, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: May 30, 1997.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 97-15411 Filed 6-11-97; 8:45 am]

BILLING CODE 6560-50-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97-138, RM-8855, 8856, 8857, 8858, 8872]

Main Studio and Public Inspection File of Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Notice of Proposed Rule Making ("Notice" or "NPRM"), the Commission seeks comment on the proposed amendment of its rules governing main studio and local public inspection file requirements for broadcast licensees. The Commission seeks comment on its proposals to relax the standard governing the location of the main studio and to allow the local public inspection file to be located at the broadcast station's main studio, wherever located. Comment is also sought regarding proposals to streamline the contents of the public inspection file. For additional information, see Supplementary Information.

DATES: Comments must be filed on or before August 8, 1997, and reply comments on or before September 8, 1997. Written comments by the public on the proposed and/or modified information collections are due August 8, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications

Commission, Room 234, 1919 M Street, NW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418-2130. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97-138, adopted May 22, 1997, and released May 28, 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.

Synopsis of Notice of Proposed Rule Making on Main Studio and Public File

1. As part of our continuing effort to ensure that our rules serve the public interest without imposing unnecessary regulatory burdens, we here consider relaxation of our broadcast main studio and local public inspection file rules. The main studio rule generally requires each AM radio, FM radio, and television broadcast station to maintain its main studio within its principal community signal contour. The local public inspection file rules require broadcast stations to maintain a number of records in a file that is accessible to the public. Our current rules require that this file be located at the station's main studio where the studio is situated in the station's community of license, or, if the main studio is outside the community of license, at any accessible place (such as a public registry for documents or an attorney's office) in the station's community of license. Both rules seek to ensure that members of the local community have reasonable access to station management and information about the station. This enables the residents of the community to monitor a station's public interest performance, and encourages a continuing dialogue between the station and its community.

2. We have received a number of petitions for rule making regarding these rules. None of these petitions questions the underlying purposes served by the rules. Rather, they seek to relax various aspects of the rules in a manner they believe will lessen regulatory burdens on licensees without any detriment to

the public interest. We placed these petitions on public notice, and received several comments and reply comments that generally supported the petitioners' proposals. We believe a number of these proposals may be in the public interest in that they would provide broadcast licensees additional flexibility in complying with the main studio and public inspection file rules, while at the same time ensuring that the rules continue to facilitate interaction between licensees and their local communities. This document seeks comment on the various issues raised by these proposals. We also take this opportunity to seek comment on various ways to update and clarify our local public inspection file rules.

3. *Main Studio Location.* Prior to our most recent amendment of the rule, broadcasters were required to maintain their main studios in their community of license. In 1987, we relaxed the rule to permit a station to locate its main studio outside its community of license provided it is within its principal community contour. In doing so, we noted that the role of the main studio in the production of programming had diminished over the years, that community residents often communicate with stations by telephone or mail rather than visiting the studio, and that the growth of modern highways and mass transit systems had reduced travel times. We further observed that the revised rule would allow broadcasters to obtain certain efficiencies, such as colocating a station's studio at its transmitter site or moving the studio to lower cost areas. These factors persuaded us that relaxing the rule would provide broadcasters greater flexibility while at the same time ensuring that their main studios continued to be reasonably accessible to the communities they serve.

4. Apex Associates and others filed a petition for rule making that proposes a further relaxation of the rule. It requests the Commission to amend the rule to provide that "every AM, FM and TV station shall maintain a main studio which is so situated as to be reasonably accessible to residents of the station's community of license." The petition also proposes that the definition of "reasonably accessible" be left within the discretion of each licensee, or in the alternative, that this term be defined as "within 30 minutes normal driving time" from the community of license. All commenters support the proposed amendment to the rules.

5. *Discussion.* The Apex petition presents several legitimate reasons for considering relaxation of the main studio rule. As an initial matter, the

parties have pointed out that the current rule may be imposing undue burdens on licensees. There is a longstanding Congressional and Commission policy in favor of reducing regulatory burdens consistent with the public interest wherever appropriate. We also believe a review of the rule is particularly warranted in light of the recent changes in the local radio ownership rules. In 1987, the last time the main studio rule was revised, the maximum number of radio stations that a single licensee could own in a market was two: one AM and one FM. Subsequently, the Commission amended the local radio ownership rules to permit ownership of up to three commercial radio stations, no more than two in the same service, in radio markets with 14 or fewer radio stations, provided that the owned stations, if other than a single AM and FM combination, represented less than 50 percent of the stations in the market; in markets with 15 or more commercial radio stations, the rules permitted ownership of up to two AM and two FM commercial radio stations if the combined audience share of the commonly owned stations did not exceed 25 percent in the market. In February 1996, President Clinton signed into law the Telecommunications Act of 1996 ("1996 Act"), Public Law 104-104, 110 Stat. 56 (1996), which further relaxed the local radio ownership limits. In the largest markets, for example, a single entity can now own up to eight commercial radio stations. A licensee owning two or more stations in the same area may find it most efficient to operate these stations from a centrally located studio/business office, yet the main studio rule would require it to maintain a separate main studio for one or more of its commonly-owned stations if they do not place a principal community contour signal over the central studio/office. As the Apex petition points out, this can impose substantial burdens on the licensee, depriving it of savings that could be put to more productive use for the benefit of the community served by the station. These burdens are also arguably inconsistent with the economies of scale that can be achieved through common ownership of stations that Congress implicitly found to be in the public interest in relaxing the local radio ownership rules in the 1996 Act.

6. We also believe that review of the main studio rule is warranted because it may place disproportionate burdens on owners of smaller stations. The principal community contour of a broadcast station—the determinant of the main studio's location—varies greatly depending on a station's channel

or class. High power stations, which have principal community contours as great as 70 or 80 miles in diameter, consequently have greater flexibility in locating their main studios under the rule than low power stations, which can have principal community contours as small as 20 miles in diameter. While the current rule serves to ensure that the main studio is located in the primary reception area of the station, the petitioners and commenting parties have raised concerns about the differential treatment between small and larger stations that call for a review of the rule's use of a principal community contour standard.

7. We further note that, as some of the petitioners and commenters maintain, it is possible for a main studio to be outside the station's principal community contour and yet still be reasonably accessible to the community of license. For example, a location outside the principal community contour may be convenient to community residents because of its proximity to particular commuting patterns, access to public transportation or major highways, or the availability of ample public parking. The current rule may be too limited to take into account these possibilities. Conversely, many locations within a principal community contour may be difficult or relatively inconvenient to get to.

8. Given the above factors, we generally propose to relax the main studio rule and replace the community contour standard with a new standard that gives licensees additional flexibility yet continues to ensure that the main studio is reasonably accessible to a station's community of license. We seek comment on this general proposal and its potential impact on the public interest. We particularly invite comment on the manner in which we should determine whether a station's main studio is reasonably accessible to the residents of its community of license.

9. The Apex petition argues that the revised rule should simply require the main studio be "reasonably accessible to residents of the station's community of license," leaving it to the discretion of each licensee to define what reasonable is in the first instance. As an alternative, the Apex Petition argues that "reasonably accessible" should be defined as "within 30 minutes normal driving time" from the community of license. While we seek comment on these options, we are not inclined to adopt them given their lack of clarity. While relaxing the rule, they would appear to create a significant amount of uncertainty for the public and licensees regarding the appropriate location of a

station's main studio. Such a vague rule could make it difficult for licensees to determine whether a chosen site complies with the rule, and could generate numerous disputes which would have to be resolved by the Commission on an individual basis, which would be administratively inefficient.

10. Another option would involve retaining the principal community contour standard and adopting a waiver policy that would allow a station to locate its main studio outside the contour in specified circumstances. Such a policy would permit the Commission to examine on a case-by-case basis commuting patterns, population densities, local transportation and highway systems, and other factors unique to each community. We are disinclined, however, to pursue this approach. It too would create considerable uncertainty and would impose substantial administrative burdens on both licensees and the Commission. We also note that our rules currently permit a licensee to seek a waiver of the Commission's main studio location requirement.

11. We consequently favor a generally applicable rule that measures "reasonable accessibility" in a manner that can be clearly and easily understood and applied. One way this could be accomplished is to require that the main studio be located within the principal community contour of any station licensed to the community of license in question. This would provide a clear, easy-to-apply rule, eliminate the differential treatment in the current rule between low and high power stations, and give many stations a larger area within which to choose a studio location. For example, in a community with a licensed Class A FM station and a licensed Class C FM station, either station could locate its main studio anywhere within the latter station's principal community contour, which generally has a radius of over 42 miles. We question, however, whether this would provide for a studio location far from the listeners of smaller stations. Accordingly, we seek comment on whether this approach provides sufficient flexibility to licensees while continuing to ensure that their main studios are reasonably accessible to the communities they serve.

12. We also seek comment on using a straight mileage standard rather than relying on a measurement based on signal contours. In particular, the rule could be revised to require a station to locate its main studio within a radius of a set number of miles from a common

reference point in the station's community of license, such as the community's city-center coordinates. Is this approach preferable to the use of signal contour standards? If the Commission adopts this approach, what mileage standard would be an appropriate measure of reasonable accessibility? Another option would combine the above two approaches: A station could choose to locate its main studio anywhere in the principal community contour of any station licensed to the same community, or within a set distance from the community center, whichever provides greater flexibility. Still another alternative would permit an entity that owns multiple stations in a market to co-locate the main studio for these stations at any one of the commonly owned stations, provided each of the stations is located in the same local market and that the main studio was within some set distance from the community center.

13. We invite comment on these various approaches and any other proposals that commenters believe will serve the public interest by minimizing unnecessary regulatory burdens and ensuring that residents of a local community have reasonable access to the broadcast stations licensed to serve them. We emphasize that in proposing modifications to our main studio rule we in no way seek to alter the obligation of each broadcast licensee to serve the needs and interests of its community. As the Commission has long recognized, this is a bedrock obligation of every broadcast licensee. Rather, we propose to relax the main studio rule in a manner consistent with this obligation.

14. *Local Public Inspection File Location.* The Commission requires a broadcast station to maintain its local public inspection file at its main studio in its community of license or at any accessible place in the community of license (e.g., an attorney's office or local public library) if the station's main studio is located outside the community. As with the main studio rule, reasonable access to the public inspection file facilitates monitoring of a station's operations and public interest performance by the public and encourages a community dialogue with local stations. This in turn helps ensure that stations are responsive to the needs and interests of their local communities.

15. Several parties have filed their petitions for rule making requesting that the Commission amend the public inspection file rule to provide that the public file be maintained at the main studio, wherever located. These parties state that the main studio is the most

logical and likely location that members of the public would seek to find a station's public file. They also state that experience under the current rule has shown that files maintained outside the main studio are subject to mishandling, loss of documents, and destruction because the files are not under the daily supervision of the licensee. In addition, they claim that because so few members of the public actually seek access to the off-premises public file, the expense involved in maintaining that file often is not offset by any benefit to the public.

16. Another party, Salem Communications Corp., proposes a different approach regarding the location of the public inspection file. It proposes that the Commission require any licensee who elects to locate its public file at its main studio outside its community of license to also accommodate the public in one of the three following ways: (1) Provide free transportation to the main studio; (2) deliver the public file to a location specified by the requestor; or (3) provide specified documents by mail.

17. *Discussion.* We propose to amend our rules to permit both commercial and noncommercial stations to locate their local public inspection files at their main studios, wherever located. Coupled with our proposal above regarding the location of the main studio, this would place the public file at the same "reasonably accessible" location as the main studio, which would not necessarily be in the community of license. We also seek comment on reasonably accessible locations for the public file of an applicant for a new station or change of community. We propose that such a party maintain its file in the proposed community of license or at its proposed main studio.

18. We recognize that in amending the main studio rule in 1987 the Commission determined that the public inspection file should be maintained in a station's community of license in order to assure meaningful public participation in our licensing process. The petitioners, however, have pointed to a number of public interest reasons in favor of permitting licensees to locate their public inspection files at their main studios, even when these are outside the station's community of license. Allowing this flexibility will reduce regulatory burdens on licensees while at the same time ensuring, as with our proposed amendment to the main studio rule, that the public file is reasonably accessible to residents of the local community, and could well increase the convenience to the public in some cases. Reasonable accessibility

of the main studio and the public file has been our benchmark for facilitating public involvement at the station. We also believe that it would serve the public interest to provide stations greater flexibility in locating the public inspection file and main studio given the increased number of same-market, multiple-station owners under the new radio ownership rules. As described in our discussion of the main studio rule, this is consistent with the relaxation of these rules because it allows stations to avail themselves of economies of scale and allows them to channel their resources in ways that would better serve the public. In addition, it would appear that the main studio is the most logical and likely place for the public to expect to find a station's public inspection file, given that it will typically be listed in the local telephone directory. Furthermore, we believe the public would be better served if the file is maintained and stored under the direct control of the station. Not only would there be greater assurance that the file is kept up-to-date and in proper order, but also the public would be able to request assistance in researching the public file if necessary.

19. We invite comment on our proposal to permit licensees to locate their local public inspection file at their main studio, even when the main studio is outside the station's community of license. We particularly seek comment on whether this will ensure that the public file continues to be reasonably accessible to a station's local community. We also ask broadcasters to describe specifically the efficiencies that can be achieved in providing greater flexibility under the rule, and how these efficiencies can benefit the public. Parties are invited to comment on the proposals advanced by Salem Communications Corp. to ensure public access, as described above, and any other such alternatives regarding the accessibility and location of the public inspection file that they believe would serve the public interest.

20. *Public Inspection File Contents.* We also take this opportunity to seek comment on updating our requirements regarding the materials that a station must place in its public inspection file. As stated above, the public file contains information that facilitates meaningful public participation in monitoring licensee compliance with public interest obligations. The requirements regarding the contents of the public file for noncommercial educational stations are similar to those that apply to commercial stations, although there is some variation. Currently, the public inspection file for both commercial and

noncommercial stations must contain general information pertaining to the station, such as certain applications and related materials the station may have filed with the FCC, ownership reports, employment reports, and a list of programs aired by the station during the previous three months that provided its most significant treatment of community issues (the "issues/programs list"). Broadcast licensees must also maintain a separate file concerning broadcasts by political candidates. In addition, all commercial broadcast television licensees must maintain a public file containing information regarding the educational and informational children's programming they air pursuant to the Children's Television Act of 1990. The Commission recently revised these children's television public file requirements in its children's television proceeding.

21. We propose to amend our rules to eliminate or revise certain aspects of the local public inspection file rules that are out-of-date or that require clarification. In particular, we plan to revise the rules as follows:

(a) We propose to delete the requirement that licensees maintain in their public file the 1974 manual entitled "The Public and Broadcasting." This manual is long out-of-date.

(b) We will delete the reference in § 73.3526(a)(11) of our rules regarding the maintenance of reports that were required under our financial interest and syndication rules, which have been repealed.

(c) We will correct the cross-reference in the local public inspection file rules to the rule section governing a licensee's political file.

(d) We plan to delete the note set forth under §§ 73.3526(a)(1) and 73.3527(a)(1) of our rules. This note provides that certain applications filed on or before May 13, 1965—the date of a previous FCC *Report and Order* regarding the local public inspection file rules—need not be placed in the station's public file. This exemption is no longer needed given that, even without the exemption, the retention periods for maintaining such applications have long since expired.

We seek comment on these proposals and any other similar revisions that would serve to update or clarify the public inspection file rules. For instance, are there certain applications covered by the existing rule that no longer need to be maintained in the public file?

22. We also consider here a proposal to revise our requirements regarding the responsibility for maintaining public

file materials when a station's license is assigned to a new owner. The rules provide that after the Commission approves an application for assignment of license and the transaction has been consummated, the assignee is responsible for ensuring that the public file contain all the documents previously required to be maintained in the file by the assignor. A petition for rule making filed by David Tillotson requests that the Commission amend the public file rule to delete this requirement. Tillotson maintains the proposed change is warranted because the public file need only contain information concerning the *current* licensee or permittee. According to Tillotson, the public has no practical use for information regarding the ownership, programming and EEO practices of a station's prior licensees, and therefore a new licensee should not be required to bear the burden of reconstructing the prior licensee's public file. As to this type of licensee-specific information, we believe there is merit to these arguments, and invite comment on amending our rules to relieve license assignees of this burden. We note, however, that there may be information in the public file relevant to a station's facilities (*e.g.*, engineering material in a modification application filed by the assignor) that is not licensee-specific and therefore should be maintained by the assignee. We seek comment on this issue.

23. Finally, we propose to clarify the general requirement in § 73.1202(a) of our rules that all written comments and suggestions received from the public by licensees of commercial AM, FM, and TV broadcast stations regarding operation of their station shall be maintained in the local public inspection file. We wish to clarify that such written comments and suggestions include electronic mail messages transmitted via the internet to stations that are capable of receiving them. Internet "email" is now commonly used by many members of the public and is increasing in popularity. Stations may print out a hard copy of such an internet message and place it in their public file. Parties are invited to comment on this proposed clarification.

24. *Retention Periods.* We also take this opportunity to review the retention periods for the materials in a licensee's local public inspection file as well as its political file. These retention periods, set forth in §§ 73.3526(e) and 73.3527(e) of the rules, vary depending on the type of record involved, as the following illustrative list indicates:

(a) Political file materials, which are kept in a separate file, must be retained for two years.

(b) With respect to commercial broadcast stations, letters received from members of the public must be retained for three years.

(c) A licensee's issues/programs list must be retained for the term of the station's license, which the current rule states as five years for television licensees and seven years for radio licensees. This provision predates our recent decision extending both television and radio broadcast license terms to eight years.

(d) A television licensee's documentation of its performance under the Children's Television Act of 1990 must be retained for the term of a station's license, which the current rule states as five years. Again, this provision predates the recent extension of license terms to eight years.

(e) The various applications a station must place in its public file generally must be retained by a permittee or a licensee for a period beginning with the date that they are tendered for filing and ending with the expiration of one license term (five years for television licensees or seven years for radio licensees) or until the grant of the first renewal application of the television or radio broadcast license in question, whichever is later.

25. We wish to ensure that our public file retention period requirements provide clear guidance to licensees and the public, facilitate meaningful public participation in monitoring licensee compliance with our rules and policies, and minimize unnecessary paperwork burdens on broadcasters. At a minimum, we propose to revise any public file retention periods that are tied to the broadcast license term (*e.g.*, the issues/programs list) to reflect the new license term of eight years. This is consistent with the rule's purpose in providing the public access to information that is relevant to a station's performance throughout its license term, facilitating monitoring of licensee performance by interested parties as well as their participation in the license renewal process. In addition, we propose to amend the rules to reflect that all documents that are required to be retained for the license term be retained not only for the eight-year license term, but also until the grant of the renewal application is no longer subject to appeal either at the FCC or in the courts. This will ensure that the public has access to pertinent information regarding the licensee's performance during the pendency of its

renewal application. We invite comment on this issue.

26. We also seek comment on whether any of our public file retention periods can be shortened to reduce regulatory burdens consistent with the public interest. In particular, our current rules generally require a licensee to retain certain applications filed with the FCC until the expiration of one license term or until grant of the first renewal application of the television or radio broadcast license in question. The applications subject to this retention period include, for example, license assignment and transfer applications and applications for major facility modifications. We question the need to require licensees to retain these materials for this period of time, and propose that they retain such applications only during the period in which they are pending before the FCC or the courts. This would appear to be the period of time that they would have particular relevance to the public. We also note that other public file materials may provide an alternative source for the information contained in these applications; the ownership reports, for example, provide information about a licensee's ownership structure that can be found in an assignment or transfer application. We seek comment on this proposal. Are there some applications or parts of applications that should be kept for a longer period? For example, some applications contain an exhibit in support of a rule waiver and the Commission has granted the waiver based, in part, on the applicant's public interest representation. How long should the new owner be required to retain such an application or the waiver exhibit in its public file?

27. We seek comment on other ways to clarify and streamline our retention period requirements. What are the appropriate retention periods for a licensee's annual employment reports and annual ownership reports? Should we modify the requirement that commercial stations retain letters from the public for three years? We particularly seek comment on the appropriate retention period for letters from the public regarding violent programming given the new statutory requirement that licensees summarize such letters in their renewal applications.

28. *An Electronic Public File Option.* We recognize that many stations are equipped with computers and make information available to the public on their own World Wide Web home pages on the internet. We encourage stations to do so, as it facilitates a dialogue between licensees and their

communities that can lead to better service to the public. Indeed, in our recently completed children's television proceeding we encouraged stations to post their Children's Educational Programming Reports on their Web sites. We wish to explore other ways in which information now maintained in the local public inspection file could be made available to the internet.

29. We realize, of course, that many Americans and broadcast stations do not have internet access or even computers. There may be options, however, that would allow stations to take advantage of this new technology in ways that reduce paperwork burdens while at the same time provide the public greater access to information about the station. For example, we seek comment on giving stations the option of maintaining all or part of the public inspection file in a computer database rather than in paper files. For example, commercial television licensees will soon be able to complete their Children's Television Programming Reports directly on their computers and then file them electronically with the FCC. A station that chooses to do so could also maintain these Reports in a computer file at its station rather than placing them in its "paper" public inspection file as it is presently required to do every quarter. The station that chooses this option would be required to make a computer terminal available to members of the public interested in reviewing the station's "electronic" public file, and also, as set forth under the current rules, would be required to provide paper copies of such public file materials on request. We would also encourage such stations to post their "electronic" public files on any World Wide Web sites they maintain. We seek comment on this option as well as other means of using computer technology to provide access to public inspection file materials.

30. In this *document* we review various aspects of our main studio and local public inspection file rules. In doing so, we seek to minimize regulatory burdens and facilitate meaningful interaction between broadcast stations and the communities they serve. We have traditionally relied on this interaction as a primary means of ensuring that broadcasters are responsive to the needs and interests of their communities.

31. *Authority.* This *document* is issued pursuant to authority contained in §§ 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, 307.

Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due August 11, 1997. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (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 the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: New Collection (will modify four existing collections: 3060-0171, § 73.1125-Station main studio location; 3060-0214, § 73.3526-Local Public Inspection File of Commercial Stations; 3060-0215, § 73.3527-Local Public Inspection File of Noncommercial Educational Stations; and 3060-0211, § 73.1943-Political File.

Title: Review of the Commission's Rules regarding the main studio and local public inspection files of broadcast television and radio stations.

Form No.: None

Type of Review: New collection

Respondents: Licensees/permittees of broadcast stations

Number of Respondents, Estimated Time Per Response, Total Annual Burden: Section 73.1125 requires the filing of an estimated 135 notifications per year with an average burden of 0.5 hours per request. Section 73.3526 requires an estimated 10,262 commercial radio stations to maintain a public inspection file. The average burden on a commercial radio licensee/permittee is 2 hours per week (104 hours per year) to maintain a public inspection file. We also estimate that 1,187 commercial television stations will be required to maintain a public inspection file. The average burden on a commercial television licensee/permittee is 2.5 hours per week (130 hours per year) to maintain a public inspection file. These estimates for § 73.3526 contain only the burden associated with the public inspection

file. Section 73.3527 requires an estimated 2,214 noncommercial educational radio and television stations to maintain a public inspection file. The average burden on such a licensee/permittee is 2 hours per week (104 hours per year) to maintain a public inspection file. This estimate for § 73.3527 contains only the burden associated with the public inspection file. With respect to § 73.1943, we estimate that 25 political broadcasts per station (13,664 stations) will be made and a record kept with an average burden of 0.25 hours per request. The total annual burden for these collections is 1,537,282 hours. These figures are contingent on any decision reached upon adoption of a Report and Order.

Needs and Uses: The main studio and public file rules seek to ensure that members of the local community have access to the broadcast stations that are obligated under the FCC's rules to serve them. This rule making proceeding seeks to relieve undue regulatory burdens while retaining basic obligations of broadcast licensees to serve their communities of license.

For information regarding proper filing procedures for comments, see 47 CFR §§ 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting, Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-15389 Filed 6-11-97; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390, 392, and 393

[FHWA Docket No. MC-97-5; FHWA-97-2364]

RIN 2125-AD40

Parts and Accessories Necessary for Safe Operation; General Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA is extending the comment period for its April 14, 1997, notice of proposed rulemaking (NPRM) in which the agency proposed amendments to part 393 of the Federal Motor Carrier Safety Regulations (FMCSRs). The extension is in response to a request from the Motor and

Equipment Manufacturers Association (MEMA). The FHWA has determined that granting the extension is appropriate given the complexity of the NPRM and the need for informed responses from potential commenters.

DATES: Signed, written comments must be received on or before July 28, 1997.

ADDRESSES: Comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS-10, (202) 366-4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 1997 (62 FR 18170), the FHWA published a NPRM concerning part 393 of the Federal Motor Carrier Safety Regulations (FMCSRs), and requesting comments on the proposed amendments by June 13, 1997. The proposed changes are intended to remove obsolete and redundant regulations; respond to several petitions for rulemaking; provide improved definitions of vehicle types, systems, and components; resolve inconsistencies between part 393 and the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standards (49 CFR 571); and codify certain FHWA regulatory guidance concerning the requirements of part 393. Generally, the amendments do not involve the establishment of new or more stringent requirements but a clarification of existing requirements. The FHWA indicated that this action is consistent with the President's Regulatory Reinvention Initiative and furthers the FHWA's ongoing Zero-Base Regulatory Review in that it proposes to make many sections more concise, easier to understand and more performance oriented.

Request for an Extension of the Comment Period

The Motor and Equipment Manufacturers Association (MEMA) requested a 30-day extension of the comment period in order to develop "meaningful and responsive comments, in part supported by testing and other technical data which will take additional time to assemble. * * *" The MEMA specifically requested additional time to formulate comments in response to the proposed amendments in § 393.25, *Requirements for lamps other than head lamps*, § 393.45, *Brake tubing and hose, adequacy*, and § 393.46, *Brake tubing and hose connections*. A copy of the MEMA request is included in the docket.

FHWA Decision

The FHWA has determined that the request should be granted, given the complexity of the Society of Automotive Engineers (SAE) recommended practices and standards that the agency proposed to incorporate by reference. The FHWA proposed that marker lamps on projecting loads, all lamps temporarily attached to vehicles transported in driveaway-towaway operations, and all lamps on converter dollies and pole trailers be required to meet the following applicable SAE standards: J586—*"Stop Lamps for Use on Motor Vehicles Less Than 2032 mm in Overall Width,"* December 1989; J1398—*"Stop Lamps for Use on Motor Vehicles 2032 mm or More in Overall Width,"* May 1985; J585—*"Tail Lamps (Rear Position Lamps) for Use on Motor Vehicles Less Than 2032 mm in Overall Width,"* December 1994; J588—*"Turn Signal Lamps for Use on Motor Vehicles Less Than 2032 mm in Overall Width,"* December 1994; J2040—*Tail Lamps (Rear Position Lamps) for Use on Motor Vehicles 2032 mm or More in Overall Width,"* June 1991; J588—*"Turn Signal Lamps for Use on Motor Vehicles Less Than 2032 mm in Overall Width,"* December 1994; J1395—*"Front and Rear Turn Signal Lamps for Use on Motor Vehicles 2032 mm or More Overall Width,"* June 1991; J592—*"Clearance, Side Marker, and Identification Lamps,"* December 1994.

The agency also proposed that amber Class 2 or Class 3, 360 degree warning lamps must meet SAE J845—*"360 Degree Warning Lamp for Authorized Emergency, Maintenance and Service Vehicles,"* March 1992. Class 1, 360 degree warning lamps would be prohibited. Amber flashing warning lamps would be required to meet SAE J595—*"Flashing Warning Lamps for*

Authorized Emergency, Maintenance and Service Vehicles," January 1990. Amber Class 2 or Class 3 gaseous discharge warning lamps would be required to meet SAE J1318—*"Gaseous Discharge Warning Lamp for Authorized Emergency, Maintenance, and Service Vehicles,"* April 1986.

With regard to brake hoses, the FHWA proposed that coiled nylon brake hose or hose assemblies must meet SAE J844, *"Nonmetallic Air Brake System Tubing,"* October 1994. The proposed regulation would list the three exceptions that the National Highway Traffic Safety Administration's brake hose standard, 49 CFR 571.106, provides for coiled nylon brake tubing. Paragraphs S7.3.6 (length change), S7.3.10 (tensile strength), and S7.3.11 (tensile strength of an assembly after immersion in water) of 49 CFR 571.106 cross reference § 393.45 and indicate that certain coiled tubing that meets the requirements of § 393.45 is not required to meet the testing requirements described in those paragraphs.

The FHWA is mindful of the need for all interested parties to have enough time to prepare relevant and useful comments. Therefore, the FHWA is extending the comment period on Docket FHWA MC 97-5; FHWA-97-2364 for a 45-day period, to July 28, 1997.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will continue to file relevant information in the docket as it becomes available after the comment closing date, and interested parties should continue to examine the docket for new materials.

List of Subjects in 49 CFR Part 390

Highway safety, Highways and roads, Intermodal transportation, Motor carriers, Motor vehicle identification, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 392

Highway safety, Highways and roads, Motor carriers—driving practices, Motor vehicle safety.

49 CFR Part 393

Highways and roads, Incorporation by reference, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

Authority: 49 U.S.C. 31136, 31502; 49 CFR 1.48.

Issued on: June 6, 1997.

Jane Garvey,

Acting Federal Highway Administrator.

[FR Doc. 97-15440 Filed 6-11-97; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1157

[STB Ex Parte No. 563]

Commuter Rail Service Continuation Subsidies and Discontinuance Notices

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) is proposing to remove from the Code of Federal Regulations regulations concerning subsidies for the continuation of commuter rail service and notices of the discontinuance of commuter rail service.

DATES: Comments are due on July 14, 1997.

FOR FURTHER INFORMATION CONTACT:

Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), abolished the Interstate Commerce Commission (ICC) and established the Board. Section 204(a) of the ICCTA provides that "[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act."

It appears that some of the regulations at 49 CFR part 1157 are based on repealed statutes. On the other hand, statutes outside the ICCTA refer to and hence may require the retention in substance of part 1157. We are instituting this proceeding to determine whether these regulations may be eliminated, or whether they have continuing validity and must be retained.

Part 1157 deals with the determination of commuter rail continuation subsidies for the Consolidated Rail Corporation (Conrail) (subpart A) and notices of the discontinuance of commuter rail service by Amtrak Commuter Services Corporation (Amtrak Commuter) (subpart B). The subpart A regulations are based in part on former 49 U.S.C. 10362, which, together with former section 10361, pertained to the Rail Services Planning Office (RSPO) of the

former ICC.¹ Both section 10361 and section 10362 were repealed by the ICCTA.² Moreover, the ICCTA removed the requirement in 45 U.S.C. 744(e) that RSPO issue regulations for rail passenger subsidies for Conrail. See section 327(3) of the ICCTA. Finally, under 49 U.S.C. 10501(c)(2) of the ICCTA, with certain exceptions not relevant here,³ "the Board does not have jurisdiction under this part over mass transportation provided by a local governmental authority."⁴ As described *infra*, however, the subpart A regulations are referred to in an Amtrak Commuter statute that is still in effect. Accordingly, we seek comment on whether subpart A can be eliminated.

The regulations in part 1157, subpart B are based on 49 U.S.C. 24505(e)(2).⁵ As noted, while the ICCTA removed references in 45 U.S.C. 744(e) to

¹ These and other statutes will be discussed in greater detail, *infra*.

² Besides former 49 U.S.C. 10362, the regulations in part 1157, subpart A give for their statutory authority 49 U.S.C. 10321 and 5 U.S.C. 559. Section 10321, dealing with the ICC's general authority, has been carried over to 49 U.S.C. 721, while 5 U.S.C. 559 remains part of the Administrative Procedure Act.

³ The exceptions, listed in section 10501(c)(3)(A), make safety, employee representation for collective bargaining, and other employee-related matters subject to applicable federal laws. Also, under section 10501(c)(3)(B), the Board has jurisdiction over transportation by local transportation authorities relating to use of terminal facilities (section 11102) and switch connections and tracks (section 11103).

⁴ Under former 49 U.S.C. 10504(b)(2), the ICC did not have jurisdiction over mass transportation provided by a local governmental authority if the fares, or the authority to apply to the Commission for changes in those fares, were subject to the approval of the Governor of the state in which the transportation was provided. The ICCTA broadened this exemption, and the Board currently does not have jurisdiction whether or not the Governor can approve a fare. "This provision * * * changes the statement of agency jurisdiction to reflect curtailment of regulatory jurisdiction in areas such as passenger transportation. * * * (A)lthough regulation of passenger transportation is generally eliminated, public transportation authorities * * * may invoke the terminal area and reciprocal switching access remedies of section 11102 and 11103." See H. R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 167 (1995). See also, Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois, D/B/A Metra—Exemption—Tariff Filing Requirements, Docket No. 41506 (STB, served Mar. 29, 1996).

⁵ The statutory authority given for the regulations in part 1157, subpart B is "49 U.S.C. 504(d)(2)" while the text of the regulations cites "45 U.S.C. 504(d)(2)." Neither of these references is currently correct. Section 1137 of the Northeast Rail Service Act of 1981, discussed *infra*, contains a section 504(d)(2) which was originally codified at 45 U.S.C. 584(d)(2). Section 584 was repealed by Pub. L. No. 103-272, section 7(b), July 5, 1994, 108 Stat. 745, and recodified at 49 U.S.C. 24505(e)(2) as part of a general restructuring of the United States Code "(t)o restate the laws related to transportation in one comprehensive title * * *." H.R. Rep. No. 180, 103d Cong., 2d Sess. 3 (1994), reprinted in 1994 U.S.C.A.N. 818, 820.

regulations issued by RSPO, section 24505(e)(2) still refers to RSPO prescribing regulations for Amtrak Commuter discontinuance notices. As indicated, however, under section 10501(c)(2) the Board does not have jurisdiction over local governmental authorities providing mass transportation. Additionally, neither the Board (nor the ICC before it) has jurisdiction to regulate any of Amtrak's service. We also seek comment on whether the subpart B regulations can be eliminated.

Background

To assist parties in commenting on whether part 1157 should be retained, we will briefly describe the rather complex statutory setting for the regulations.

The Rail Passenger Service Act of 1970, Pub. L. No. 91-518, 84 Stat. 1327 (1970) (Amtrak Act), created the National Railroad Passenger Corporation, known as Amtrak, a for-profit corporation. See 49 U.S.C. 24301 *et seq.*⁶ Railroads that entered into contracts with Amtrak were relieved of their duties to provide intercity rail passenger service.

The Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985, 45 U.S.C. 701 *et seq.* (3R Act) created Conrail as a for-profit corporation to reorganize the bankrupt rail services in the Northeast and Midwest. Conrail was required by the 3R Act to continue providing rail service if states or local transportation authorities made payments to subsidize unprofitable operations. Section 304. The 3R Act also created RSPO, which was authorized to issue standards for defining accounting terms used in section 304. Section 205(d).⁷

Subsequently, Congress enacted the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), which amended portions of the 3R Act and also added new sections. The 4R Act established, *inter alia*, a program of Federal financial assistance for the continuation of certain rail commuter passenger services in the Midwest and

⁶ The Amtrak Act was originally codified at 45 U.S.C. 501-566.

⁷ Under the eventual statutory codification, RSPO was established as "an office in the Interstate Commerce Commission." Former 49 U.S.C. 10361. In resolving the issue of whether final orders or regulations of RSPO were to be considered orders or regulations of the ICC, the court held that "(a)lthough Congress gave to the RSPO final administrative responsibility for certain determinations, we conclude that the RSPO is sufficiently part of the ICC so that its orders are to be considered orders of the ICC for purposes of the Hobbs Act." *Southeastern Pennsylvania Transp. Auth. v. I.C.C.*, 644 F.2d 238, 240, n.3 (3rd Cir. 1981).

Northeast regions. Section 304(e) of the 4R Act (now codified at 45 U.S.C. 744(e)) amended the 3R Act by explicitly adding a section pertaining to rail passenger service. Under this provision, Conrail was to continue providing rail passenger service if a state or local transportation authority offered a subsidy to pay for the unprofitable service.

Of significance to this proceeding, section 309 of the 4R Act amended section 205(d) of the 3R Act (49 U.S.C. 10362) to require RSPO to develop standards for the computation of subsidies for the continuation of these commuter services.⁸ RSPO issued the regulations on August 3, 1976, 41 FR 32546.⁹ These standards were originally codified at 49 CFR part 1127 and are now found at 49 CFR part 1157, subpart A (subsidy standards).

Next, Congress enacted the Northeast Rail Service Act of 1981, Pub. L. 97-35, 95 Stat. 643 (NERSA).¹⁰ In the context of part 1157, NERSA made three important changes.

First, under section 1136 of NERSA, codified at 45 U.S.C. 744a, Conrail was relieved on January 1, 1983, of any legal obligation to provide commuter service. Despite this change, however, 45 U.S.C. 744 was retained. Section 744(e), as noted, required Conrail to provide rail passenger service if a subsidy is paid under regulations issued by RSPO.

Second, section 1137 of NERSA amended the Amtrak Act and chartered Amtrak Commuter. Section 1137 was originally codified at 45 U.S.C. 581-91 and is now codified at 49 U.S.C. 24501-06. Under section 24505(a)(1), Amtrak Commuter is required to provide the commuter rail passenger service that Conrail was obligated to provide under the 3R and 4R Acts. Moreover, under section 24505(a)(2), Amtrak Commuter may provide passenger service if a commuter authority pays the avoidable costs plus a reasonable return on value less the revenues from the

transportation. RSPO was to issue the regulations for such payments.¹¹

Finally, also under section 1137 and now codified at 49 U.S.C. 24505(e), Amtrak Commuter may discontinue rail passenger service on 60 days' notice if a commuter authority does not offer a subsidy or a subsidy payment is not paid when due. Under section 24505(e)(2) RSPO was directed to prescribe regulations for "the necessary contents of the notice required under this subsection."

In response to NERSA, RSPO issued an NPR in Ex Parte No. 293 (Sub-No. 8), that was published in the **Federal Register** on September 9, 1982 (47 FR 39700). RSPO proposed to divide the regulations at 49 CFR part 1127 (which then contained the subsidy standards) into two sections: subpart A would contain the existing subsidy standards while subpart B would comprise the new discontinuance notice procedures.

While RSPO proposed new regulations under subpart B for discontinuance notices, it did not propose any changes to the subsidy standards. Instead, the NPR implicitly proposed to adopt the subsidy standards for use in Amtrak Commuter cases: "After January 1, 1983, [Amtrak Commuter] is required to take over the commuter operations currently provided by Conrail if a commuter authority offers a subsidy payment which complies with RSPO's Standards * * *." (Emphasis supplied; citation omitted.) Final rules were adopted in a notice published in the **Federal Register** on January 5, 1983 (48 FR 413).

The ICCTA was the final legislative action applicable to these regulations. As noted, under 49 U.S.C. 10501(c)(2), "the Board does not have jurisdiction *under this part* over mass transportation provided by a local governmental authority." (Emphasis supplied.) Moreover, under the ICCTA, sections 10361 and 10362 concerning RSPO were repealed.

As indicated, although Conrail, under 45 U.S.C. 744a, is no longer obligated to provide commuter passenger service, 45 U.S.C. 744(e) has not been repealed. The ICCTA did, however, eliminate from section 744(e) references to subsidy standards set by RSPO. For example, before the ICCTA, section 744(e)(4)(C) concerned a public body that "offers a rail service continuation payment, pursuant to subsection (c)(2)(A) of this section and regulations issued by

(RSPO) pursuant to section 205(d)(5) of this Act . * * ." (Emphasis supplied.) The ICCTA removed the language pertaining to regulations issued by RSPO, and now the statute simply describes a public body that "offers a rail service continuation payment, pursuant to subsection (c)(2)(A) of this section . * * ."

On the other hand, the ICCTA did not delete references in the Amtrak Commuter statute to RSPO regulations. Section 24505(b)(2) still states that RSPO "may revise and update the [subsidy] regulations", and section 24505(e)(2) still requires RSPO to prescribe the notice of discontinuance regulations.

Part 1157 Regulations

The regulations in part 1157, subpart A, pertaining to the determination of commuter rail service subsidies, are detailed and long. The subsidy standards prescribe various responsibilities for RSPO. Under § 1157.3(d)(4), upon request of either party, RSPO will mediate disputes about the subsidy agreement, the subsidy standards, and certain plans. Under § 1157.4, parties desiring an interpretation of the standards can file a written petition; RSPO will issue an interpretation unless it determines that the subsidy standards need to be amended, in which case it will institute a rulemaking proceeding. Under § 1157.7(d), in an impasse over joint special studies, either party may submit the dispute to RSPO for resolution. Finally, under § 1157.3(f), the subsidized carrier is to submit financial status reports to RSPO.

The regulations at 49 CFR part 1157, subpart B, implement the statutory requirement of section 24505(e) that the contents of an Amtrak Commuter discontinuance notice be prescribed. The regulations repeat the statutory criteria that Amtrak Commuter can discontinue service on 60 days' notice if it is not offered a subsidy or a subsidy is not paid when due. The regulations prescribe the form and content of the notice and method of posting. They also require that the notice be served on the subsidizer, governor, designated state agency, RSPO, and Amtrak.

Discussion and Conclusions

The changes made by the ICCTA require us to reexamine part 1157. We note that these regulations were issued by an office (RSPO) that has been abolished. They provide, moreover, for continuing responsibilities by that office, particularly in subpart A (mediation, issuing interpretations). Thus, at a minimum, the regulations

⁸ The RSPO subsidy regulations are also referenced in 45 U.S.C. 744(e).

⁹ RSPO originally published a notice of proposed rulemaking (NPR) on February 20, 1976, in *Standards for the Computation of Commuter Rail Passenger Service Subsidies*, Ex Parte No. 293 (Sub-No. 8). On May 16, 1976, it published a further NPR (41 FR 20104), and on June 30, 1976, it published a second NPR (41 FR 26936).

¹⁰ "NERSA * * * was designed essentially to extricate Conrail from its fiscally draining commitment to commuter services so that it could concentrate on freight services, while ensuring the orderly transfer of commuter services to new, viable providers." *Conrail v. Metropolitan Transit Authority*, 1996 U.S. Dist. Lexis 3519, at *4 (S.D.N.Y. 1996).

¹¹ Section 24505(b)(1) provides that "(a) commuter authority making an offer under subsection (a)(2) of this section shall * * * (B) make the offer according to regulations the Rail Services Planning Office prescribes under section 10362(b) (5)(A) and (6) of this title."

must be modified to remove the references to, and continuing duties of, RSPO. In subpart B, RSPO's only function was to receive a copy of the notice, and this responsibility can be easily eliminated.

The Federal Circuit has recently held:

"When a statute has been repealed, the regulations based on that statute automatically lose their vitality. Regulations do not maintain an independent life, defeating the statutory change." *Aerolineas Argentinas v. U.S.*, 77 F.3d 1564, 1575 (Fed. Cir. 1996).

The broader issue, however, is whether the remaining regulations have a validity independent of the existence of RSPO and the jurisdiction of the Board. While the ICCTA deleted the RSPO references at 45 U.S.C. 744(e) pertaining to Conrail, 49 U.S.C. 24505(b) still incorporates RSPO subsidy regulations in the requirements for an offer to provide subsidy to Amtrak Commuter. We also note that under 49 U.S.C. 10501(c)(2) the Board does not have jurisdiction over mass transportation provided by a local government authority. On its face, this restriction appears to eliminate our authority to modify, or resolve disputes under, the subsidy and notice regulations.¹² Nonetheless, it can be argued that there is still a need for the regulations, which, because of their utility, are "frozen in time" (at least until further statutory changes are made). We seek comment on these issues.

The Board preliminarily concludes that the removal of the rule, if adopted, would not have a significant effect on a substantial number of small entities.

¹² Under section 10501(c)(1)(A) (i) and (ii), the term "local governmental authority" has two meanings. First, it takes the definition of 49 U.S.C. 5302(a)(6): State political subdivision, an authority of a state or political subdivision, an Indian tribe, or a public corporation, commission or board established under state law. It also "includes a person or entity that contracts with the local governmental authority." * * * Section 10501(c)(1)(A)(ii). Under section 10501(c)(1)(B), "Mass transportation" means the rail services described in section 5302(a)(7): transportation providing regular and continuing general or specific public transportation.

By comparison, section 24501(a)(2) states that Amtrak Commuter "provides by contract commuter rail passenger transportation for a commuter authority." * * * The terms "commuter authority" and "commuter rail passenger transportation" are similar to "local governmental authority" and "mass transportation". Under 49 U.S.C. 24102(4), commuter authority is defined as "a State, local, or regional entity established to provide, or make a contract providing for, commuter rail passenger transportation." Under section 24102(5), commuter rail passenger transportation is "short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple-ride, and commuter tickets and morning and evening peak period operations." Thus, under either definition, the Board appears to have no jurisdiction over such activities.

The rule removal will lessen the filing requirements of rail passenger carriers. Any harm to passengers that are considered small entities would be minimal and, in any event, are required by law. The Board, however, seeks comments on whether there would be effects on small entities that should be considered.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1157

Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

Decided: June 2, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,
Secretary.

PART 1157—[REMOVED]

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is proposed to be amended by removing part 1157.

[FR Doc. 97-15266 Filed 6-11-97; 8:45 am]
BILLING CODE 4915-00-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Status Reviews for the Alexander Archipelago Wolf and the Queen Charlotte Goshawk

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of status reviews; reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that the comment period is reopened on the rangewide status reviews for the Alexander Archipelago wolf (*Canis lupis ligoni*) and the Queen Charlotte goshawk (*Accipiter gentilis laingi*) under the Endangered Species Act of 1973, as amended. The Service solicits any information, data, comments, and suggestions from the public, other government agencies, the scientific community, industry, or other interested parties concerning the status of these species.

DATES: Comments and data from all interested parties must be received by

July 28, 1997 to be included in the findings.

ADDRESSES: Data, information, comments, or questions concerning these status reviews should be sent to Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 3000 Vintage Blvd., Suite 201, Juneau, Alaska 99801-7100.

FOR FURTHER INFORMATION CONTACT: John Lindell, at the above address, or by calling 907/586-7240.

SUPPLEMENTARY INFORMATION:

Background

Alexander Archipelago Wolf

On December 17, 1993, the Service received a petition to list the Alexander Archipelago wolf as threatened under the Act, from the Biodiversity Legal Foundation, Eric Holle, and Martin Berghoffen. On May 20, 1994, the Service announced a 90-day finding (59 FR 26476) that the petition presented substantial information indicating that the requested action may be warranted, and opened a public comment period until October 1, 1994 (59 FR 26476 and 59 FR 44122). The Service issued its 12-month finding that listing the Alexander Archipelago wolf was not warranted on February 23, 1995 (60 FR 10056).

On February 7, 1996, the Southwest Center for Biological Diversity, Biodiversity Legal Foundation, Save the West, Save America's Forests, Native Forest Network, Native Forest Council, Eric Holle, Martin Berghoffen, and Don Muller filed suit in the United States Court for the District of Columbia challenging the Service's not warranted finding. The complaint stated that the Service had based its not warranted finding on proposed changes to the USDA Forest Service's Tongass Land Management Plan, although there was no commitment that those proposed changes would be adopted in the final version. On October 9, 1996, the United States District Court remanded the 12-month finding to the Secretary of Interior, instructing him to reconsider the determination "on the basis of the current forest plan, and status of the wolf and its habitat, as they stand today" (96 CV 00227 DDC).

Accordingly, a public comment period was opened on December 5, 1996 (61 FR 64497) to gather all new information for review. It was extended until April 4, 1997 through three subsequent notices (61 FR 69065; 62 FR 6930; and 62 FR 14662). The Service has reevaluated the petition and the literature cited in the petition, reviewed the Tongass Land Management Plan and other available literature and

information, and consulted with biologists and researchers knowledgeable of gray wolves in general, and the Alexander Archipelago wolf in particular. The 1979 Tongass National Forest Land Management Plan, as amended, formed the basis for evaluating the status of the wolf on the Tongass National Forest. On May 23, 1997, the USDA Forest Service issued a revised Tongass Land Management Plan. Consequently, the review of the 1979 Tongass Land Management Plan no longer represented the "current" plan as specified by the Court ruling. The Fish and Wildlife Service was, therefore, granted an 90-day extension in order to reevaluate the status of the wolf under the provisions of the 1997 Tongass Land Management Plan.

Queen Charlotte Goshawk

On May 9, 1994, the Fish and Wildlife Service received a petition dated May 2, 1994, from the Southwest Center for Biological Diversity, Greater Gila Biodiversity Project, Biodiversity Legal Foundation, Greater Ecosystem Alliance, Save the West, Save America's Forests, Native Forest Network, Native Forest Council, Eric Holle, and Don Muller, to list the Queen Charlotte goshawk as endangered pursuant to the Endangered Species Act. The petition was based largely upon the present and impending impacts to the Queen Charlotte goshawk caused by timber harvest in the Tongass National Forest. On August 26, 1994, the Service published a positive 90-day finding (59 FR 44124) that substantial information was presented in the petition indicating that the requested action may be warranted.

In accordance with the Service's listing petition procedures, the positive 90-day finding initiated a more thorough 12-month evaluation, and based on this evaluation the Service determined on May 19, 1995, that listing was not warranted. Notice of this finding was published on June 29, 1995 (60 FR 33784). In the 12-month finding, the Service acknowledged that continued large-scale removal of old-growth forest in the Tongass National Forest would result in significant adverse effects on the Queen Charlotte goshawk in southeast Alaska; however, at that time the Forest Service was revising land use strategies to ensure goshawk habitat conservation. The Service believed that the proposed actions to protect goshawks would preclude the need for listing.

On November 17, 1995, the Southwest Center for Biological Diversity, Biodiversity Legal Foundation, Save the West, Save America's Forests, Native Forest Network, Native Forest Council,

Eric Holle, and Don Muller filed a complaint in United States District Court, District of Columbia, against the Department of the Interior and the Service for their refusal to list the Queen Charlotte goshawk or designate critical habitat. The concern was that the Service based its not warranted finding on proposed changes to the Forest Service's Tongass Land Management Plan, although there was no commitment that those proposed changes would be adopted in the final version. On September 25, 1996, the United States District Court remanded the 12-month finding to the Secretary of Interior, instructing him to reconsider the determination "on the basis of the current forest plan, and status of the goshawk and its habitat, as they stand today" (95 CV 02138 DDC).

Accordingly, a public comment period was opened on December 5, 1996 (61 FR 64497) to gather all new information for review. It was extended until April 4, 1997 through three subsequent notices (61 FR 69065; 62 FR 6930; and 62 FR 14662). The Service has reevaluated the petition and the literature cited in the petition, reviewed the Tongass Land Management Plan and other available literature and information, and consulted with biologists and researchers knowledgeable of northern goshawks in general, and the Queen Charlotte goshawk in particular. The 1979 Tongass National Forest Land Management Plan, as amended, formed the basis for evaluating the status of the goshawk on the Tongass National Forest. On May 23, 1997, the USDA Forest Service issued a revised Tongass Land Management Plan. Consequently, the review of the 1979 Tongass Land Management Plan therefore, no longer represented the "current" plan as specified by the Court ruling. The Fish and Wildlife Service was, therefore, granted an 90-day extension in order to reevaluate the status of the goshawk under the provisions of the 1997 Tongass Land Management Plan.

Comments Requested

Separate findings based on the status reviews will be issued for the Alexander Archipelago wolf and the Queen Charlotte goshawk by August 31, 1997. In order to complete these status reviews, the Service is requesting any information, data, comments, and suggestions from the public, other concerned government agencies, the scientific community, industry, or other interested parties concerning the status of these species. In regard to the 1997 Tongass Land Management Plan, the Service is only interested in comments

on the effects of the 1997 Tongass Land Management Plan on Alexander Archipelago wolves and Queen Charlotte goshawks.

For information on the 1997 Tongass Land Management Plan and Record of Decision, contact Pamela Finney, by telephone at 907/586-8726, or by writing the USDA Forest Service, 8465 Old Dairy Road, Juneau, Alaska, 99801. Any general comments on the Tongass Land Management Plan may be submitted to the Forest Service at that address.

Authority

The authority for this section is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: June 6, 1997.

David B. Allen,

Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 97-15388 Filed 6-11-97; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 120996A]

Magnuson Act Provisions; Essential Fish Habitat; Public Meeting; Extension of Comment Period

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

ACTION: Extension of comment period.

SUMMARY: NMFS announces the extension of the public comment period on the proposed regulations containing guidelines for the description and identification of essential fish habitat (EFH) in fishery management plans. The public comment period is hereby extended to July 8, 1997, to give members of the public additional time to review and comment on the proposed regulation. NMFS also announces its intent to hold at least one additional public meeting at a date, time, and location to be announced in a future notice. This meeting is added to provide an additional opportunity for public comment on the EFH proposed regulations.

DATES: Written comments will be accepted on or before July 8, 1997. The date of the additional meeting will be announced in a future notice.

ADDRESSES: Comments should be addressed to Office of Habitat

Conservation, Attention: EFH, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282; telephone: 301/713-2325. The location of the additional public meeting will be announced in a future notice.

FOR FURTHER INFORMATION CONTACT: Lee Crockett, NMFS, 301/713-2325.

SUPPLEMENTARY INFORMATION:

Background

NMFS issued proposed regulations containing guidelines for the description and identification of EFH in fishery management plans, adverse impacts on EFH, and actions to conserve and enhance EFH on April 23, 1997 (62 FR 19723). An extension of the comment period was published on May 19, 1997 (62 FR 27214). The regulations would also provide a process for NMFS to coordinate and consult with Federal and state agencies on activities that may adversely affect EFH. The guidelines are required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The purpose of the rule is to assist fishery management councils in fulfilling the requirements set out by the Magnuson-Stevens Act to amend their fishery management plans to describe and identify EFH, minimize adverse effects on EFH, and identify other actions to conserve and enhance EFH. The purpose of the coordination and consultation provisions is to specify procedures for adequate consultation with NMFS on activities that may adversely affect EFH.

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

Dated: June 6, 1997.

James P. Burgess,

*Director, Office of Habitat Conservation,
National Marine Fisheries Service.*

[FR Doc. 97-15360 Filed 6-6-97; 4:58 pm]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 052897C]

South Atlantic Fishery Management Council; Public Hearings

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

ACTION: Public hearings; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene seven public hearings on Draft Amendment 9 to the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region (FMP) and its draft supplemental environmental impact statement (draft SEIS).

DATES: Written comments will be accepted until 5 p.m. on July 11, 1997. The hearings will be held from June 17 to July 2, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments should be sent: By mail to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; via fax, South Atlantic Fishery Management Council, (803) 769-4520; or via email, safmc@noaa.gov. Copies of the draft amendment and SEIS are available from Susan Buchanan at 803-571-4366. The draft amendment and SEIS will also be available to the public at the hearings.

The hearings will be held in Florida, Georgia, South Carolina, and North Carolina. See **SUPPLEMENTARY INFORMATION** for locations of the hearings and special accommodations.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer, South Atlantic Fishery Management Council, 803-571-4366; Fax: 803-769-4520; E-mail address: safmc@noaa.gov.

SUPPLEMENTARY INFORMATION: The Council will hold public hearings on Draft Amendment 9 to the FMP and the associated draft SEIS.

Amendment 9 includes management measures that would: 1. Increase the red porgy minimum size limit from 12" (30.5 cm.) total length (TL) to 13" (33 cm) TL for both recreational and commercial fishermen, and establish a recreational bag limit of two red porgy per person per day;

2. Increase the black sea bass minimum size limit from 8" (20.3 cm) TL to 10" (25.4 cm) TL for both recreational and commercial fishermen, and establish a recreational bag limit of 20 black sea bass per person per day;

3. Require escape vents and escape panels with degradable fasteners in black sea bass pots;

4. Establish measures for greater amberjack that will: Prohibit all harvest in excess of the bag limit throughout the exclusive economic zone (EEZ) of the South Atlantic during April and May; prohibit sale during April and May; reduce the recreational bag limit from three to one greater amberjack per

person per day; and prohibit coring (removal of head and tail);

5. Increase the recreational vermillion snapper minimum size limit from 10" TL (25.4 cm) to 12" (30.5 cm) TL;

6. Increase the gag minimum size limit from 20" (50.8 cm) TL to 24" (61 cm) TL for both recreational and commercial fishermen, and prohibit all harvest January through March;

7. Increase the black grouper minimum size limit from 20" (50.8 cm) TL to 24" (61 cm) TL for both recreational and commercial fishermen;

8. Specify that within the current five-fish aggregate grouper bag limit (which includes tilefish and excludes jewfish and Nassau grouper), no more than two fish may be gag grouper or black grouper;

9. Establish an aggregate recreational bag limit of 20 fish per person per day inclusive of all snapper and grouper species currently not under a bag limit;

10. Specify that vessels with bottom longline gear aboard may only possess snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish; and

The Council is also evaluating use of one or more of the following measures to reduce fishing mortality, in addition to the species specific actions listed above:

(1) Establish a variable 3-month closure of the EEZ for all temperate mid-shelf species (TEMS) in the snapper-grouper management unit. Individual snapper-grouper permit holders would be allowed to choose which 9 calendar months their permits would be effective. TEMS species consist of red porgy, vermillion snapper, red snapper, speckled hind, gag, scamp, red grouper, gray triggerfish, white grunt, and black grouper; black sea bass may also be included in the TEMS group.

(2) For TEMS, establish an aggregate quota at 75 percent of the 1993-1995 average landings (with and without black sea bass), establish a 2,000-lb (908-kg) trip limit, begin the fishing year on April 1, and close the fishery during February;

(3) Establish a black sea bass quota at 75 percent of the 1993-1995 average landings;

(4) Establish by framework regulatory adjustment procedure closed seasons to achieve reductions in TEMS species (with and without black sea bass) of not less than 25 percent of the 1993-1995 average landings.

The hearings will begin at 7 p.m. and will end when all business is completed. Staff members will be available at the hearing locations from 6 p.m. to 7 p.m. (1 hour before the

hearings) to answer questions pertaining to Amendment 9.

The dates and locations are scheduled as follows:

1. Tuesday, June 17, 1997--Pier House Resort, One Duval Street, Key West, FL; telephone: 305-296-4600; 1-800-327-8340;

2. Tuesday, June 24, 1997--Comfort Inn, 5308 New Jesup Hwy, Brunswick, GA; telephone: 912-264-6540;

3. Wednesday, June 25, 1997--Ramada Inn Daytona Speedway, 1798 W International Speedway Blvd, Daytona Beach FL; telephone: 904-255-2422;

4. Thursday, June 26, 1997--Holiday Inn On The Oceanfront, 1350 S Ocean Blvd, Pompano Beach, FL; telephone: 954-941-7300;

5. Friday, June 30, 1997--Sheraton Atlantic Beach, Salter Path Road, Atlantic Beach, NC; telephone: 919-240-1155;

6. Tuesday, July 1, 1997--Holiday Inn Wilmington, 4903 Market Street, Wilmington, NC; telephone: 910-799-1440;

7. Wednesday, July 2, 1997--Town & Country Inn, 2008 Savannah Hwy, Charleston, SC; telephone: 803-571-1000.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see ADDRESSES) by June 9, 1997.

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

Dated: June 9, 1997.

Bruce C. Morehead,

Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 97-15439 Filed 6-11-97; 8:45 am]

BILLING CODE 3510-22-F

Notices

Federal Register

Vol. 62, No. 113

Thursday, June 12, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Advisory Council Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, June 20, 1997. The meeting will be held in the Green Room, Third Floor, at the Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, D.C., beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior and Agriculture; the heads of four designated Federal agencies; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

- I. Chairman's Welcome.
- II. Chairman's Report.
- III. Report of the Task Force on Regulations—Consideration of Proposed Regulation for Adoption.
- IV. Affordable Housing Policy—Presentation and Discussion.
- V. Preservation Policy Issues.
- VI. Executive Director's Report.
- VII. New Business.
- VIII. Executive Session.
- IX. Adjourn.

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, D.C., 202-606-8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT:

Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: June 9, 1997.

John M. Fowler,

Acting Executive Director.

[FR Doc. 97-15420 Filed 6-11-97; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97-045-1]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Approved information collection extension; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of information collections that it uses in preventing the introduction and spread of livestock and poultry diseases through the importation into the United States of restricted and controlled materials.

DATES: Comments on this notice must be received by August 11, 1997.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97-045-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please send an original and three copies, and state that your comments refer to Docket 97-045-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street

and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding regulations to prevent the introduction and spread of livestock and poultry diseases through the importation into the United States of restricted and controlled materials, contact Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737-1231, (301) 734-3276; or e-mail: GColgrove@aphis.usda.gov. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734-5086.

SUPPLEMENTARY INFORMATION:

Title: Importation of Restricted and Controlled Animal and Poultry Products and Byproducts, Organisms, and Vectors into the United States.

OMB Number: 0579-0015.

Expiration Date of Approval: August 31, 1997.

Type of Request: Extension of a currently approved information collection.

Abstract: The United States Department of Agriculture restricts and controls the importation of certain animal and poultry products and byproducts, organisms, and vectors to prevent the introduction and spread of livestock and poultry diseases into the United States.

To do this, we must collect information from a variety of individuals, both within and outside the United States, who are involved in handling, transporting, and importing these items. Collecting this information is critical to our mission of ensuring that these imported items do not present a disease risk to the livestock and poultry populations of the United States.

If these information collections are not conducted, the United States will be at increased risk of an exotic disease incursion. The introduction of such diseases as rinderpest, foot-and-mouth disease, hog cholera, African swine fever, swine vesicular disease, and exotic Newcastle disease would have an

immeasurable impact upon the U.S. livestock and poultry industries, not only in the area of animal health, but also in the realm of international trade.

Collecting this information requires us to use a number of forms and documents, which are described below. We are asking the Office of Management and Budget (OMB) to approve our use of these information gathering tools.

The following forms and documents are currently in use:

VS Form 16-25 (Application for Approval or Report of Inspection of Establishments Handling Restricted Animal Byproducts or Controlled Materials) is a dual purpose form. It is an application for those establishments requesting approval to handle restricted imported animal byproducts and controlled materials. It also serves as a report of inspections of establishments to ensure that restricted and controlled imports are being handled in compliance with our requirements.

VS Form 16-26 (Agreement for Handling Restricted Imports of Animal Byproducts and Controlled Materials) is a form signed by an operator of an establishment wishing to handle restricted or controlled materials in which the operator agrees to comply with all requirements for handling the restricted and controlled materials.

VS Form 16-3 (Application for Permit to Import Controlled Materials/Import or Transport Organisms or Vectors) is the application and agreement form used by individuals seeking a permit.

Certain sections of 9 CFR parts 94 and 95 specify that various categories of animal products, byproducts, and controlled materials may be imported into the United States if authorization for such importation has been granted by the Administrator, Animal and Plant Health Inspection Service (APHIS).

Such permission is given only when the Administrator is satisfied that the importation will not constitute an undue risk to U.S. livestock and poultry.

9 CFR part 122 specifies that organisms that present a disease risk to animals or poultry, or vectors of such disease agents, may not be imported or moved interstate without a permit issued by the U.S. Department of Agriculture. Part 122 specifies that importers must obtain such permits prior to the importation or interstate transport of the organism or vector.

Prospective importers make application for import authorization by completing the appropriate sections of VS Form 16-3. APHIS personnel must have the essential data concerning the proposed importation in order to evaluate the request and determine what safeguard measures are appropriate in

each case and to advise APHIS port and border personnel regarding clearance of arriving shipments.

Certificates. Under 9 CFR parts 94, 95, and 96, certain animal and poultry products must have a certificate from the national government of the exporting country to be eligible for importation into the United States. These certificates are required to verify that the animal or poultry products meet the sanitary requirements of our regulations (e.g., originated from disease-free animals and from animals native to the country of origin, or were prepared in a certain manner in an approved establishment).

The certificate accompanies each shipment to the United States. Upon arrival of the shipment, the certificate is presented to APHIS port inspectors who evaluate the information according to the permission authorization and 9 CFR parts 94, 95, and 96.

The certificate, signed by a full-time salaried veterinary official from the country of origin, or other authorized person, provides us with information that enables us to determine whether an article meets our requirements for importation.

Seals. Certain animal or poultry products and byproducts must be shipped in sealed containers or holds to ensure that the integrity of the shipment is not violated. The seals must be numbered, the numbers of the seals must be recorded on the government certificate that accompanies the shipment, and the seals must not have been tampered with. USDA inspectors at the port of entry inspect the seals and verify that the seals are intact and that the numbers match those on the certificates.

Compliance agreement, recordkeeping requirements. Certain animal or poultry products and byproducts are required to be processed in a certain manner in an establishment in a foreign country before being exported to the United States. We require an official of the processing plant to sign a written agreement prepared by APHIS. By signing this agreement, this official certifies that the animal products being exported to the United States have been processed in a manner approved by USDA, and that adequate records of these exports are being maintained.

Marking requirements. Before certain animal products may enter the United States, they must be marked, with an ink stamp or brand, to indicate that the products have originated from an approved meat processing establishment and have been inspected by appropriate veterinary authorities. The mark is

applied to the meat product by processing plant personnel.

The following forms and documents were proposed for use in APHIS Docket No. 94-106-1, "Importation of Animals and Animal Products" (61 FR 16978-17105), and were given preliminary approval under OMB control number 0579-0015. Although these requirements may change (a final rule has not yet been published), we are seeking a continuation of the preliminary approval.

Foreign meat inspection certificate for importation of fresh meat from FMD or rinderpest, risk class R2 regions. This certificate, completed by a veterinary official of the exporting region, certifies that the meat product has originated from a region that has been assigned to an R2 risk class.

Foreign meat inspection certificate for importation of fresh meat from FMD or Rinderpest, risk class R3 regions. This certificate, completed by a veterinary official of the exporting region, certifies that the meat product has originated from a region that has been assigned to an R3 risk class.

Certification of a national government for importation of pork or pork products from a swine vesicular disease-free region. This is a statement, completed by a government official of an exporting region, certifying the U.S. destined pork or pork products originated in a region that is free from swine vesicular disease.

Cleaning and disinfecting methods. This is a letter from veterinary officials of an exporting region stating that appropriate cleaning and disinfecting methods have been applied to trucks, railroad cars, or other means of conveyance used to transport certain animal products destined for the United States.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning these information collection activities. We need this outside input to help us accomplish the following:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as

appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .45176 hours per response.

Respondents: Importers, shippers, foreign animal health authorities.

Estimated Number of Respondents: 8,955.

Estimated Numbers of Responses per Respondent: 11.63.

Estimated Total Annual Burden on Respondents: 47,049 hours.

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.

Done in Washington, DC, this 5th day of June 1997.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-15437 Filed 6-11-97; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID918-1610-00-UCRB]

Interior Columbia Basin Ecosystem Management Project

AGENCIES: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice of availability of draft environmental impact statements.

SUMMARY: The USDA, Forest Service and USDI, Bureau of Land Management (BLM) have prepared two draft environmental impact statements (EISs) (the Eastside Draft Environmental Impact Statement and the Upper Columbia River Basin Draft Environmental Impact Statement) as part of the Interior Columbia Basin Ecosystem Management Project (Project). The proposed action of the Project is to develop a scientifically sound, ecosystem-based strategy for management of the lands under the jurisdiction of the Forest Service and BLM in the Project area. The Project area includes lands east of the crest of the Cascade Mountains within the Columbia River basin (with the exception of those National Forest System lands within the Greater Yellowstone Ecosystem) and the Klamath and Great Basins within the

State of Oregon. The Eastside Draft EIS applies to approximately 30 million acres of Forest Service- and BLM-administered lands within Oregon and Washington. The Upper Columbia River Basin Draft EIS applies to approximately 42 million acres of Forest Service- and BLM-administered lands within the Columbia River basin in Idaho, Montana, Wyoming, Utah, and Nevada. These draft EISs are based, in part, on the work of the Science Integration Team of the Interior Columbia Basin Ecosystem Management Project, summarized in the *Integrated Scientific Assessment for Ecosystem Management in the Interior Columbia Basin and Portions of the Klamath and Great Basins*, USDA Forest Service, Pacific Northwest Research Station, Portland, OR, September, 1996.

Both draft EISs describe and analyze two "no action" alternatives and five "action" alternative intended to respond to the statement of purpose of, and need for, the Project and to the issues identified through public scoping.

The Record of Decision that will eventually complete the National Environmental Policy Act process of which these two draft EISs are a part, may amend Forest Service Regional Guides and is expected to amend existing Forest Service Land and Resource Management Plans and BLM Resource Management Plans and Management Framework Plans in the Project area by the adoption of an ecosystem-based management strategy. **DATES:** A 120-day comment period begins with the publication in the **Federal Register** of the Environmental Protection Agency's notice of the filing of these two draft EISs. Comments on the draft EISs must be submitted or postmarked no later than October 6, 1997. Those who do not comment on one or both of the draft EISs or otherwise participate in this EIS process may have limited options to appeal or protest the final decision. Public outreach to explain the draft EISs and to assist the public with commenting on the two draft documents will be conducted throughout the Project area during the comment period. Notice of dates and locations of these efforts will be given through mailings and local media.

ADDRESSES: Copies of the Eastside Draft EIS may be obtained from ICBEMP, 112 E. Poplar Street, Walla Walla, WA 99362 or by calling (509) 522-4030. Copies of the Upper Columbia River Basin Draft EIS may be obtained from ICBEMP, 304 N. 8th Street, Room 250, Boise, ID 83702 or by calling (208) 334-1770, ext. 123. The Draft EISs will also be available in

late June via the internet (<http://www.icbemp.gov>).

Comments on the Eastside draft EIS should be submitted in writing to ICBEMP, 112 East Poplar Street, P.O. Box 2076, Walla Walla, WA 99362. Comments on the Upper Columbia River Basin draft EIS should be submitted in writing to ICBEMP, 304 N. 8th Street, Room 250, Boise, ID 83702. If your comments are in regard to both draft EISs, they may be sent to either office. Comments may also be made electronically by accessing the Project home page (<http://www.icbemp.gov>), where a comment form will be available by late June for submitting comments.

Comments, including names and street addresses of respondents, will be available for public review at the above addresses during regular business hours (7:30 a.m. to 4:30 p.m. at Walla Walla and 8:00 a.m. to 5:00 p.m. at Boise, Monday through Friday, except holidays), and may be published as part of the final environmental impact statement. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the decision under 36 CFR 217 (Forest Service) or standing to protest the proposed decision under 43 CFR 1610.5-2 (Bureau of Land Management).

FOR FURTHER INFORMATION CONTACT:

EIS Team Leader Jeff Walter, 304 N. 8th Street, Room 250, Boise, ID 83702, telephone (208) 334-1770 or EIS Deputy Team Leader Cathy Humphrey, 112 East Poplar Street, P.O. Box 2076, Walla Walla, WA 99362, telephone (509) 522-4030.

SUPPLEMENTARY INFORMATION: The statement of the purpose of, and need for, the proposed action (development of a scientifically sound, ecosystem-based management strategy) is key information. The purpose and need, along with the issues identified through public scoping, framed the alternative management strategies considered in these two Draft EISs. The purpose and

need also provide guideposts for selection of a preferred alternative.

The purpose of this action is to create a coordinated approach and to select a management strategy that best achieves a combination of the following: (1)

Restore and maintain long-term ecosystem health and ecological integrity. (2) Support economic and/or social needs of people, cultures, and communities, and provide sustainable and predictable levels of products and services from lands administered by the Forest Service or BLM, including fish, wildlife, and native plant communities.

(3) Update or amend current Forest Service and BLM management plans with long-term direction primarily at the regional and sub-regional levels. (4) Emphasize adaptive management over the long term. (5) Provide consistent direction at regional and sub-regional levels that will assist managers in making project decisions at a local level in the context of broader ecological considerations. (6) Help restore and maintain habitats and viability of plant and animal species, especially for threatened, endangered, and candidate species and of special interest to Tribes. This would be done primarily by moving toward desired ranges of landscape conditions on a sub-regional and regional basis. (7) Provide opportunities for cultural, recreational, and aesthetic experiences. (8) Replace interim direction (PACFISH, INFISH, and Eastside screens) primarily with ecosystem-based long-term, regional and subregional strategies, to provide a broader context for local direction. (9) Identify where current policy, regulation, or law may act as barriers to implementing the strategy or achieving desired conditions.

The need for this action is to restore and maintain long-term ecosystem health and ecological integrity; and to support the economic and/or social needs of people, cultures, and communities, and sustainable and predictable levels of goods and services from National Forest System and Bureau of Land Management lands. Using the issues identified through public scoping to establish the scope of the alternatives, the interdisciplinary team developed five action alternatives intended to respond to the statement of the purpose and need. Alternatives 1 and 2 are variations of "no action". Alternatives 3 through 7 are alternative ecosystem-based management strategies. The themes of the seven alternatives are as follows:

Alternative 1: Continues management specified under existing Forest Service or BLM land-use lands.

Alternative 2: Applies recent interim direction (PACFISH, INFISH, and Eastside Screens as the long-term strategy for lands administered by Forest Service or BLM. All other direction from existing plans would continue. Direction in Alternative 1 would apply to areas not covered by interim direction.

Alternative 3: Updates existing Forest Service or BLM plans in response to changing conditions. Minimizes changes to local plans, addressing only priority conditions that most hinder effectiveness or legal conditions. Provides a broader dimension and more integrated management regarding priority large-scale issues than Alternatives 1 or 2.

Alternative 4: Aggressively restores ecosystem health through active management using an integrated ecosystem management approach. Priority is placed on forest, rangeland, and watershed health. Actions are designed to produce economic benefits whenever practical. Alternative 4 is the agencies' preferred alternative.

Alternative 5: Emphasizes production of goods and services consistent with ecosystem management principles. Areas are targeted for specific uses based on biological capability and economic efficiency. Other uses may occur but conflicts would be resolved in favor of the priority use.

Alternative 6: Emphasizes an adaptive management approach to restore and maintain ecosystems while providing for social and economic needs. Takes a slower, more cautious approach than other alternatives and implies the use of experimental processes, local research, and extensive monitoring.

Alternative 7: Emphasizes reducing risks to ecological integrity and species viability by establishing a system of reserve lands administered by the Forest Service or Bureau of Land Management. Reserves are selected for representation of vegetation and rare animal species. Management activities are limited within reserves and are similar to Alternative 3 outside reserves.

Dated: June 6, 1997.
Nancy Graybeal,
Deputy Regional Forester.

Dated: June 6, 1997.
William L. Bradley,
Deputy State Director for Resource Planning, Use and Protection.
[FR Doc. 97-15379 Filed 6-11-97; 8:45 am]
BILLING CODE 4310-11-M, 4310-GG-M

AMERICAN BATTLE MONUMENTS COMMISSION

AMERICAN BATTLE MONUMENTS COMMISSION

Performance Review Board Appointments

AGENCY: American Battle Monuments Commission.

ACTION: Notice of performance review board appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the American Battle Monuments Commission Performance Review Board. The publication of these appointments is required by Section 405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95-454, 5 U.S.C. 4314(c)(4)).

DATES: These appointments are effective as of 1 May 1997.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Theodore Gloukhoff, Director of Personnel and Administration, American Battle Monuments Commission, Suite 5119, 20 Massachusetts Avenue, NW., Washington DC 20314, Telephone Number: (202) 761-1311.

American Battle Monuments Commission SES Performance Review Board—1997/1998

William E. Roper, Ph.D., P.E., Assistant Director, Research and Development (Civil Works), U.S. Army Corps of Engineers

John P. D'Aniello, P.E., Deputy Director of Civil Works, U.S. Army Corps of Engineers

William A. Brown, Sr., Chief Programs Management Division, Directorate of Military Programs, U.S. Army Corps of Engineers

Theodore Gloukhoff,

Director, Personnel and Administration.

[FR Doc. 97-15363 Filed 6-11-97; 8:45 am]

BILLING CODE 6120-01-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on June 26, 1997, at the Paramount High School, County Road 17, Boligee, AL 35443. The purpose of the meeting is to hold a community forum on race relations in Boligee and Greene county.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913-551-1400 (TDD 913-551-1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 5, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97-15364 Filed 6-11-97; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052097A]

Fisheries Off West Coast States and in the Western Pacific; Availability of a Limited Entry Permit

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

ACTION: Availability of a limited entry permit.

SUMMARY: The Acting Regional Administrator, Southwest Region, NMFS, (Regional Administrator) has determined that one new permit, or possibly two permits, may be available for the Northwestern Hawaiian Islands (NWHI) bottomfish limited entry fishery (Ho'omalau Zone). Under the regulations implementing the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP), new permits may be issued when the Regional Administrator has determined, in consultation with the Western Pacific Fishery Management Council (Council), that bottomfish stocks in the Ho'omalau Zone are able to support additional fishing effort. The purpose of this notification is to inform all potential applicants that applications are being accepted.

DATES: Applications must be filed no later than July 28, 1997.

ADDRESSES: Applications may be obtained from, and completed applications must be sent to, the Pacific Area Office, Southwest Region, NMFS,

2570 Dole Street, Room 106, Honolulu, HI 96822-2396.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, NMFS, (808) 973-2985, or Svein Fougner, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: Under regulations implementing Amendment 2 (53 FR 29907, August 9, 1988) to the FMP, which established the limited access program for the NWHI, the Regional Administrator, Southwest Region, in consultation with the Council, may allow new entry into the limited access area (Ho'omalau Zone) of the NWHI bottomfish fishery if the fishery can support additional effort (50 CFR 660.6(f)). At the 91st Council meeting on November 18-21, 1996, the Regional Administrator informed the Council of the potential for new entry into the Ho'omalau Zone during 1997, and requested guidance on issuing permits. The Council, concurring with its Scientific and Statistical Committee, recommended to allow no more than seven permits for the Ho'omalau Zone. This is consistent with the NMFS Honolulu Laboratory's economic analysis of the optimal number of NWHI bottomfish vessels. The Regional Administrator has determined that the fishery can support seven vessels at this time. When the number of permits falls below seven, the Regional Administrator may initiate procedures allowing for new entry up to the maximum number allowed in the fishery. On March 27, 1997, the Regional Administrator determined that there would be one permit, with the possibility of a second permit, available due to the non-renewal of a permit for 1997. The status on the renewal of a second permit is currently under review. Regulations governing the issuance of new Ho'omalau Zone permits require that all prospective applicants be informed by publication of this notification in the **Federal Register**, of the opportunity to file applications (50 CFR 660.61(f)). Forms will be provided by the Pacific Area Office, Southwest Region, NMFS (See **ADDRESSES**). A new permit will be awarded based on a point system as follows: (1) Two points shall be assigned for each year in which the applicant was an owner or captain of a vessel that made three or more qualifying landings of bottomfish from the NWHI. A qualifying landing is defined by regulations as a landing of bottomfish from the NWHI regardless of weight, if made on or before August 7, 1985; or a landing of at least 2,500 lb (1,134 kg) of bottomfish from the NWHI, or a landing of at least 2,500 lb (1,134 kg) of fish harvested from the NWHI, of

which at least 50 percent by weight was bottomfish, if made after August 7, 1985 (50 CFR 660.12). (2) One point shall be assigned for each year the applicant was an owner or captain of a vessel that landed at least 6,000 lb (2,722 kg) of bottomfish from the main Hawaiian Islands. In any single year, points can be assigned for bottomfish landed from either the NWHI or the main Hawaiian Islands but not for a combination of both areas. Points shall be assigned for every year for which the requisite landings can be documented. Applicants must maintain their own files of valid documentation verifying claims of accrued points. Copies of these documents must accompany all permit applications. A permit shall be awarded to a qualifying applicant in descending order, starting with the applicant with the largest number of points. If two or more persons have an equal number of points, and there are insufficient new permits for all such applicants, the new permit shall be awarded by the Regional Administrator through a lottery. An applicant must own at least a 25 percent share in the vessel that the permit would cover, and only one permit will be assigned to any vessel. No additional permits will be issued to any vessel owner who already has a Ho'omalau Zone bottomfish permit. At the 91st meeting, the Council also recommended, and the Regional Administrator agrees, that in considering applications for Ho'omalau Zone permits: (1) No State of Hawaii fish catch reports used to document eligibility points should be accepted that are more than one year old; (2) only State of Hawaii fish catch reports should be accepted by NMFS to validate accrued qualifying points demonstrating historical participation in the Hawaiian Islands bottomfish fishery; (3) the cut-off date for applications should be 45 days after publication of the notice of availability of a permit in the **Federal Register**; (4) relief captains and vessel owners must provide vessel insurance records or legal certificates of documentation demonstrating the minimum 25 percent ownership in the vessel; and (5) only records of bottomfish management unit species should be used for assigning qualifying points. The Council has requested that the Regional Administrator act expeditiously once a determination has been made on the availability of a permit so that the new permit holder will be allowed as much time as possible to make at least three bottomfish landings from the Ho'omalau Zone before December 31, 1997. A minimum of three qualifying bottomfish

landings is required by all Ho'omalū Zone permittees in order to maintain eligibility for renewing the permit for the next fishing year (i.e., 1998).

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

Dated: June 6, 1997.

Rebecca Lent,

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

[FR Doc. 97-15396 Filed 6-11-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052997A]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

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

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that 1-year letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on April 30, 1997, to the Apache Corporation, Houston, TX; on May 12, 1997, to Mariner Energy, Inc., and to SOCO Offshore, both of Houston, TX; on May 20, 1997, to Kerr-McGee Corporation, Lafayette, LA; and on May 29, 1997, to the Samedan Oil Corporation, and to the Newfield Exploration Company, both of Houston, TX.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055 or Charles Oravetz, Southeast Region (813) 570-5312.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings

are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000.

Summary of Requests

NMFS received requests for letters of authorization on April 22, 1997, from the Apache Corporation, 2000 Post Oak Boulevard, Houston, TX 77056; on April 29, 1997, from Mariner Energy, Inc., 580 WestLake Park Blvd., Houston, TX 77079; on May 9, 1997, from SOCO Offshore, 1221 Lamar, Houston, TX 77010; on May 19, 1997, from Kerr-McGee Corporation, P.O. Box 30400, Lafayette, LA 70593; on April 11, 1997, from Samedan Oil Corporation, 350 Glenborough, Houston, TX 77067-3229; and, on May 23, 1997, from Newfield Exploration Company, 363 N. Sam Houston Parkway E, Houston, TX 77060. These letters requested a take by harassment of a small number of bottlenose and spotted dolphins incidental to the described activity. Issuance of these letters of authorization are based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: June 6, 1997.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97-15398 Filed 6-11-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.052397C]

Marine Mammals; Permit No. 1021 (P532C)

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

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 1021 submitted by Texas A&M University at Galveston, P.O. Box 1675, Galveston, TX 77551 (Principal Investigator: Dr. Randall W. Davis) has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2432.

SUPPLEMENTARY INFORMATION: On March 3, 1997, notice was published in the **Federal Register** (62 FR 9414) that an amendment of permit no. 1021 issued December 17, 1996 (61 FR 67998) had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222.23).

In the original permit application, the applicant requested authority to conduct low frequency sound experiments on sperm whales in the Gulf of Mexico. The project was deferred pending completion of an environmental assessment (EA). The EA had a finding of no significant impact, therefore, the permit was amended to include this project. Additionally, the permit was amended to allow the take of up to 30 Weddell seals (*Leptonychotes weddellii*) per year for three years.

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 23, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97-15397 Filed 6-11-97; 8:45 am]

BILLING CODE 3510-22-F

The amended permit authorizes additional activities on beluga whales that include: suction cup tagging animals already authorized to be satellite tagged, placing a loop-band around the pectoral for identification, and increasing the number of animals to be instrumented with a suction cup tag package.

Dated: June 2, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97-15438 Filed 6-11-97; 8:45 am]

BILLING CODE 3510-22-F

quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Categories 347/348 is being increased for swing, reducing the limit for Categories 341/641 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 58390, published on November 14, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 6, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 7, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997.

Effective on June 12, 1997, you are directed to adjust the current limits for the following categories, pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit ¹
341/641	144,675 dozen.
347/348	512,157 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1996.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060397B]

Marine Mammals; Permit No. 957 (P77.1#71)

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

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 957 submitted by The National Marine Mammal Laboratory, Alaska Fisheries Science Center, National Marine Fisheries Service, 7600 Sand Point Way NE, Bin C15700, Seattle, Washington 98115-0070, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289);

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668.

SUPPLEMENTARY INFORMATION: On March 20, 1997, notice was published in the **Federal Register** (62 FR 13368) that an amendment of permit no. 957, issued May 31, 1995 (60 FR 30065), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Quota and Visa Requirements To Include a New Exempt Certification Arrangement for Chinese Floor Coverings Produced or Manufactured in the People's Republic of China; Correction

June 6, 1997.

A notice and letter to the Commissioner of Customs were published in the **Federal Register** on May 16, 1997 (62 FR 27017). In the letter to Customs, 3rd column, 3rd paragraph, the 3rd line reads as follows: "in by the shipment, quantity, date of." This line should be corrected to read "in the shipment, quantity, date of."

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97-15377 Filed 6-11-97; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

June 6, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 12, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97-15375 Filed 6-11-97; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

June 6, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 12, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 58043, published on November 12, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 6, 1997.

Commissioner of Customs, *Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on June 12, 1997 you are directed to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement concerning textile products from Taiwan:

Category	Twelve-month limit ¹
Group I:	
200-224, 225/317/326, 226, 227, 229, 300/301/607, 313-315, 360-363, 369-L/670-L/870 ² , 369-S ³ , 369-O ⁴ , 400-414, 464-469, 600-606, 611, 613/614/615/617, 618, 619/620, 621-624, 625/626/627/628/629, 665, 666, 669-P ⁵ , 669-T ⁶ , 669-O ⁷ , 670-H ⁸ and 670-O ⁹ , as a group.	595,745,224 square meters.
Sublevels in Group I:	
611	3,179,735 square meters.
613/614/615/617	19,720,400 square meters.
619/620	14,494,799 square meters.
625/626/627/628/629	18,861,158 square meters.
Within Group I Subgroup:	
219	16,222,758 square meters.
Group II:	
237, 239, 330-332, 333/334/335, 336, 338/339, 340-345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359-C/659-C ¹⁰ , 359-H/659-H ¹¹ , 359-O ¹² , 431-444, 445/446, 447/448, 459, 630-632, 633/634/635, 636, 638/639, 640, 641-644, 645/646, 647/648, 649, 651, 653, 654, 659-S ¹³ , 659-O ¹⁴ , 831-844 and 846-859, as a group.	726,631,180 square meters.
Sublevels in Group II:	
336	35,111 dozen.
338/339	972,277 dozen.
340	1,285,462 dozen.
345	123,976 dozen.
347/348	1,454,317 dozen of which not more than 1,288,567 dozen shall be in Categories 347-W/348-W ¹⁵ .
359-H/659-H	5,010,143 kilograms.
433	14,048 dozen.
435	26,111 dozen.
436	5,149 dozen.
438	29,067 dozen.
443	54,627 numbers.
444	62,550 numbers
445/446	141,484 dozen.
633/634/635	1,650,784 dozen of which not more than 968,910 dozen shall be in Categories 633/634 and not more than 858,578 dozen shall be in Category 635.

Category	Twelve-month limit ¹
638/639	6,507,486 dozen.
640	947,130 dozen of which not more than 281,710 dozen shall be in Category 640-Y ¹⁶
642	831,532 dozen.
647/648	5,411,981 dozen of which not more than 5,088,804 dozen shall be in Categories 647-W/648-W ¹⁷ .
Within Group II Subgroup:	
342	224,959 dozen.
447/448	20,543 dozen.
636	385,814 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1996.
² Category 870; Category 369-L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090; Category 670-L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.
³ Category 369-S: only HTS number 6307.10.2005.
⁴ Category 369-O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369-L); and 6307.10.2005 (Category 369-S).
⁵ Category 669-P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.
⁶ Category 669-T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.
⁷ Category 669-O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669-P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669-T).
⁸ Category 670-H: only HTS numbers 4202.22.4030 and 4202.22.8050.
⁹ Category 670-O: all HTS numbers except 4202.22.4030 4202.22.8050 (Category 670-H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670-L).
¹⁰ Category 359-C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.
¹¹ Category 359-H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.
¹² Category 359-O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359-C); 6505.90.1540 and 6505.90.2060 (Category 359-H).
¹³ Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.
¹⁴ Category 659-O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010 (Category 659-C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659-H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659-S).
¹⁵ Category 347-W: only HTS numbers Category 347-W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348-W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.
¹⁶ Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.
¹⁷ Category 647-W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648-W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97-15376 Filed 6-11-97; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures and Option Contracts on the Mini Standard & Poor's 500 Stock Price Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in futures and futures options on the Mini Standard & Poor's 500 Stock Price Index. The Acting Director of the

Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before June 27, 1997.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581. In addition, comments may be sent by facsimile

transmission to (202) 418-5521 or by electronic mail to secretary@cftc.gov. Reference should be made to the Chicago Mercantile Exchange Mini Standard & Poor's 500 Stock Price Index futures and option contracts.

FOR FURTHER INFORMATION CONTACT:

Please contact Michael Penick of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581, telephone 202-418-5275. Facsimile number (202) 418-5527. Electronic mail mpenick@cftc.gov.

SUPPLEMENTARY INFORMATION: The CME has requested an abbreviated 15-day public comment period. In that regard, the CME noted that there are no substantive issues raised by these applications since futures and options with similar terms based on the S&P 500 are actively traded. The Division believes that for the above reasons, and in particular because the proposed contracts are identical to the actively traded S&P 500 contract (except for the contract size and the minimum price fluctuation), a 15-day comment period is appropriate for these applications.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418-5100, or via the internet on the CFTC website at www.cftc.gov under "What's Pending."

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on June 6, 1997.

John R. Mielke,

Acting Director.

[FR Doc. 97-15425 Filed 6-11-97; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

[OMB Control No. 9000-0075]

**Submission for OMB Review;
Comment Request Entitled
Government Property**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding extension of an existing OMB clearance (9000-0075).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Government Property. A request for public comments was published at 62 FR 15160, on March 31, 1997. No comments were received.

DATES: *Comment Due Date:* July 14, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000-0075 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501-3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

"Property," as used in Part 45, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property. Government property includes both Government-

furnished property and contractor-acquired property.

Contractors are required to establish and maintain a property system that will control, protect, preserve, and maintain all Government property because the contractor is responsible and accountable for all Government property under the provisions of the contract including property located with subcontractors.

The contractor's property control records shall constitute the Government's official property records and shall be used to:

- (a) Provide financial accounts for Government-owned property in the contractor's possession or control;
- (b) Identify all Government property (to include a complete, current, auditable record of all transactions);
- (c) Locate any item of Government property within a reasonable period of time.

This clearance covers the following requirements:

- (a) FAR 45.307-2(b) requires a contractor to notify the contracting officer if it intends to acquire or fabricate special test equipment.
- (b) FAR 45.502-1 requires a contractor to furnish written receipts for Government property.
- (c) FAR 45.502-2 requires a contractor to submit a discrepancy report upon receipt of Government property when overages, shortages, or damages are discovered.
- (d) FAR 45.504 requires a contractor to investigate and report all instances of loss, damage, or destruction of Government property.
- (e) FAR 45.505-1 requires that basic information be placed on the contractor's property control records.
- (f) FAR 45.505-3 requires a contractor to maintain records for Government material.
- (g) FAR 45.505-4 requires a contractor to maintain records of special tooling and special test equipment.
- (h) FAR 45.505-5 requires a contractor to maintain records of plant equipment.
- (i) FAR 45.505-7 requires a contractor to maintain records of real property.
- (j) FAR 45.505-8 requires a contractor to maintain scrap and salvage records.
- (k) FAR 45.505-9 requires a contractor to maintain records of related data and information.
- (l) FAR 45.505-10 requires a contractor to maintain records for completed products.
- (m) FAR 45.505-11 requires a contractor to maintain records of transportation and installation costs of plant equipment.

(n) FAR 45.505-12 requires a contractor to maintain records of misdirected shipments.

(o) FAR 45.505-13 requires a contractor to maintain records of property returned for rework.

(p) FAR 45.505-14 requires a contractor to submit an annual report of Government property accountable to each agency contract.

(q) FAR 45.508-2 requires a contractor to report the results of physical inventories.

(r) FAR 45.509-1(a)(3) requires a contractor to record work accomplished in maintaining Government property.

(s) FAR 45.509-1(c) requires a contractor to report the need for major repair, replacement and other rehabilitation work.

(t) FAR 45.509-2(b)(2) requires a contractor to maintain utilization records.

(u) FAR 45.606-1 requires a contractor to submit inventory schedules.

(v) FAR 45.606-3(a) requires a contractor to correct and resubmit inventory schedules as necessary.

(w) FAR 52.245-2(a)(3) requires a contractor to notify the contracting officer when Government-furnished property is received and is not suitable for use.

(x) FAR 52.245-2(a)(4) requires a contractor to notify the contracting officer when government-furnished property is not timely delivered and the contracting officer will make a determination of the delay, if any, caused the contractor.

(y) FAR 52.245-2(b) requires a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(z) FAR 52.245-4 requires a contractor to submit a timely written request for an equitable adjustment when Government-furnished property is not furnished in a timely manner.

(aa) FAR 52.245-5(a)(4) requires a contractor to notify the contracting officer when Government-furnished property is received that is not suitable for use.

(bb) FAR 52.245-5(a)(5) requires a contractor to notify the contracting officer when Government-furnished property is not received in a timely manner.

(cc) FAR 52.245-5(b)(2) requests a contractor to submit a written request

for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(dd) FAR 52.245-7(f) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ee) FAR 52.245-7(l)(2) requires a contractor to alert the contracting officer within 30 days of receiving facilities that are not suitable for use.

(ff) FAR 52.245-9(f) requires a contractor to submit a facilities use statement to the contracting officer within 90 days after the close of each rental period.

(gg) FAR 52.245-10(h)(2) requires a contractor to notify the contracting officer if facilities are received that are not suitable for the intended use.

(hh) FAR 52.245-11(e) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ii) FAR 52.245-11(j)(2) requires a contractor to notify the contracting officer within 30 days of receiving facilities not suitable for intended use.

(jj) FAR 52.245-17 requires a contractor to maintain special tooling records.

(kk) FAR 52.245-18(b) requires a contractor to notify the contracting officer 30 days in advance of the contractor's intention to acquire or fabricate special test equipment (STE).

(ll) FAR 52.245-18 (d) & (e) requires a contractor to furnish the names of subcontractors who acquire or fabricate special test equipment (STE) or components and comply with paragraph (d) of this clause, and contractors must comply with the (b) paragraph of this clause if an engineering change requires acquisition or modification of STE. In so complying, the contractor shall identify the change order which requires the proposed acquisition, fabrication, or modification.

(mm) FAR 52.245-19 requires a contractor to notify the contracting officer if there is any change in the condition of property furnished "as is" from the time of inspection until time of receipt.

This information is used to facilitate the management of Government property in the possession of the contractor.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to

average .4826 hours per response, including the time for reviewing instructions, searching existing data sources, fathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, 26,409; responses per respondent, 506.3; total annual responses, 13,624,759; preparation hours per response, .4826; and total response burden hours, 6,575,805.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0075, Government Property, in all correspondence.

Dated: May 30, 1997.

Sharon A. Kiser,
FAR Secretariat.

[FR Doc. 97-15380 Filed 6-11-97; 8:45 am]
BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 97-20]

36(b)(1) Arms Sales Notification

AGENCY: Department of 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 Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. P. Murphy, DSAA/COMPT/CPD, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97-20, with attached transmittal, policy justification, and sensitivity of technology pages.

Dated: May 6, 1996.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M



DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

23 MAY 1997

In reply refer to:

I-04522/97

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. 97-20, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost \$80 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A handwritten signature in cursive script, appearing to read "H. Diehl McKalip".

H. Diehl McKalip
Acting 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. 97-20

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

- (i) Prospective Purchaser: Taipei Economic and Cultural Representative Office (TECRO) in the United States
- (ii) Total Estimated Value:
- | | |
|--------------------------|---------------------|
| Major Defense Equipment* | \$60 million |
| Other | <u>\$20 million</u> |
| TOTAL | <u>\$80 million</u> |
- (iii) Description of Articles or Services Offered:
One thousand seven hundred eighty-six TOW 2A anti-armor guided missiles (to include 27 Lot Acceptance missiles), 114 TOW launchers, 100 M1045A2 High Mobility Multi-purpose Wheeled Vehicles trucks, spare and repair parts, technical support, support equipment, personnel training and training equipment, technical data and publications, U.S. Government Quality Assurance Team(s) (QATs), U.S. Government and contractor engineering and logistics support services, and other related elements of logistics to provide full program support.
- (iv) Military Department: Army (JBD)
- (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: **23 MAY 1997**

as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATIONTaipei Economic and Cultural Representative Office (TECRO) in the United States - TOW 2 Anti-Armor Guided Missiles

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested the purchase of 1,786 TOW 2A anti-armor guided missiles (to include 27 Lot Acceptance missiles), 114 TOW launchers, 100 M1045A2 High Mobility Multi-purpose Wheeled Vehicles trucks, spare and repair parts, technical support, support equipment, personnel training and training equipment, technical data and publications, U.S. Government Quality Assurance Team(s) (QATs), U.S. Government and contractor engineering and logistics support services, and other related elements of logistics to provide full program support. The estimated cost is \$80 million.

This sale is consistent with United States law and policy, as expressed in Public Law 96-8.

The recipient will use these missiles to increase their military defensive posture and will have no difficulty absorbing these missiles into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Hughes Aircraft Company, Tucson, Arizona. One or more proposed offset agreements may be entered into in connection with this proposed sale.

Implementation of this sale will require the assignment of up to four U.S. Government personnel for a period of up to two weeks. The U.S. Government personnel and QATs may be required in Taiwan for periods ranging from one to two weeks depending on how materiel is delivered and what planning must be undertaken. One contractor representative will be required in-country for up to 12 months to implement the proposed sale.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97-20

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The TOW 2A is a Secret system which contains sensitive technology. The hardware is Unclassified and some of the supporting operations and maintenance documentation is classified up to the Secret level. This sale does not require any classified documentation; however, confidential information must be disclosed for training and operation; sensitive technology is contained within the system itself. This sensitivity is primarily in the software programs which instruct the system how to operate in the presence of countermeasures. Programs are contained in the system in the form of microprocessors with only Read Out Memory maps being available, which do not provide the software program itself. The overall hardware is also considered sensitive in that the modulation frequency and infrared wavelengths could be useful in attempted countermeasure development. The benefits to be derived from this sale outweigh the potential damage that could result if sensitive technology were revealed to unauthorized persons.

2. 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.

DEPARTMENT OF DEFENSE**Office of the Secretary****Defense Science Board Task Force on Underground Facilities**

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Underground Facilities will meet in closed session on July 15-16, 1997 at Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, 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 address the threat to U.S. interests posed by the growth of underground facilities in unfriendly nations. The Task Force should investigate technologies and techniques to meet the international security and military strategy challenges posed by these facilities.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 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: May 6, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-15320 Filed 6-11-97; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE**Office of the Secretary****Defense Science Board Task Force on Nuclear Deterrence; Meeting**

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Nuclear Deterrence will meet in closed session on July 9-10, 1997 at Science Applications International Corporation, 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 address the U.S. ability to deter and prevent the effective use of weapons of mass destruction against U.S. territory, forces, and allies.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 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: May 6, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-15322 Filed 6-11-97; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE**Office of the Secretary****Department of Defense Wage Committee; Closed Meetings**

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on July 1, 1997; July 8, 1997; July 15, 1997; July 22, 1997; and July 29, 1997, at 10 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Pub. L. 92-463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301-4000.

Dated: May 6, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-15321 Filed 6-11-97; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE**Office of the Secretary****Privacy Act of 1974; System of Records**

AGENCY: Office of the Secretary, dod.
ACTION: Notice to amend record systems.

SUMMARY: The Office of the Secretary of Defense proposes to amend 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 amendment will be effective on July 14, 1997, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695-0970 or DSN 225-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records 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 amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety.

Dated: June 6, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DODDS 22**SYSTEM NAME:**

DoD Dependent Children's School Program Files (May 14, 1997, 62 FR 26487).

CHANGES:

* * * * *

RECORD ACCESS PROCEDURES:

Add a second paragraph 'Parents or legal guardians of a student may be given access to the student's academic records, disciplinary files, and other student information without regard to who has custody of the child, unless the divorce decree or court-approved parenting plan states that such access

should be denied or indicates that the non-custodial parent is denied access to the child.'

* * * * *

DODDS 22

SYSTEM NAME:

DOD Dependent Children's School Program Files.

SYSTEM LOCATION:

Active Students: Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203-1634.

Former High School Students: Permanent records (high school transcripts) are retained at the school for four years subsequent to graduation, transfer, or termination, and are then forwarded to the area office for one year where they are compiled and forwarded to the Educational Testing Service, Department of Defense Dependents Schools, P.O. Box 6605, Princeton, NJ 08541-0001, except Panama. Records for the Panama area are retired to Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344-2533.

Former Panama Canal College Students: Permanent records (college transcripts) are retained at the college for ten years and are then retired to East Point Federal Records Center. For a complete list of school locations, write to the *System manager*.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former students in the DoD-operated overseas dependent schools.

CATEGORIES OF RECORDS IN THE SYSTEM:

Enrollment files: Documents relating to the admission, registration, and departure of dependent school students. Included are pupil enrollment applications, course preference, admission cards, drop cards, and similar or related documents which contain pupil and sponsor's names, personal and demographic information, as well as pupil's health records.

Daily attendance register files: Documents reflecting the daily attendance of pupils at dependent schools. Included are forms, printouts, bound registers and similar or related documents which contain pupil and sponsor's names, personal and demographic information, as well as pupil's health records.

Elementary school academic records: Documents reflecting the standardized achievement, mental ability, yearly grade average, attendance of each student and the teacher's comments.

Included are forms, notes, and similar or related documents.

Elementary school report card files: Documents reflecting grades, personality traits, and promotion or failure. Included are report cards and similar or related documents.

Elementary school teacher class register files: Documents reflecting daily, weekly, semester, or annual scholastic grades and averages, absence and tardiness data.

Elementary school student files: Documents pertaining to individual elementary school students. Included in each folder are reading and health records; individual education plans; intelligence quotient; achievement, aptitude, and similar test results; notes related to pupils progress and characteristics; and similar matters used by counselors and successive teachers.

Secondary school absentee files: Documents reflecting absence of students. Included are homeroom teacher's registers, secondary school daily attendance records of absentees reported by teachers, tardy slips for admission of students to classroom, transfer slips notifying teachers of new class or homeroom assignment, notices of change by school principal to teacher upon change of classroom, student applications for permission to be absent, student pass slips, and similar or related documents.

Secondary school academic record files: Documents reflecting student grades and credits earned. Included are forms, notes, and similar or related documents.

Secondary school report card files: Documents reflecting scholastic grades, personality traits, and promotion or failure. Included are report cards and related documents.

Secondary school teacher class register files: Documents reflecting daily, weekly, semester, or annual scholastic marks and averages, absence and tardiness, and withdrawal data. Included are class registers and similar or related documents.

Secondary school class reporting files: Documents reflecting teacher reports to principals and used as source documents for preparing secondary school academic record cards. Included are forms, correspondence, and similar or related documents.

Credit transfer certificate files: Documents reflecting secondary school scholastic credits earned. Included are certificates and similar or related documents.

Secondary school student files: Documents pertaining to individual secondary school students. Included in each folder are student health records;

individual education plans; absence reports and correspondence with parents pertaining to absence; records of achievement and aptitude tests; notes concerning participation in extracurricular activities, hobbies, and other special interests or activities of the student; and miscellaneous memorandums used by student counselors.

College absence, withdrawal, and add files: Student applications for permission to be absent from final exams. Student drop and add class records and administrative withdrawal letter.

College academic record files: Documents reflecting student grades and credits earned. Included are forms, notes, and similar or related documents.

College report card files: Documents reflecting scholastic grades and promotion or failure. Included are report cards and related documents.

College teacher class register files: Documents reflecting daily, weekly, semester, or annual scholastic marks and averages, absence and withdrawal data. Included are class registers and similar or related documents.

College class reporting files: Documents reflecting teacher reports to Registrar and used as source documents for preparing college transcripts. Included are forms, correspondence, and similar or related documents.

Credit transfer certificate files: Documents reflecting college scholastic credits earned. Included are certificates and similar or related documents.

College student files: Documents pertaining to individual college students. Included in each folder are absence reports, records of achievement, and aptitude tests.

Automated support files: Automated data files are composed of records containing any of the above information in addition to (varies by regional system): Student registration data--student identification number, student name, sex, grade level, bus number, date of enrollment, date of birth, course numbers and names, teachers, credit, grades received, dates of absences, and sponsor's name, status, rank, date of rotation, organization, location of unit, local address, emergency address, permanent address, and telephone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. Chapter 25A; DoD Directive 1342.6, Department of Defense Dependents Schools (DoDDS), as amended.

PURPOSE(S):

Dependent children's school program files (general):

1. Records of students attending DoD operated overseas dependent schools are used by school officials, including teachers, to: a. Determine the eligibility of children to attend these schools; b. Schedule children for transportation; c. Record daily and/or class attendance of students and date(s) of withdrawal; d. Determine tuition paying students and record status of payments; e. Determine students located in areas not serviced by dependents schools so that alternative arrangements for education can be made and payment made, as required; f. Monitor special education services required by and received by the student; and, g. Used to develop and maintain reading and health records, including school related medical needs.

2. Records may also be released to other officials of the Department of Defense requiring information for operation of the Department (including defense investigative agencies and recruiting officials).

Dependent children's school program files (elementary):

1. Used by school officials, including teachers, in the current and/or gaining school to develop and provide an educational program for elementary students by school personnel cited above.

2. Used in the following manner to record: a. Teacher or standardized test data; b. Attendance, absences, and/or tardiness of each student; c. Recommendations for promotion or retention including teacher comments; d. Daily, weekly, semester, or annual grades; and, e. Notes related to the individual pupil's progress and learning characteristics useful to professional school personnel in counseling the student and in the determination of his/her proper placement.

Dependent children's school program files (secondary):

1. Used by school officials, including teachers, in the current and/or gaining school to develop and provide an educational program for secondary students.

2. Documents are used by school personnel cited above in the following manner to: a. Record teacher and/or standardized test data; b. Record attendance, absences, and/or tardiness of each student; c. Form the basis for a decision on a student request for permission to be absent from a class or classes; d. Determine proper class or grade placement or graduation; e. Determine scholastic grades and/or grade point average; f. Form the basis for school recommendations for student financial aid for post-secondary education; g. Form the basis for preparing the secondary school

transcript; h. Determine secondary school academic credits earned; and, i. Note special interest or hobbies of the student.

3. Used by DoD recruiting officials to determine eligibility for military service.

Dependent children's school program files (college):

1. Used by school officials, including teachers, in the current and/or gaining school to develop and provide an educational program for college students.

2. Documents are used by school personnel cited above in the following manner to: a. Record teacher and/or standardized test data; b. Record attendance and absences of each student; c. Form the basis for a decision on a student request for permission to be absent from a class or classes; d. Determine proper class or grade placement or graduation; e. Determine scholastic grades and/or grade point average; f. Form the basis for school recommendations for student financial aid for college education; g. Form the basis for preparing the college transcript; and h. Determine college academic credits earned.

3. Used by DoD recruiting officials to determine eligibility for military service.

Automated support is used by school and area officials (where applicable) to:

1. Provide academic data to each student upon request, provide report cards, etc., at the end of each grading period, provide transcripts upon request, and provide hard copy for manual files.

2. Provide academic data within the area and to DoDDS headquarters.

3. Provide data within the Department of Defense on a need-to-know basis.

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:

Records concerning sponsor's names, rank, and branch of service may be released to former students for the purpose of organizing reunion activities.

Academic data of transferring, withdrawing, or graduating students may be provided to other educational institutions and employers or prospective employers in accordance with current policies and procedures.

Academic achievements and data may be provided to the public, via distribution of information within the school and through various media

sources, for positive reinforcement purposes. This information will not be distributed for commercial uses.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, disks, and magnetic tape.

RETRIEVABILITY:

Elementary school academic records and secondary school and college academic records (transcripts) are filed alphabetically by school, school year, and last name of student.

Remaining dependent school student files are filed by school, school year, and last name of student.

The automated files are indexed by a variety of data, depending upon the region and school involved (some have regionally assigned student identification numbers, others are by last name of student). Also, any combination of data in the file can be used to select individual records. Only authorized personnel have required information to access the system or process jobs.

SAFEGUARDS:

Paper records are maintained in locked file cabinets accessible only to authorized personnel.

Computer-produced student records are retained in limited access school offices and/or locked cabinets. Computer disks, tapes, etc., are maintained in limited access areas within the various computer centers, area offices, and/or schools.

Computer facilities and remote terminals are located in schools and area offices throughout the school system. Particular area systems vary; however, the same basic safeguards are employed (in various combinations) in all the systems. Computer hardware disk cards and other materials are secured in locked facilities after normal duty hours or are maintained in secure military computer centers. During school hours, storage media is stored in areas where access can be monitored. Administrative safeguards, including authorized user names and passwords are used to prevent unauthorized access to information in the automated systems.

RETENTION AND DISPOSAL:

Enrollment files: Maintained at the respective school for one year after

graduation, withdrawal, transfer, or death of the student, then destroyed.

Daily attendance register files: Destroyed after reviewing attendance registers for the next school year.

Elementary school academic records files: When a student transfers to another school, this file is forwarded by mail to officials of the receiving school on request in accordance with current regulations, or destroyed at the school five years after graduation, withdrawal, or death of the student.

Elementary school report card files: Documents reflecting grades, personality traits, and promotion or failure. Included are report cards and similar or related documents.

Elementary school teacher class register files: Destroyed at the school concerned after five years.

Elementary school student files:

1. When a student transfers to another school, the reading and health records are released to the parent/guardian for hand-carrying to the receiving school.

2. Remaining documents pertaining to the students are forwarded by mail to the officials of the receiving school or the parent/guardian on request in accordance with current regulations; if not requested, documents are destroyed at the school concerned one year after graduation, withdrawal, or death of the student.

Special Education files: Records pertaining to tests and evaluations of students and documentation of individual needs for special education programs. Included is follow-on correspondence and case files relating to mediation and hearings. Records are cut-off after final decision and retired to Washington National Records Center (WNRC) after 5 years. When 20 years old, the records are destroyed.

Secondary school absentee files: Destroyed at the school after one year.

Secondary school academic record files (high school transcript):

1. Permanent file.

2. When a student transfers to another DoD dependents school, this file (transcript) is forwarded by mail to officials of the receiving school on request.

3. When a student transfers to a non-DOD school, a copy of the transcript is forwarded to the receiving school on request in accordance with current regulations.

4. Files not forwarded to another DoD school are retained at the school concerned for four years, the area office for one year and then retired to the Educational Testing Service (or East Point FARC if in the Panama region) for an additional sixty years.

Secondary school report card files:

Released to parents of students or student (if over eighteen years of age) at the end of the school year or on transfer of student.

Secondary school teacher class register files: Retained at the school concerned for five years and then destroyed.

Secondary school class reporting files: Destroyed at the school after one year.

Credit transfer certification files: Destroyed at the school after one year.

Secondary school student files:

1. Retained at the school concerned for two years after graduation, withdrawal or death of the student.

2. When a student transfers to another school: a. A copy of the record may be released to the parents or student (if over eighteen years of age) for hand-carrying to the receiving school. b. An official copy of the record will be forwarded to the receiving school in accordance with current regulations upon request. (The original record is retained at the school.)

College absentee files: Destroyed at the school after one year.

College academic record files (college transcripts):

1. Permanent file.

2. When a student transfers to another college or university, this file (transcript) is forwarded by mail to officials of the receiving school upon receipt of an authorized request.

3. Original files (transcripts) are retained at the college for ten years then retired to East Point FARC.

College report card files: Released to student at the end of the semester or school year, or on transfer of student.

College teacher class register files: Retained at the school for five years and then destroyed.

College class reporting files: Destroyed at the school after one year.

Credit transfer certificate files: Destroyed at the school after one year.

College student files:

1. Retained at the college for two years.

2. When a student transfers to another college: An official copy of the record will be forwarded to the receiving school upon request pending receipt of authorized request. (The original record is retained at the college.)

Automated records are retained for the same period as paper records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Management Employee Relations Branch, Personnel Division, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203-1634.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203-1635.

Written requests for information should contain the full name and address of the individual, and must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Department of Defense Dependents Schools, 4040 North Fairfax Drive, Arlington, VA 22203-1635.

Parents or legal guardians of a student may be given access to the student's academic records, disciplinary files, and other student information without regard to who has custody of the child, unless the divorce decree or court-approved parenting plan states that such access should be denied or indicates that the non-custodial parent is denied access to the child.

Written requests for information should contain the full name and address of the individual, and must be signed.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individuals concerned and their parents/guardians, teachers and school administrators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97-15324 Filed 6-11-97; 8:45 am]

BILLING CODE 5000-04-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is

publishing Civilian Personnel Per Diem Bulletin Number 195. This bulletin lists revisions in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 195 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: July 1, 1997.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 194. Distribution of Civilian Personnel Per Diem Bulletins by mail was

discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

BILLING CODE 5000-04-M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING		M&IE RATE	MAXIMUM PER DIEM		EFFECTIVE DATE
	AMOUNT (A)	+		(B)	=		(C)
ALASKA:						
ANCHORAGE						
05/01 -- 09/30	147		66		213	02/01/97
10/01 -- 04/30	81		60		141	02/01/97
ANCHORAGE NAVAL RESERVE CENTER						
05/01 -- 09/30	147		66		213	02/01/97
10/01 -- 04/30	81		60		141	02/01/97
BARROW	110		76		186	03/01/96
BETHEL	93		61		154	02/01/97
CORDOVA	74		72		146	02/01/97
CRAIG						
05/01 -- 08/31	95		66		161	05/01/97
09/01 -- 04/30	79		64		143	05/01/97
DELTA JUNCTION	75		64		139	02/01/97
DUTCH HARBOR-UNALASKA	110		75		185	02/01/97
EARECKSON AIR STATION	75		60		135	02/01/97
EIELSON AFB						
05/16 -- 09/14	121		60		181	02/01/97
09/15 -- 05/15	75		55		130	02/01/97
ELMENDORF AFB						
05/01 -- 09/30	147		66		213	02/01/97
10/01 -- 04/30	81		60		141	02/01/97
FAIRBANKS						
05/16 -- 09/14	121		60		181	02/01/97
09/15 -- 05/15	75		55		130	02/01/97
FT. GREELY	75		64		139	02/01/97
FT. RICHARDSON						
05/01 -- 09/30	147		66		213	02/01/97
10/01 -- 04/30	81		60		141	02/01/97
FT. WAINWRIGHT						
05/16 -- 09/14	121		60		181	02/01/97
09/15 -- 05/15	75		55		130	02/01/97
HOMER						
05/01 -- 09/30	116		64		180	02/01/97
10/01 -- 04/30	90		61		151	02/01/97
JUNEAU						
	89		79		168	02/01/97
KENAI-SOLDOTNA						
05/01 -- 09/30	94		61		155	02/01/97
10/01 -- 04/30	74		59		133	02/01/97

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING		M&IE RATE	MAXIMUM PER DIEM		EFFECTIVE DATE
	AMOUNT (A)	+		=	RATE (C)	
KETCHIKAN						
05/01 -- 09/30	99		77		176	02/01/97
10/01 -- 04/30	83		75		158	02/01/97
KING COVE	85		69		154	03/01/96
KING SALMON	77		68		145	03/01/96
KLAWOCK						
05/01 -- 08/31	95		66		161	05/01/97
09/01 -- 04/30	79		64		143	05/01/97
KODIAK	88		72		160	02/01/97
KOTZEBUE						
05/16 -- 09/15	101		81		182	04/01/97
09/16 -- 05/15	90		80		170	04/01/97
KULIS AGS						
05/01 -- 09/30	147		66		213	02/01/97
10/01 -- 04/30	81		60		141	02/01/97
MURPHY DOME						
05/16 -- 09/14	121		60		181	02/01/97
09/15 -- 05/15	75		55		130	02/01/97
NOME	93		76		169	02/01/97
PETERSBURG	82		58		140	02/01/97
SEWARD						
05/01 -- 09/15	114		74		188	02/01/97
09/16 -- 04/30	78		71		149	02/01/97
SITKA-MT. EDGECOMBE						
04/01 -- 10/31	97		63		160	02/01/97
11/01 -- 03/31	86		62		148	02/01/97
SKAGWAY						
05/01 -- 09/30	99		77		176	02/01/97
10/01 -- 04/30	83		75		158	02/01/97
SPRUCE CAPE	88		72		160	02/01/97
TANANA	93		76		169	02/01/97
VALDEZ						
05/15 -- 09/15	105		65		170	02/01/97
09/16 -- 05/14	84		64		148	02/01/97
WASILLA	89		65		154	02/01/97
WRANGELL						
05/01 -- 09/30	99		77		176	02/01/97
10/01 -- 04/30	83		75		158	02/01/97
[OTHER]	75		60		135	02/01/97
AMERICAN SAMOA:						
AMERICAN SAMOA	73		53		126	03/01/97

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM		M&IE	MAXIMUM		EFFECTIVE
	LODGING	AMOUNT		PER DIEM	RATE		DATE
	(A)	+	(B)	=	(C)	
GUAM:						
GUAM (INCL ALL MIL INSTAL)	185		90		275	05/01/97
HAWAII:						
CAMP H M SMITH	110		61		171	07/01/97
EASTPAC NAVAL COMP TELE AREA	110		61		171	07/01/97
FT. DERUSSEY	110		61		171	07/01/97
FT. SHAFTER	110		61		171	07/01/97
HICKAM AFB	110		61		171	07/01/97
HONOLULU NAV & MC RESERVE CTR	110		61		171	07/01/97
ISLE OF HAWAII: HILO	76		55		131	07/01/97
ISLE OF HAWAII: OTHER						
04/01 -- 12/18	137		53		190	07/01/97
12/19 -- 03/31	150		54		204	07/01/97
ISLE OF KAUAI						
05/01 -- 11/30	109		71		180	07/01/97
12/01 -- 04/30	133		73		206	07/01/97
ISLE OF KURE	60		41		101	07/01/97
ISLE OF MAUI						
04/16 -- 12/14	100		58		158	07/01/97
12/15 -- 04/15	113		59		172	07/01/97
ISLE OF OAHU	110		61		171	07/01/97
KANEOHE BAY MC BASE	110		61		171	07/01/97
KEKAHA PACIFIC MISSILE RANGE FAC						
05/01 -- 11/30	109		71		180	07/01/97
12/01 -- 04/30	133		73		206	07/01/97
KILAUEA MILITARY CAMP	76		55		131	07/01/97
LULUALEI NAVAL MAGAZINE	110		61		171	07/01/97
NAS BARBERS POINT	110		61		171	07/01/97
PEARL HARBOR AFLOAT TNG GRP, MIDDLE	110		61		171	07/01/97
PEARL HARBOR NAVAL COMPLEX	110		61		171	07/01/97
PEARL HARBOR NAVAL SUBMARINE BASE	110		61		171	07/01/97
PEARL HARBOR NAVY PUBLIC WORKS CTR	110		61		171	07/01/97
SCHOFIELD BARRACKS	110		61		171	07/01/97
WHEELER ARMY AIRFIELD	110		61		171	07/01/97
[OTHER]	79		62		141	06/01/93
JOHNSTON ATOLL:						
JOHNSTON ATOLL	13		9		22	07/01/97

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM		M&IE	MAXIMUM		EFFECTIVE
	LODGING	AMOUNT		PER DIEM	RATE		DATE
	(A)	+	(B)	=	(C)	
MIDWAY ISLANDS:						
MIDWAY ISLAND NAVAL AIR FACILITY						
	60		41		101	07/01/97
MIDWAY ISLANDS	60		41		101	07/01/97
NORTHERN MARIANA ISLANDS:						
ROTA	105		71		176	05/01/97
SAIPAN	170		78		248	05/01/97
[OTHER]	61		53		114	05/01/97
PUERTO RICO:						
BAYAMON						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96
CAROLINA						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96
DORADO						
04/01 -- 12/21	164		83		247	10/01/96
12/22 -- 03/31	300		96		396	10/01/96
FAJARDO [INCL CEIBA, LUQUILLO & HUMACAO]						
05/01 -- 11/23	70		64		134	10/01/96
11/24 -- 04/30	114		68		182	10/01/96
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96
LUIS MUNOZ MARIN IAP AGS						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96
MAYAGUEZ						
	90		58		148	02/01/97
PONCE						
	107		58		165	10/01/96
ROOSEVELT ROADS						
05/01 -- 11/23	70		64		134	10/01/96
11/24 -- 04/30	114		68		182	10/01/96
ROOSEVELT ROADS NAS 2/						
05/01 -- 11/23	70		64		134	10/01/96
11/24 -- 04/30	114		68		182	10/01/96
SABANA SECA						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96
SABANA SECA US NAVAL SEC GRP ACT						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal government civilian employees.

LOCALITY	MAXIMUM LODGING		M&IE RATE	MAXIMUM PER DIEM		EFFECTIVE DATE
	AMOUNT			RATE		
	(A)	+	(B)	=	(C)	
SAN JUAN						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96
SAN JUAN US NAVAL RESERVE STATION						
05/01 -- 12/14	102		60		162	10/01/96
12/15 -- 04/30	130		63		193	10/01/96
[OTHER]	70		50		120	10/01/96
VIRGIN ISLANDS (U.S.):						
ST. CROIX						
04/15 -- 12/14	109		80		189	07/01/97
12/15 -- 04/14	129		82		211	07/01/97
ST. JOHN						
06/01 -- 12/15	228		79		307	07/01/97
12/16 -- 05/31	344		91		435	07/01/97
ST. THOMAS						
04/15 -- 12/18	215		76		291	07/01/97
12/19 -- 04/14	322		87		409	07/01/97
WAKE ISLAND:						
WAKE ISLAND	40		35		75	10/01/96

Dated: May 6, 1997.

L.M. Bynum,

*Alternate OSD Federal Register, Liaison
Officer, Department of Defense.*

[FR Doc. 97-15323 Filed 6-11-97; 8:45 am]

BILLING CODE 5000-04-C

DEPARTMENT OF EDUCATION**Submission for OMB Review;
Comment Request**

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Director, Information Resources Management Group, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 14, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the

need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 6, 1997.

Linda C. Tague,

Acting Director, Information Resources Management Group.

**Office of Special Education and
Rehabilitative Services**

Type of Review: Reinstatement.

Title: Office of Special Education and Rehabilitative Services (OSERS) Peer Reviewer Qualification Statement.

Frequency: Biennially.

Affected Public: Individuals or households.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 3,500.

Burden Hours: 875.

Abstract: In order for OSERS to conduct a peer review of their discretionary grant applications, it must be able to select qualified reviewers. This selection is based on the information from the OSERS Peer Reviewer Qualifications Statement that is entered into the OSERS Peer Review System. The potential peer reviewers come from the rehabilitation and special educational fields.

[FR Doc. 97-15358 Filed 6-11-97; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.128G]

**Vocational Rehabilitation Service
Projects Program for Migratory
Agricultural Workers and Seasonal
Farmworkers With Disabilities; Notice
Inviting Applications for New Awards
for Fiscal Year (FY) 1998**

Purpose of Program: To provide grants for vocational rehabilitation services for migratory agricultural workers or seasonal farmworkers with disabilities.

Eligible Applicants: State Vocational Rehabilitation Agencies (SVRAs); nonprofit agencies working in collaboration with the SVRAs; and local agencies administering vocational rehabilitation programs under written agreements with SVRAs.

Deadline for Transmittal of Applications: September 2, 1997.

Deadline for Intergovernmental Review: November 1, 1997.

Applications Available: July 1, 1997.

Available Funds: \$490,000.

Estimated Range of Awards: \$150,000-\$175,000.

Estimated Average Size of Awards: \$160,000.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in § 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Information Contact: Mary Winkler-Chambers, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3322 Switzer Building, Washington, D.C. 20202. Telephone (202) 205-8435.

For Applications Contact: The Grants and Contracts Service Team, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3317, Switzer Building, Washington, D.C. 20202-2641. Telephone: (202) 205-8351. The preferred method for requesting application packages is to FAX your request to (202) 205-8717. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as previously listed.

Information about the Department's funding opportunities, including copies of applications notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260-9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at <http://gcs.ed.gov>). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 777b.

Dated: June 6, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97-15393 Filed 6-11-97; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.128J]

Projects for Initiating Recreational Programs for Individuals With Disabilities

ACTION: Notice Inviting applications for new awards for fiscal year (FY) 1998.

Purpose of Program: To provide grants for initiating recreational programs providing individuals with disabilities recreational activities and related experiences that can be expected to aid in their employment, mobility, socialization, independence, and community integration. To the maximum extent possible, these programs and activities are to be provided in settings with peers who are not individuals with disabilities.

Eligible Applicants: States, other public agencies (including federally recognized Indian tribal governments), and nonprofit private organizations.

Deadline for Transmittal of Applications: September 30, 1997.

Deadline for Intergovernmental Review: November 29, 1997.

Applications Available: July 1, 1997.

Available Funds: \$1,092,179.

Estimated Range of Awards: \$110,000—\$140,000.

Estimated Average Size of Awards: \$114,000.

Estimated Number of Awards: 9.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in § 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Information Contact: Mary Winkler-Chambers, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3322, Switzer Building, Washington, D.C. 20202. Telephone (202) 205-8435.

For Applications Contact: The Grants and Contracts Service Team, U.S.

Department of Education, 600 Independence Avenue, S.W., Room 3317, Switzer Building, Washington, D.C. 20202-2641. Telephone: (202) 205-8351. The preferred method for requesting application packages is to FAX your request to (202) 205-8717. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as previously listed.

Information about the Department's funding opportunities, including copies of applications notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260-9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at <http://gcs.ed.gov>). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 29 U.S.C. 777b.

Dated: June 6, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97-15392 Filed 6-11-97; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)
DATES: Wednesday, June 18, 1997: 6:50 p.m.—9:30 p.m. (Mountain Standard Time)

ADDRESSES: West Mesa Community Center, 5500 Glenrio NW, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area

Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845-4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:50 p.m. Public Comment Period
7:00 p.m. Approval of Agenda
7:05 p.m. Approval of 5/21/97 Minutes
7:10 p.m. Chair's Report—Jesse D. Dompheh
7:25 p.m. Introduction of Board Members—Current and Incoming
7:45 p.m. No Further Action—Class II Permit Modification Overview
8:00 p.m. Break
8:15 p.m. Budget and Planning Committee Report
8:45 p.m. Definition of Waste Types—Presentation
9:00 p.m. July Meeting Discussion
9:05 p.m. New/Other Business
9:15 p.m. Agenda Items for Next Meeting
9:20 p.m. Public Comment Period
9:25 p.m. Announcement of Next Meeting/Adjourn

A final agenda will be available at the meeting Wednesday, June 18, 1997.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will

also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P. O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845-4094.

Issued at Washington, DC on June 9, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97-15399 Filed 6-11-97; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant.

DATES: Thursday, June 19, 1997: 6:00 p.m.—9:00 p.m.

ADDRESSES: Heath High School (cafeteria), 4330 Metropolis Lake Road, West Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: Carlos Alvarado, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS-103, Paducah, Kentucky 42001, (502) 441-6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities. Tentative Agenda: Updates on the Environmental Management and Enrichment Facilities Project report, the Federal Facility Agreement, and the membership drive; reviews of the 10 Year Plan and the Draft Work Plan; and a presentation by Julie Watts of the Agency for Toxic Substances and Disease Registry.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Carlos Alvarado at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation

in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday through Friday, or by writing to Carlos Alvarado, Department of Energy Paducah Site Office, Post Office Box 1410, MS-103, Paducah, Kentucky 42001, or by calling him at (502) 441-6804.

Issued at Washington, DC on June 9, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97-15400 Filed 6-11-97; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-172-004]

ANR Storage Company; Notice of Compliance Filing

June 6, 1997.

Take notice that on June 2, 1997, ANR Storage Company (ANRS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective June 1, 1997.

ANRS states that the attached tariff sheets are being filed in compliance with the Commission's Order issued on May 20, 1997 in the above captioned docket.

ANRS states that copies of the filing were served upon the company's Jurisdictional customers.

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 Commissioner'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. 97-15343 Filed 6-11-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-170-004]

Blue Lake Gas Storage Company; Notice of Compliance Filing

June 6, 1997.

Take notice that on June 2, 1997, Blue Lake Gas Storage Company (Blue Lake) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective June 1, 1997.

Blue Lake states that the attached tariff sheets are being filed in compliance with the Commission's Order issued on May 19, 1997 in the above captioned dockets.

Blue Lake states that copies of the filing were served upon the company's Jurisdictional customer.

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. 97-15342 Filed 6-11-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP97-139-003]

Caprock Pipeline Company; Notice of
Tariff Filing

June 6, 1997.

Take notice that on June 3, 1997, Caprock Pipeline Company (Caprock) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to be effective June 1, 1997:

First Revised Sheet No. 29A
First Revised Sheet No. 37
Original Sheet No. 37A
Original Sheet No. 38
Original Sheet No. 38A

Caprock states that these tariff sheets are being filed to comply with the Commission's letter order in Docket No. RP97-139-001 issued May 19, 1997.

Caprock states that copies of the filing were served upon Caprock's jurisdictional customers, interested public bodies, and all parties to the proceedings.

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 of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-15341 Filed 6-11-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. RP97-181-004]

CNG Transmission Corporation; Notice
of Compliance Tariff Filing

June 6, 1997.

Take notice that on June 2, 1997, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed on the filing, to be effective June 2, 1997.

CNG states that the purpose of this filing is to further revise CNG's tariff as directed by the Commission in its May 21 order, to implement certain business practice standards of the Gas Industry Standards Board (GISB), which are incorporated by reference in the Commission's regulations.

CNG states that copies of its filing have been mailed to CNG's customers and interested state commissions, and to parties to the captioned proceeding.

Any person desiring to protect 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. 97-15345 Filed 6-11-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Docket No. MG97-6-002]

Iroquois Gas Transmission System,
L.P.; Notice of Filing

June 6, 1997.

Take notice that on May 30, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) submitted revised standards of conduct under Order Nos. 497 *et*

*seq.*¹ and Order Nos. 566, *et seq.*² Iroquois states that it is revising its standards to comply with the Commission's May 7, 1997 Order on Standards of Conduct.³

Iroquois states that copies of its filing have been mailed to all jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 23, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-15336 Filed 6-11-97; 8:45 am]

BILLING CODE 6717-01-M

¹ Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986-1990 ¶ 30,820 (1988); Order No. 497-A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986-1990 ¶ 30,868 (1989); Order No. 497-B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986-1990 ¶ 30,908 (1990); Order No. 497-C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991-1996 ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992), Order No. 497-D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991-1996 ¶ 30,958 (December 4, 1992); Order No. 497-E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991-1996 ¶ 30,987 (December 23, 1993); Order No. 497-F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497-G, *order extending sunset date*, 59 FR 3284 (June 26, 1994), FERC Stats. & Regs. 1991-1996 ¶ 30,996 (June 17, 1994).

² Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991-1996 ¶ 30,997 (June 17, 1994); Order No. 566-A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566-B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

³ Iroquois Gas Transmission System, L.P., 79 FERC ¶ 61,145 (1997).

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP97-81-003]

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

June 6, 1997.

Take notice that on June 2, 1997 K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, the following tariff sheet, to be effective June 1, 1997:

Third Revised Volume No. 1-A

Original Sheet No. 4-G

In addition, KNI tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheet, to be effective July 1, 1997:

Third Revised Volume No. 1-A

First Revised Sheet No. 4-G

KNI states that this filing includes a KNI negotiated rate for the month of June, 1997. The above tariff sheets are being filed pursuant to the Third Revised Volume No. 1-B, Section 36 of its FERC Gas Tariff and the procedures proscribed by the Commission in its December 31, 1996 "Order Accepting Tariff Filing Subject to Conditions", in Docket Nos. RP97-81 (77 FERC ¶61,350) and the Commission's Letter Order dated March 28, 1997 in Docket No. RP97-81-001.

KNI states that copies of the filing were served upon KNI's mainline jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,*Secretary.*

[FR Doc. 97-15338 Filed 6-11-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP91-47-018]

National Fuel Gas Supply Corporation; Notice of Refund Report

June 6, 1997.

Take notice that on May 30, 1997 National Fuel Gas Supply Corporation (National) notified the Commission that it made a Take-or-Pay refund to its former RQ and CD customers, in accordance with Section 20(f) of the General Terms and Conditions of National's FERC Gas Tariff.

Under Section 20(f), National is required to make any refunds attributable to its upstream pipelines to its Shippers on the same allocation basis as the surcharges were calculated. National states that this refund reflects the refund received from CNG Transmission Corporation (CNG) as a result of CNG's reconciliation of take-or-pay charges relating to direct amounts billed to National.

National states that copies of National's filing were served on National's former RQ and CD customers 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, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed on or before June 13, 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.

Lois D. Cashell,*Secretary.*

[FR Doc. 97-15337 Filed 6-11-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP97-550-000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

June 6, 1997.

Take notice that on May 28, 1997, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, file in Docket No.

CP97-550-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to operate two existing fuel gas delivery points located in Rio Blanco County, Colorado as certificated delivery points under Section 7(c) of the Natural Gas Act, for the delivery of gas for any eligible shipper under Northwest's blanket transportation certificate. Northwest makes such request under its blanket certificate issued in Docket No. CP82-433 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Northwest is requesting authority to operate an existing 2-inch meter and a 2-inch tap, as certificated delivery point facilities under Section 7(c). The 2-inch meter is located on the fuel gas line that serves the Foundation Creek Plant/Compressor Station, and the 2-inch tap is located on the Piceance Creek Lateral that delivers fuel gas to the Piceance Creek Plant/Compressor Station. Those facilities were originally installed for the non-jurisdictional delivery of fuel gas to facilities owned and operated by Northwest.

Northwest averred that effective January 1, 1993, it abandoned all of its gathering system facilities, including the Foundation Creek Plant/Compressor Station and the Piceance Creek Plant/Compressor Station, by transfer to Williams Gas Processing Company, an affiliate, as authorized in Docket No. CP91-2392. Northwest states that, effective October 15, 1996, those non-jurisdictional facilities were sold to Wildhorse Energy Partners, L.L.C. (Wildhorse).

Northwest indicates that it entered into an Interconnect and Operating Agreement with Wildhorse on October 1, 1996, to implement an operational balancing procedure for the Rocky Mountain area points of interconnection between the two companies, including the subject fuel gas delivery points in Docket No. CP97-550-000. Northwest now desires to make these delivery points available for deliveries to Wildhorse under transportation service agreements.

Northwest states that during 1996, it delivered an average of 68 Dt per day to the Foundation Creek fuel gas delivery point and an average of 403 Dt per day to the Piceance Creek fuel gas delivery point. It is stated that firm transportation service to the subject delivery points will be provided pursuant to Rate Schedule TF-1, and that interruptible transportation service

will be provided pursuant to Rate Schedule TI-1.

Northwest does not anticipate that this proposal will result in any significant peak day or annual impact to Northwest's system, since deliveries made through those two delivery points will be volumes within the shippers existing entitlements.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulation under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97-15335 Filed 6-11-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-131-002]

Overthrust Pipeline Company; Notice of Tariff Filing

June 6, 1997.

Take notice that on June 2, 1997, Overthrust Pipeline Company (Overthrust) tendered for filing in compliance with Order No. 587-C issued March 4, 1997, and acceptance, to be effective November 1, 1997, proposed pro forma tariff sheets to First Revised Volume No. 1-A of its FERC Gas Tariff.

Overthrust states that the proposed tariff sheets, which are listed below, implement the requirements of Order No. 387-C by incorporating approved GISB standards requiring natural gas pipelines to (1) publish certain information on Internet Web Pages by August 1, 1997 and (2) implement new business practice standards covering nominations and flowing gas.

Proposed Revised Tariff Sheets

Original Sheet Nos. 67C and 78D
First Revised Sheet Nos. 34A, 67A, 67B, 78, 78A, 78B and 78C

Second Revised Sheet Nos. 33, 36, 60 and 61
Third Revised Sheet Nos. 1, 34 and 67
Fifth Revised Sheet No. 30

Overthrust states that it has revised the Table of Contents, Section 1, Definitions; Section 4, Electronic Bulletin Board (EBB); Section 13, Measurement; Section 15, Scheduling of Gas Receipts and Deliveries; Section 16, Balancing of Gas and Section 29, GISB Standards as required by Order 587-C.

Overthrust states further that it has added a new Section 30, Operational Flow Orders (OFO), in order to further implement the requirements of Order 587-C.

Overthrust states that a copy of this filing has been served upon its customers, the Wyoming Public Service Commission.

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 of Practice and Procedure. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97-15340 Filed 6-11-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-129-003]

Questar Pipeline Company; Notice of Tariff Filing

June 6, 1997.

Take notice that on June 2, 1997 Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, proposed pro forma tariff sheets in compliance with Order No. 587-C issued March 4, 1997, to be effective November 1, 1997.

Questar states that the proposed tariff sheets, which are listed below, implement the requirements of Order No. 587-C by incorporating approved GISB standards requiring natural gas pipelines to (1) publish certain information on Internet Web Pages by

August 1, 1997 and (2) implement new business practice standards covering nominations and flowing gas.

Proposed Revised Tariff Sheets

Original Sheet Nos. 75C and 81B
First Revised Sheet Nos. 46B, 75A, 75B, and 99A through 99D
Second Revised Sheet Nos. 43, 80A, 81A, and 84
Third Revised Sheet Nos. 44, 45, 46A, and 75
Fifth Revised Sheet No. 46
Sheet Nos. 75C, 81B, 46A and 99B are required for pagination purposes only.

Questar states that it has revised Section 1, Definitions; Section 2 Electronic Bulletin Board; Section 11, Operating Provisions for Transportation and Storage; Section 12, Balancing of Transportation Quantities; Section 14, Measurement and Section 29, GISB Standards as required by Order 587-C.

Questar states further that it will file no later than July 1, 1997, revised tariff sheets, that will implement the requirements of Standard 4.3.6 to be effective August 1, 1997.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

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 of Practice and Procedure. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97-15339 Filed 6-11-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-177-003]

Steuben Gas Storage Company; Notice of Compliance Filing

June 6, 1997.

Take notice that on June 2, 1997, Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective June 1, 1997.

Steuben states that the attached tariff sheets are being filed in compliance with the Commission's Order issued on May 20, 1997 in the above Captioned docket.

Steuben states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-15344 Filed 6-11-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-237-004]

TransColorado Gas Transmission Company; Notice of Compliance Filing

June 6, 1997.

Take notice that on May 30, 1997, TransColorado Gas Transmission Company (TransColorado) tendered for filing and acceptance, pursuant to Subpart C of 154 of the Commission's Regulations Under the Natural Gas Act and in compliance with the Commission's letter order issued May 15, 1997 at Docket No. RP97-237-002, the following tariff sheets to its FERC Gas Tariff.

Original Volume No. 1

First Revised Sheet No. 206
Original Sheet Nos. 409-422

TransColorado states that the tariff sheets are being tendered to implement a pro forma Trading Partner Agreement for the electronic exchange of information pursuant to the Commission's directive. The tendered tariff sheets are proposed to become effective June 29, 1997.

TransColorado states that copies of the filing were served upon all parties of record in this proceeding, all interstate pipeline system customers and affected state regulatory

commissions, in accordance with the requirements of Section 385.210 of the Commission's Rules of Practice and Procedure.

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. 97-15346 Filed 6-11-97; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97-35-000, et al.]

Aguaytia Energy del Peru, et al.; Electric Rate and Corporate Regulation Filings

June 5, 1997.

Take notice that the following filings have been made with the Commission:

1. Aguaytia Energy del Peru

[Docket No. EG97-35-000]

Take notice that on June 2, 1997, Aguaytia Energy del Peru tendered for filing an amendment in the above-referenced docket.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. National Gas & Electric L.P., InterCoast Power Marketing Company, Electrade Corporation, PennUnion Energy Services, L.L.C., Northeast Energy Services, Inc., Tosco Power, Inc., and Burlington Resources Trading Inc.

[Docket Nos. ER90-168-031, ER94-6-007, ER94-1478-010, ER95-1511-005, ER96-2523-002, ER96-2635-003, and ER96-3112-002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and

copying in the Commission's Public Reference Room:

On May 27, 1997, National Gas & Electric L.P. filed certain information as required by the Commission's March 20, 1990, order in Docket No. ER90-168-000.

On May 6, 1997, InterCoast Power Marketing Company filed certain information as required by the Commission's August 19, 1994, order in Docket No. ER94-6-000.

On April 21, 1997, Electrade Corporation filed certain information as required by the Commission's August 25, 1994, order in Docket No. ER94-1478-000.

On April 11, 1997, PennUnion Energy Services, L.L.C. filed certain information as required by the Commission's September 11, 1995, order in Docket No. ER95-1511-000.

On May 16, 1997, Northeast Energy Services, Inc. filed certain information as required by the Commission's September 19, 1996, order in Docket No. ER96-2523-000.

On May 15, 1997, Tosco Power, Inc. filed certain information as required by the Commission's September 12, 1996, order in Docket No. ER96-2635-000.

On May 30, 1997, Burlington Resources Trading Inc. filed certain information as required by the Commission's November 14, 1996, order in Docket No. ER96-3112-000.

3. Vitol Gas and Electric, L.L.C., ICPM, Inc., and Power Fuels, Inc.

[Docket Nos. ER94-155-017, ER95-640-008, and ER96-1930-003 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On April 11, 1997, Vitol Gas and Electric, L.L.C. filed certain information as required by the Commission's April 14, 1994 order in Docket No. ER94-155-000.

On April 10, 1997, ICPM, Inc. filed certain information as required by the Commission's March 31, 1995, order in Docket No. ER95-640-000.

On April 11, 1997, Power Fuels Inc. filed certain information as required by the Commission's July 5, 1996, order in Docket No. ER96-1930-000.

4. Lowell Cogeneration Company Limited Partnership

[Docket No. ER97-2414-000]

Take notice that on May 30, 1997, Lowell Cogeneration Company Limited Partnership tendered for filing an amendment in the above-referenced docket.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER97-2999-000]

Take notice that on May 19, 1997, Boston Edison Company (Boston Edison), tendered for filing a Standstill Agreement between itself and Commonwealth Electric Company (Commonwealth). The Standstill Agreement extends through July 31, 1997 the time in which Commonwealth may institute a legal challenge to the 1995 true-up bill under Boston Edison's FERC Rate Schedule No. 68, governing sales to Commonwealth from the Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective May 20, 1997.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Energy, Inc.

[Docket No. ER97-3000-000]

Take notice that on May 19, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Service Agreement) with APS—Bulk Power Marketing, as Transmission Customer. A copy of the filing was served upon APS—Bulk Power Marketing.

The Service Agreement is for firm point-to-point transmission service.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Energy, Inc.

[Docket No. ER97-3001-000]

Take notice that on May 19, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service (Service Agreement) with MP Energy as Transmission Customer. A copy of the filing was served upon MP Energy.

The Service Agreement is for non-firm point-to-point transmission service.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Energy, Inc.

[Docket No. ER97-3002-000]

Take notice that on May 19, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for firm Point-To-Point transmission service

(Service Agreement) with citizen Lehman Power Sales (Citizen), as Transmission Customer. A copy of the filing was served upon Citizen.

The Service Agreement is for firm point-to-point transmission service.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Puget Sound Energy, Inc.

[Docket No. ER97-3003-000]

Take notice that on May 19, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Service Agreement) with Valero Power Services Co., as Transmission Customer. A copy of the filing was served upon Valero Power Services.

The Service Agreement is for firm point-to-point transmission service.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Energy, Inc.

[Docket No. ER97-3004-000]

Take notice that on May 19, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service (Service Agreement) with Citizen Lehman Power Sales as Transmission Customer. A copy of the filing was served upon Citizen. The Service Agreement is for non-firm point-to-point transmission service.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Puget Sound Energy, Inc.

[Docket No. ER97-3005-000]

Take notice that on May 19, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Service Agreement) with APS—Bulk Power Marketing, as Transmission Customer. A copy of the filing was served upon APS—Bulk Power Marketing.

The Service Agreement is for firm point-to-point transmission service.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Puget Sound Energy, Inc.

[Docket No. ER97-3006-000]

Take notice that on May 19, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Non-Firm

Point-To-Point Transmission Service (Service Agreement) with Southern Energy Trading and Marketing, Inc. as Transmission Customer. A copy of the filing was served upon Southern Energy Trading and Marketing, Inc.

The Service Agreement is for non-firm point-to-point transmission service.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Puget Sound Energy, Inc.

[Docket No. ER97-3007-000]

Take notice that on May 19, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Service Agreement) with Southern Energy Trading and Marketing, Inc., as Transmission Customer. A copy of the filing was served upon Southern Energy Trading and Marketing, Inc.

The Service Agreement is for firm point-to-point transmission service.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Puget Sound Energy, Inc.

[Docket No. ER97-3008-000]

Take notice that on May 19, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service (Service Agreement) with Western Power Services (WPS) as Transmission Customer. A copy of the filing was served upon WPS.

The Service Agreement is for non-firm point-to-point transmission service.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Energy, Inc.

[Docket No. ER97-3009-000]

Take notice that on May 19, 1997, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Service Agreement) with Western Power Services (WPS), as Transmission Customer. A copy of the filing was served upon WPS.

The Service Agreement is for firm point-to-point transmission service.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Puget Sound Energy, Inc.

[Docket No. ER97-3010-000]

Take notice that on May 19, 1997, Puget Sound Energy, Inc., as

Transmission Provider, tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service (Service Agreement) with Valero Power Services Co. as Transmission Customer. A copy of the filing was served upon Valero Power Services Co.

The Service Agreement is for non-firm point-to-point transmission service.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER97-3011-000]

Take notice that on May 19, 1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 16 to add PacifiCorp Power Marketing, Inc., South Carolina Electric & Gas Company, and Stand Energy Corporation to Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96-18-000. The proposed effective date under the Service Agreements is May 16, 1997.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER97-3012-000]

Take notice that on May 19, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Western Power Services, 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 May 1, 1997.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Illinois Power Company

[Docket No. ER97-3013-000]

Take notice that on May 19, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Koch Energy Traders, 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 May 15, 1997.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Power Marketing Corp.

[Docket No. ER97-3014-000]

Take notice that on May 19, 1997, Entergy Power Marketing Corp. (EPMC) filed an amendment to its standards of conduct that would permit EPMC to broker power from and to the Entergy Operating Companies.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Orange and Rockland Utilities, Inc.

[Docket No. ER97-3015-000]

Take notice that on May 19, 1997, Orange and Rockland Utilities, Inc. (Orange and Rockland) filed Service Agreements between Orange and Rockland and Equitable Power Services Company and Rochester Gas and Electric Corporation (Customers). These Service Agreements specify that the Customers have agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96-210-000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of May 19, 1997, for the Service Agreements. Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Oklahoma Gas and Electric Company

[Docket No. ER97-3016-000]

Take notice that on May 19, 1997, Oklahoma Gas and Electric Company (OG&E) tendered for filing a proposed Power Supply and Transmission Service Agreement with the City of Paris, Arkansas (Paris), a Service Agreement for Network Integration Transmission

Service, and a Standard Form of Network Operating Agreement. OG&E also requests cancellation of its Service Agreements with the City of Paris for two of the three delivery points. OG&E has also filed revised Index of Purchasers from Rate Schedule WM-1 included in the OG&E FERC Electric Tariff, 1st Revised Volume No. 1.

Copies of this filing have been sent to Public Works Manager of Paris Arkansas, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission. OG&E requests an effective date of June 1, 1997.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Southern Company Services, Inc.

[Docket No. ER97-3017-000]

Take notice that on May 19, 1997, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as (Southern Companies) filed two (2) service agreements under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entities: (i) Ohio Edison Company; and (ii) Old Dominion Electric Cooperative. SCSI states that the service agreements will enable Southern Companies to engage in short-term market-based rate transactions with these entities.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Northern Indiana Public Service Company

[Docket No. ER97-3018-000]

Take notice that on May 19, 1997, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and The Detroit Edison Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to The Detroit Edison Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96-47-000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of May 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Ohio Edison Company, Pennsylvania Power Company

[Docket No. ER97-3019-000]

Take notice that on May 20, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Non-Firm Point-to-Point Transmission Service with Pennsylvania Power & Light Company and Ohio Edison Company pursuant to Ohio Edison's Open Access Tariff. This Service Agreement will enable the parties to obtain Non-Firm Point-to-Point Transmission Service in accordance with the terms of the Tariff.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Jersey Central Power & Light Company

[Docket No. ER97-3020-000]

Take notice that on May 20, 1997, GPU Energy, on behalf of Jersey Central Power & Light Company (Jersey Central) filed amendments to an Interconnection Agreement between Jersey Central and Atlantic City Electric Company. The amendments revise a component of the rate for service under the Interconnection Agreement relating to Jersey Central's O&M expense for 1997 and 1998.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Consolidated Edison Company of New York, Inc.

[Docket No. ER97-3021-000]

Take notice that on May 20, 1997, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to The Power Company, L.P. (Power).

Con Edison states that a copy of this filing has been served by mail upon Power.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Consolidated Edison Company of New York, Inc.

[Docket No. ER97-3022-000]

Take notice that on May 20, 1997, Consolidated Edison Company of New

York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Long Island Lighting Company (LILCO).

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Union Electric Company

[Docket No. ER97-3023-000]

Take notice that on May 20, 1997, Union Electric Company (UE) tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between Rainbow Energy Marketing Corporation (REMC) and UE. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to REMC pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96-50.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER97-3024-000]

Take notice that on May 20, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, an unexecuted Service Agreement with Commonwealth Edison Company under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Tucson Electric Power Company

[Docket No. ER97-3025-000]

Take notice that on May 20, 1997, Tucson Electric Power Company (TEP) tendered for filing three (3) service agreements for firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96-140-000. TEP requests waiver of notice to permit the service agreements to become effective as of May 1, 1997. The service agreements are as follows:

(1) Service Agreement for Firm Point-to-Point Transmission Service with Tucson Electric Power Company, Contracts & Wholesale Marketing dated April 29, 1997.

(2) Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc. dated May 7, 1997.

(3) Service Agreement for Firm Point-to-Point Transmission Service with

Enron Power Marketing, Inc. dated May 7, 1997.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Central Illinois Public Service Company

[Docket No. ER97-3027-000]

Take notice that on May 21, 1997, Central Illinois Public Service Company (CIPS) submitted four umbrella short term firm transmission service agreements, dated between April 1, 1997 and April 23, 1997, establishing the following as customers under the terms of CIPS' Open Access Transmission Tariff: Aquila Power Corporation, Cinergy Power Marketing and Trading, Citizens Lehman Power Sales, and Rainbow Energy Marketing Corporation.

CIPS requests an effective date of April 19, 1997 for Aquila Power Corporation and Rainbow Energy Marketing Corporation, April 1, 1997 for Cinergy Power Marketing and Trading, and April 10, 1997, for Citizens Lehman Power Sales. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served on the four customers and the Illinois Commerce Commission.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Central Illinois Public Service Company

[Docket No. ER97-3028-000]

Take notice that on May 21, 1997, Central Illinois Public Service Company (CIPS) submitted three umbrella short-term firm transmission service agreements, dated between April 1, 1997 and May 7, 1997, establishing the following as customers under the terms of CIPS' Open Access Transmission Tariff: Enron Power Marketing, Inc., Illinois Power—Bulk Power Marketing, and Koch Power Services, Inc.

CIPS requests an effective date of April 21, 1997 for the service agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served on the three customers and the Illinois Commerce Commission.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Long Island Lighting Company

[Docket No. ER97-3029-000]

Take notice that on May 21, 1997, Long Island Lighting Company (LILCO) filed a Service Agreement for Non-Firm Point-to-Point Transmission Service

between LILCO and Nissequogue Cogen Partners (Transmission Customer).

This Service Agreement specifies that the Transmission Customers has agreed to the rates, terms and conditions of the LILCO open access transmission tariff filed on July 9, 1996, in Docket No. OA96-38-000.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of May 13, 1997, for the Service Agreement. LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customers.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Ohio Edison Company Pennsylvania Power Company

[Docket No. ER97-3030-000]

Take notice that on May 21, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Non-Firm Point-to-Point Transmission Service with the companies listed below and Ohio Edison Company pursuant to Ohio Edison's Open Access Tariff. These Service Agreements will enable the parties to obtain Non-Firm Point-to-Point Transmission Service in accordance with the terms of the Tariff.

Company

NESI Power Marketing, Inc.
Northern Indiana Public Service Company

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Atlantic City Electric Company

[Docket No. ER97-3031-000]

Take notice that on May 21, 1997, Atlantic City Electric Company (Atlantic Electric) tendered for filing service agreements under which Atlantic Electric will sell capacity and energy to Duquesne Light Company and Tosco Power, Inc. under Atlantic Electric's market-based rate sales tariff. Atlantic Electric requests the agreements be accepted to become effective on May 22, 1997.

Atlantic Electric states that a copy of the filing has been served on Duquesne Light Company and Tosco Power, Inc.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Western Resources, Inc.

[Docket No. ER97-3032-000]

Take notice that on May 21, 1997, Western Resources, Inc. tendered for

filing a non-firm transmission agreement between Western Resources and VTEC Energy, Inc. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective April 25, 1997.

Copies of the filing were served upon VTEC Energy, Inc. and the Kansas Corporation Commission.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. American Electric Power Service Corporation

[Docket No. ER97-3033-000]

Take notice that on May 21, 1997, the American Electric Power Service Corporation (AEPSC) tendered for filing executed service agreements under the AEP Companies' Point-to-Point Transmission Service Tariff. The Transmission Tariff has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after April 30, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Interstate Power Company

[Docket No. ER97-3034-000]

Take notice that on May 21, 1997, Interstate Power Company (IPW) tendered for filing a Transmission Service Agreement between IPW and CMS Marketing Services & Trading (CMS). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to CMS.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Interstate Power Company

[Docket No. ER97-3035-000]

Take notice that on May 21, 1997, Interstate Power Company (IPW) tendered for filing a Network Transmission Service and Operating Agreement between IPW and St. Charles Light & Water Department (St. Charles).

Under the Service Agreement, IPW will provide Network Integration Transmission Service to St. Charles.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. Central Illinois Public Service Company

[Docket No. ER97-3036-000]

Take notice that on May 21, 1997, Central Illinois Public Service Company (CIPS) submitted two service agreements, dated May 12, 1997 and May 14, 1997, establishing the following as customers under the terms of CIPS' Open Access Transmission Tariff: Plum Street Energy Marketing, Inc. and Southern Indiana Gas and Electric Company.

CIPS requests an effective date of May 14, 1997 for the service agreements. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served on the two customers and the Illinois Commerce Commission.

Comment date: June 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

42. UtiliCorp United Inc.

[Docket No. ES97-31-000]

Take notice that on May 28, 1997, UtiliCorp United Inc. (Applicant) filed an application with the Federal Energy Regulatory Commission under § 204 of the Federal Power Act seeking authorization to issue up to 60,000 shares of preference stock, pursuant to the terms of a shareholder rights plan. Applicant also requests exemption from the competitive bidding and negotiated placement requirements of the Commission's Regulations.

Comment date: July 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

43. Citizens Utilities Company

[Docket No. ES97-35-000]

Take notice that on May 23, 1997, Citizens Utilities Company (Applicant) filed an application with the Federal Energy Regulatory Commission under § 204 of the Federal Power Act requesting an order authorizing the issuance of up to 170,000,000 shares of Common Stock Series B in exchange for all outstanding shares of Common Stock Series A, pursuant to a share-for-share exchange of all outstanding shares of Common Stock Series A.

Comment date: June 23, 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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. 97-15394 Filed 6-11-97; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket Nos. CP95-194-001, CP95-194-003, CP96-027-000, and CP96-027-001]

Northern Border Pipeline Company and Natural Gas Pipeline Company of America; Notice of Availability of the Final Environmental Impact Statement for the Proposed Northern Border Project

June 6, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Final Environmental Impact Statement (FEIS) on the natural gas pipeline facilities proposed by Northern Border Pipeline Company (Northern Border) and Natural Gas Pipeline Company of America (Natural) in the above-referenced dockets, collectively referred to as the Northern Border Project.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with the mitigating measures we have recommended, would have limited environmental impact and would be an environmentally acceptable action. Most of this impact would occur during construction. The FEIS also evaluates two single system alternatives to the proposals between Harper, Iowa and Chicago, Illinois. The FEIS concludes that either single system alternative would be environmentally preferable to

building both projects in that area. The Amarillo system alternative is the environmentally preferred alternative.

The FEIS assesses the potential environmental effects of the Construction and operation of the following facilities:

Northern Border

- About 390.0 miles of new natural gas pipeline;
- About 303,500 horsepower (hp) of new compression;
- 9 new and 1 modified meter stations, 5 new pig Launcher/receivers, 1 new office/ warehouse building, and 16 new and 9 modified valves; and
- 13 new communication towers.

Natural

- About 85.7 miles of new natural gas pipeline;
- About 9,000 hp of new compression; and
- 3 new pig launcher/receivers and 17 new or modified valves.

The purpose of the proposed facilities would be to transport up to 1,226.3 million cubic feet per day of natural gas from producing regions in Canada and the Williston Basin in Montana and North Dakota to natural gas shippers and local distribution companies in the Midwest, primarily the Chicago area.

The FEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208-1371.

A limited number of copies are available at this location.

Copies of the FEIS have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs at (202) 208-1088.

Lois D. Cashell,

Secretary.

[FR Doc. 97-15334 Filed 6-11-97; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5838-9]

Toxic Chemicals; PCBs; Submission of ICR No. 1012 to OMB; Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: PCB Disposal Permitting Regulation (EPA ICR No. 1012.06; OMB Control No. 2070-0011) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on June 30, 1997. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the Agency's intent to renew the ICR and on the ICR contents, was issued on November 12, 1996 (61 FR 58065). EPA did not receive any comments during the comment period.

DATES: Additional comments may be submitted on or before July 14, 1997.

FOR FURTHER INFORMATION OR A COPY CONTACT: Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR No. 1012.06 and OMB Control No. 2070-0011.

ADDRESSES: Send comments, referencing EPA ICR No. 1012.06 and OMB Control No. 2070-0011, to the following addresses: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mailcode: 2137), 401 M Street, SW, Washington, DC 20460.

And to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1012.06; OMB Control No. 2070-0011.

Current Expiration Date: Current OMB approval expires on June 30, 1997.

Title: PCB Disposal Permitting Regulation.

Abstract: Section 6(e) of the Toxic Substances Control Act (TSCA) bans polychlorinated biphenyls (PCBs) from the environment and directs the Administrator of EPA to promulgate rules to, among other things, prescribe methods for the disposal of PCBs. EPA promulgated rules in 1978 and 1979 that

address disposal requirements. These provisions require owners of alternate disposal technologies, incinerators and chemical waste landfills to submit permit applications to and obtain approvals from EPA. Additionally, EPA prescribes technical and operational criteria that these facilities must meet to qualify for consideration by the Agency. EPA may include in an approval any other requirements or provisions that are necessary to ensure the operation of the facility will not present an unreasonable risk of injury to health or the environment.

To meet its statutory obligations, EPA must obtain sufficient information to conclude that the operation of a disposal facility does not result in an unreasonable risk of injury to health or the environment. EPA requests only the information that the Agency needs to reach a decision to grant or deny an applicant's request for a disposal approval. EPA uses the information submitted by each permit applicant to determine if the applications meet the technical and operational criteria for a disposal facility and to make a finding that the operation of the facility will not result in an unreasonable risk of injury to health or the environment.

Responses to the collection of information are required in order for respondents to obtain or retain benefits (see 40 CFR parts 761.60, 761.70 and 761.75). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average approximately 334 hours per response for an estimated 32 respondents. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

No person is 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 displayed in 40 CFR Part 9.

Respondents/Affected Entities: Operators of PCB disposal facilities.
Estimated No. of Respondents: 32.
Estimated Total Annual Burden on Respondents: 10,688 hours.
Frequency of Collection: On occasion.
Changes in Burden Estimates: There is a reduction of 6,232 hours in the total estimated respondent burden as compared with that identified in the Information Collection Request (ICR) most recently approved by OMB, from 16,920 hours currently to an estimated 10,688 hours. The prior ICR assumed an equal number of applications to conduct research and development (R&D) in PCB disposal as applications for commercial disposal of PCBs. However, based on experience gained since the last ICR, EPA's revised calculations now account for the fact that EPA receives twice as many R&D applications as commercial applications. The average burden for R&D applications is only 60 hours, versus 880 hours for commercial applications.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted as described above.

Dated: June 9, 1997.

Richard T. Westlund,
Acting Director, Regulatory Information Division.
 [FR Doc. 97-15367 Filed 6-11-97; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5839-3]

Air Pollution Control; Proposed Actions on Clean Air Act Grants to the South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed determinations with request for comments and notice of opportunity for public hearing.

SUMMARY: The Environmental Protection Agency has made two proposed determinations that reductions in expenditures of non-Federal funds for the South Coast Air Quality Management District (SCAQMD) in Diamond Bar, California are a result of non-selective reductions in expenditures. These determinations, when final, will permit the SCAQMD to keep the financial assistance awarded to

it by EPA for FY-96, and to be awarded financial assistance for FY-97 by EPA, under section 105(c) of the Clean Air Act (CAA).

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by July 14, 1997.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: R. Michael Stenburg, Grants and Program Integration Office (Air-8), Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901; FAX (415) 744-1076.

FOR FURTHER INFORMATION CONTACT: R. Michael Stenburg, Grants and Program Integration Office (Air-8), Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901 at (415) 744-1182.

SUPPLEMENTARY INFORMATION: Under the authority of Section 105 of the CAA, EPA provides financial assistance (grants) to the SCAQMD, whose jurisdiction includes Los Angeles and Orange Counties in southern California, to aid in the operation of its air pollution control programs. In FY-96, EPA awarded the SCAQMD \$7,084,731, which represented approximately 8.4% of the SCAQMD's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that "[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year." EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, "after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government." CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY-96 section 105 application, the SCAQMD projected expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) of \$78,452,571. This MOE would have been sufficient to meet the MOE requirements of the CAA, i.e. it

would have been equal to or greater than the MOE for the previous year (FY-95). Subsequently, however, the SCAQMD submitted to EPA final documentation which shows that its actual FY-96 MOE was \$76,882,860. This amount represents a shortfall of \$520,712 from the MOE of \$77,403,572 for the preceding fiscal year (FY-95). In order for the SCAQMD to be eligible to keep its FY-96 grant, EPA must make a determination under section 105(c)(2).

Furthermore, in its FY-97 § 105 grant application the SCAQMD projected MOE of \$67,362,724. This amount represents a shortfall of \$9,520,136 from the actual FY-96 MOE of \$76,882,860. In order for the SCAQMD to be eligible to be awarded its FY-97 grant, EPA must make a determination under section 105(c)(2).

The SCAQMD is a single-purpose agency whose primary source of funding is emission fee revenue. It is the "unit of Government" for section 105(c)(2) purposes. The SCAQMD submitted documentation to EPA which shows that over the last five years emission reductions brought on by a combination of regulated and voluntary emission reductions and actions to minimize fee increases on businesses have reduced fee revenues from stationary sources from a high of \$66,914,362 in 1991-1992 to approximately \$49,147,500 in 1996-1997. As a result, the SCAQMD has instituted hiring/salary freezes, furloughs, and layoffs, has reduced its equipment purchases and contract expenditures, and has instituted new programs to reduce costs such as permit streamlining, computer-assisted permit processing, and privatization efforts.

Therefore, the SCAQMD's MOE reductions resulted from a loss of fee revenues due to circumstances beyond its control. EPA proposes to determine that the SCAQMD's lower FY-96 and FY-97 MOE levels meet the section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, these determinations will allow the SCAQMD to keep the funds received from EPA for FY-96 and be awarded financial assistance for FY-97.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by July 14, 1997 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by July 14, 1997.

If no written request for a hearing is received, EPA will proceed to both final determinations. While notice of the final

determinations will not be published in the **Federal Register**, copies of the determinations can be obtained by sending a written request to R. Michael Stenburg at the above address.

Dated: June 3, 1997.

David P. Howekamp,

Director, Air Division, U.S. EPA, Region 9.

[FR Doc. 97-15366 Filed 6-11-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5840-2]

Performance Evaluation Studies Supporting Administration of the Clean Water Act and Safe Drinking Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the decision by the Environmental Protection Agency (EPA) to transfer components of the laboratory performance evaluation (PE) studies programs that the Agency has conducted to assess laboratories testing drinking water and wastewater to the private sector. Under the externalized program, EPA would issue standards for the operation of the program, the National Institute of Standards and Technology (NIST) would develop standards for private sector PE suppliers and would evaluate and accredit PE suppliers, and the private sector would develop and manufacture PE materials and conduct PE studies. The results of these studies would be made available to the study participants (participating analytical laboratories and in the case of DMRQA studies to permittees) and to those government organizations that have the responsibility for administering programs supported by the studies (e.g., state, federal agency). This decision should ensure the continued viability of the existing PE programs and should permit the eventual expansion of environmental laboratory PE studies to other media and analytes while maintaining government oversight.

FOR FURTHER INFORMATION CONTACT:

Stephen W. Clark, Office of Ground Water and Drinking Water (OGWDW), U.S. EPA, 401 M Street, SW., Washington DC 20460 [telephone number (202) 260-7159]; Rick Colbert, Office of Enforcement and Compliance Assurance (OECA), U.S. EPA Ariel Rios, 1200 Pennsylvania Ave., NW., Washington DC 20044 [telephone number (202) 564-2320]; or Robert

Graves, Office of Research and Development (ORD), U.S. EPA/NERL, 26 W. Martin Luther King Dr., Cincinnati, Ohio 45268 [telephone number (513) 569-7197].

SUPPLEMENTARY INFORMATION: Since the 1970s, EPA has been conducting laboratory PE studies to support the various water programs administered by the States and EPA under the Clean Water Act and the Safe Drinking Water Act. In a PE study, a participating laboratory analyzes a test sample (a PE sample) that is prepared and distributed by the entity conducting the study. In the EPA-supported PE studies, a single EPA contractor prepared test samples which were sent to participating laboratories for analysis. EPA then scored the results against statistically-based or empirically-based performance criteria to determine whether the laboratory demonstrated acceptable performance. The results were then supplied to the study participants and the government agencies responsible for reviewing the performance of said participants.

What is the Purpose of a PE Study?

PE studies are a valuable indicator of a laboratory's competency to analyze water samples. The studies are used to assess a laboratory's ability to conduct analysis and produce meaningful and reliable environmental data. In some States, the State may certify or accredit individual laboratories to conduct analysis within the State. The PE studies serve as one component of the overall federal program to assure quality in environmental measurement to implement the Clean Water Act and the Safe Drinking Water Act. EPA has also relied on the data to assess the capability of the nation's environmental laboratory community to conduct analysis for certain analytes. If EPA found that a disproportionate number of laboratories did not seem able to properly analyze the samples for a given analyte, EPA used that information to identify areas where additional method development was warranted.

EPA has been conducting three PE study programs to support nationwide implementation of water programs:

Water Supply (WS) study program, which includes chemistry, microbiology, and radiochemistry PE studies, supports implementation of the Safe Drinking Water Act. Under the Safe Drinking Water Act, laboratory certification programs are administered primarily by States (and, in very limited instances, by EPA). Many State drinking water laboratory certification programs have required "successful" participation in EPA's Water Supply (WS) PE study

program as an element for laboratory certification by the State.

Water Pollution (WP) study program, which includes chemistry PE studies, tests laboratories' abilities to analyze for common surface water quality pollutant parameters and supports 25 to 30 State wastewater and other environmental laboratory certification programs. Many States conduct laboratory accreditation programs in support of the National Pollutant Discharge Elimination System (NPDES) permitting program under the Clean Water Act. Though participation in the WP is not federally compelled, many States require laboratories to participate in EPA's Water Pollution (WP) PE study program as a basis for accreditation under State laws.

Discharge Monitoring Report Quality Assurance (DMRQA) study program, which includes inorganic chemistry and whole effluent toxicity (WET) PE studies, is used as one tool for ensuring the quality of monitoring data submitted by National Pollutant Discharge Elimination System (NPDES) permittees. Historically, EPA administered the DMRQA studies through NPDES "major" permittees, who would transmit the DMRQA test samples to the same laboratories that conduct compliance monitoring for such permittees. Beginning in FY 1996, NPDES permittees were instructed to notify their laboratories to request and receive the necessary samples directly from the EPA. NPDES permittees are required to participate in the DMRQA study under the authority of Clean Water Act section 308. Thus, though laboratories are not directly required to participate, participation is effectively or indirectly required by market forces.

Why is EPA Externalizing the PE Study Function?

In the past, EPA conducted the PE studies with no cost to the participating laboratories. As part of the Government's efforts to save resources and to externalize those activities that are not inherently governmental functions and that can be conducted by the private sector, the Agency reassessed its continued operation of the programs.

EPA had considered numerous options for externalizing the PE studies program. EPA explained these options in the **Federal Register** at 61 FR 37464–37471 (July 18, 1996). After considering the comments received, the Agency decided on a program where EPA would issue standards for the operation of the program, the NIST would develop standards for private sector PE suppliers and would evaluate and accredit PE suppliers, and the private sector would

develop and manufacture PE materials and conduct PE studies. In addition, as part of the program, the PE providers would report the results of the studies to the study participants and to those organizations that have responsibility for administering programs supported by the studies (e.g., State and EPA for WS and WP studies; EPA for DMRQA studies). The Agency believes that this option (Option 2 of the proposed Options) would best serve the public interests.

When Will Externalization Occur?

EPA and NIST anticipate that NIST would begin to take applications for accrediting private sector PE suppliers beginning in the summer of 1998. The agencies further anticipate that the first class of commercial sector PE providers would be accredited by the January of 1999 and, accordingly, ready to begin to service laboratories with PE studies shortly thereafter. Therefore, the final studies conducted by EPA would include: DMRQA 18 (aquatic toxicity samples to be shipped June 1998; chemistry samples to be shipped July/Aug 1998); WP 40 (samples to be shipped July/Aug 1998); WSM 30 (microbiological samples to be shipped April 1998); WS 41 (chemistry samples to be shipped May/June 1998); Radiochemistry study entitled, "Gamma in Water Performance Evaluation Study" (samples to be shipped Nov 1998).

What Would Change in PE Studies?

The new PE Studies program would serve the same purposes as did the previous PE Studies program. Though the mode of operation would change, the information and data supplied to the States (and EPA Regions) would not. Under the new structure, EPA would remain the Standards Setting Authority for the Water PE Study program. [For explanation of terms, see 61 FR 37464–37471.] EPA would work with NIST to establish the operational and technical standards to be used for accrediting private sector PE Study Providers and would oversee compliance with the national standards. NIST would publish the accreditation standards. Both standards setting functions would be closely coordinated with the National Environmental Laboratory Accreditation Conference (NELAC).

NIST has indicated that its National Voluntary Laboratory Accreditation Program (NVLAP) would serve as the PE Study Provider Accreditation Body. NIST intends to collect a fee from PE Study Providers to recover costs associated with the NIST accreditation program. NIST would also develop

primary reference standards, which NIST would sell to PE Study Providers.

The private sector and/or States (who, in some cases, currently conduct their own PE studies) would have the opportunity to become accredited PE study providers. The private sector PE Study Providers would: produce and value assign the PE materials according to NIST protocols; distribute the PE samples to participating laboratories; analyze client lab measurement data; calculate acceptance limits according to procedures established by EPA; and report results (in the appropriate format and detail) to the participating laboratories, appropriate state authorities, EPA, and NIST.

Under the new system, States would have several options for obtaining the PE study data for laboratories subject to their accreditation program. Three such options include: States may require laboratories to participate in a specific private sector PE programs and have the results sent to the State by the PE study provider; States may elect to serve as PE study providers themselves (as some States do now); or States may permit a laboratory to participate in any accredited PE study and have the results sent to the State. In all cases, States would be able to receive all the information that was previously provided by the EPA. The only additional costs that States should experience as a result of these changes are those associated with purchasing PE studies from the private sector for their own laboratories.

Dated: May 28, 1997.

Robert Perciasepe,
Assistant Administrator for Water.

Dated: May 27, 1997.

Robert J. Huggett,
Assistant Administrator for Research and Development.

Dated: May 30, 1997.

Steven A. Herman,
Assistant Administrator for Enforcement and Compliance Assurance.

[FR Doc. 97–15414 Filed 6–11–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5839–8]

National Drinking Water Advisory Council, Occurrence and Contaminant Selection Working Group; Notice of Open Meeting

Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given

that a conference call for the Occurrence and Contaminant Selection Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on June 23 and 24, 1997, from 1:00 p.m. until 4:00 p.m. EDT, each day. The conference call is open to the public, but due to availability, conference lines will be limited and access will be granted on a first-come first-served basis.

The purpose of this call is to review progress on the development of the first Drinking Water Candidate List since the last meeting of the Working Group on April 3-4, 1997. The Working Group members will analyze the results of the criteria developed, and relevant issues and facts, and draft proposed position paper for deliberation by the advisory council. Therefore, statements will be taken from the public as time allows.

For more information, please contact, Evelyn Washington, Designated Federal Officer, Occurrence and Contaminant Selection Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4607), 401 M Street SW, Washington, D.C. 20460. The telephone number is 202-260-3029, fax 202-260-3762, and e-mail address washington.evelyn@epamail.epa.gov.

Dated: June 4, 1997.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 97-15407 Filed 6-11-97; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5839-9]

National Drinking Water Advisory Council, Small Systems Working Group; Notice of Open Meeting

Under section 10(a)(2) of Public Law 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Small Systems Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on June 30 and July 1, 1997 from 8:30 am to 5:30 pm, at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, Washington, DC 20024. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to review and discuss final recommendations for the National

Drinking Water Advisory Council regarding implementation of the capacity development and affordability provisions of the 1996 Safe Drinking Water Act Amendments. The meeting is open to the public to observe. The working group members are meeting to develop final recommendations based upon issues considered at previous meetings. Statements will be taken from the public at this meeting, as time allows.

For more information, please contact, Peter E. Shanaghan, Designated Federal Officer, Small Systems Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street SW, Washington, D.C. 20460. The telephone number is 202-260-5813 and the email address is shanaghan.peter@epamail.epa.gov.

Dated: May 29, 1997.

Charlene Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 97-15408 Filed 6-11-97; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5839-4]

Science Advisory Board Notification of Public Advisory Committee Meeting, June and July 1997

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC) will conduct a public meeting from Monday June 30, 1997 through Thursday July 3, 1997. The meeting will be held in conference rooms 120-126 at the Environmental Protection Agency's Andrew W. Breidenback Environmental Research Facility, 26 West Martin Luther King Boulevard, Cincinnati, Ohio. The Committee will convene at 8:30 a.m. on Monday June 30 and adjourn no later than 3 p.m. Thursday July 3. The Committee may begin earlier and end later otherwise as needed for the work.

Purpose of the Meeting

On June 30-July 1 the EEC will review the Pollution Prevention Research Strategy and the Waste Research Strategy developed by research coordination teams in EPA's Office of Research and Development (ORD). On July 2, the EEC will review the Office of Pollution Prevention and Toxics (OPPT) TRI Relative Risk-Based Environmental Indicators Project and conduct a

consultation on a proposed approach for developing the TRI Relative Risk-Based Chronic Ecological Indicator. (An SAB consultation is a discussion of an issue in its early stages which generates neither consensus advice nor a written report, but which may be helpful to the Agency in identifying areas that should be addressed in its further development of the topic.) July 3 is intended to be a day of writing and report preparation.

During the meeting, the Committee also expects to review and possibly approve four reports prepared by the EEC or its subcommittees: (A) the research program and strategic directions of the National Risk Management Research Laboratory (NRMRL); (B) Superfund's draft proposed national guidance on field filtration of ground water samples taken for metals analysis from monitoring wells for Superfund site assessment; © the use of toxicity weighting in the Office of Enforcement and Compliance Analysis Sector Facility Indexing Project; and (D) the Office of Solid Waste's proposed plan for a Congressionally required study of surface impoundments.

Review of the Pollution Prevention Research Strategy

Copies of the review documents for the Pollution Prevention Research Strategy review can be obtained from Jonathan Herrmann of the NRMRL in EPA/ORD (phone 513/569-7839 or fax 513/569-7680). The current draft charge for the pollution prevention research strategy review is:

(A) Is the research strategy on target in describing the current state of pollution prevention, where it should be focused in the near term, and where it needs to be directed in the future (i.e., sustainable development)?

(B) Does the strategic review and program scoping provide a clear sense of priorities and role for ORD's pollution prevention research effort, and does it support the opportunities for pollution prevention research and development described in Chapter 3.0? Have any opportunities for ORD research in pollution prevention been missed and, if so, what are they?

© Are the four long-term goals consistent with the mission of the research strategy, and if thoroughly executed, will they effectively achieve the stated vision? If not, what improvements or changes are recommended?

(D) Are the prioritization criteria listed in Chapter 2.0 the of the research strategy thorough and will they permit rational and reasoned decision making on which projects should be pursued as

part of a more detailed research and development implementation plan? If not, what needs to be done?

(E) Are the research and development activities and project areas presented under each of the four long-term goals, generally understandable, and achievable? If not, what suggestions do you have for improvements?

(F) Are the project areas described under Long-Term Goal II (Technologies and Approaches) appropriate for the broad scope of the research strategy? If not, what changes do you recommend?

(G) Is the breadth and extent of Long-Term Goal IV (Social Science) sufficient to advance economic, social, and behavioral issues that enhance or limit the acceptance of pollution prevention?

(H) Overall, does the research strategy support the position stated in the ORD strategic plan that pollution prevention (along with new technology) is one of six high-priority research areas that should be pursued? Is it supportive of a risk-based approach or is a stronger argument needed?

Review of the Waste Research Strategy

Copies of the review documents for the Waste Research Strategy review can be obtained from Ben Blaney of the NRMRL in EPA/ORD (phone 513/569-7852; fax 513/569-7680). The current draft charge for the waste research strategy plan is:

(A) Has ORD clearly captured and presented the environmental problems associated with wastes?

(B) Has ORD identified the high priority topics (e.g. contaminated ground water) that need to be addressed? Has too much or too little emphasis been placed on one or another of the topic areas? Do any other major topic areas need to be added?

(C) Are the research activities proposed within each topic addressing the highest priority research needs? Has too much or too little emphasis been placed on one or another of the research activities? Do any other major research activities need to be added?

(D) Are the criteria and processes used to filter and select the highest priority research clear and reasonable?

(E) Are the future directions for research in the program clearly identified in the plan and are they reasonable and appropriate?

Review of the TRI Relative Risk-Based Environmental Indicators Project

Copies of the reference documents supporting this review can be obtained from the TSCA Nonconfidential Information Center, Room B-607, Northeast Mall, 401 M Street, SW., Washington, DC 20460, 12 noon to 4

p.m., Monday through Friday, except legal holidays. Requests for documents should be sent in writing to fax number (202) 260-0569 or E-mail to oppt.ncic@epamail.epa.gov. Refer to Administrative Record Number AR181. Documents available are: (1) Toxics Release Inventory Relative Risk-Based Environmental Indicators Methodology (203 pages); (2) Toxics Release Inventory Relative Risk-Based Environmental Indicators Project: Interim Toxicity Weighting Summary Document (230 pages); and (3) Toxics Release Inventory Relative Risk-Based Environmental Indicators Project: Summary of Comments Received on the 1992 Draft Methodology and Responses to Comments (63 pages).

Acting upon the recommendations of the 1990 EPA Science Advisory Board (SAB) report, *Reducing Risk*, (EPA-SAB-EC-90-021) OPPT has designed an indicator to assess the releases of TRI and other chemicals from a relative risk-based perspective. The TRI Environmental Indicators are numeric relative ranking values, based upon reported TRI multimedia emissions and weighting factors representing toxicity, exposure characteristics, and receptor populations using current EPA models and databases.

OPPT plans to use the TRI Environmental Indicators for relative risk-based trends analysis or for targeting and prioritization of chemicals and chemical facilities. This tool can effectively conserve Agency resources in project planning and analysis; it also has environmental justice applications. OPPT will maintain a high degree of flexibility in just how the TRI Environmental Indicators will be applied by the Agency, states, and the public. OPPT requests the SAB to assess the technical merits of the methodology in order to:

(A) Evaluate whether appropriate approaches have been selected to assess hazard, exposure and population parameters;

(B) Determine if these elements have been properly integrated within the methodology;

(C) Assess whether this screening-level tool will provide reasonable results for relative risk-based analyses;

(D) Consider whether the overall methodology accomplishes OPPT's objective to provide a measure of risk-related impacts pertaining to TRI chemical emissions; and

(E) Identify research needs that could influence future enhancements and improvements of the methodology.

Consultation on a Proposed Approach for Developing the TRI Relative Risk-Based Chronic Ecological Indicator

There are no additional documents for the consultation on OPPT's proposed approach for developing the TRI Relative Risk-Based Chronic Ecological Indicator. Regarding the consultation, OPPT is seeking input from the individual SAB members and consultants on:

(A) Whether to expand the ecological indicator beyond representing solely aquatic toxicity and, if so, how could this be accomplished? Which toxicological endpoints should be used for assigning hazard rankings and should similar scoring matrices be developed?

(B) OPPT proposes to eliminate the concept of receptor population in the ecological indicator. Is this appropriate and, if not, what would be alternative approaches?

For Further Information—After June 9, agendas and rosters can be obtained from the Subcommittee Secretary, Mrs. Dorothy Clark, (phone 202/260-8414; fax 202/260-7118; or Email CLARK.DOROTHY@EPAMAIL.EPA.GOV). Members of the public desiring additional information about the meeting, including the complete charges, or who wish to attend either the conference call or face-to-face meeting should contact the Designated Federal Official for the Environmental Engineering Committee, Mrs. Kathleen Conway, (phone and voicemail 202/260-2558; fax 202/260-7118; or Email CONWAY.KATHLEEN@EPAMAIL.EPA.GOV). Mail for Mrs. Clark and Mrs. Conway should be sent to the Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mrs. Conway in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Monday, June 23, 1997 in order to be included on the agenda. Public comments will be limited to five minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, for meetings, opportunities for oral comment will usually be limited to no more than five minutes per speaker and no more than thirty minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Information concerning the Science Advisory Board, its structure, function, and composition, may be found in The FY1996 Annual Report of the Staff Director which is available from the SAB Committee Evaluation and Support Staff (CESS) by contacting US EPA, Science Advisory Board (1400), Attention: CESS, 401 M Street, SW, Washington, DC 20460 or via fax (202/260-1889). Single copies of the SAB's Reducing Risk (EPA-SAB-EC-90-021) can also be obtained from CESS. Additional information concerning the SAB can be found on the SAB Home Page at: [HTTP://WWW.EPA/SCIENCE1/](http://WWW.EPA/SCIENCE1/)

Dated: June 3, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97-15368 Filed 6-11-97; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

June 5, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with

a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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 the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 14, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202-418-0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060-0481.

Title: Application for Renewal of Private Radio Station License.

Form Number: FCC Form 452-R.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; and state, local or tribal government.

Number of Respondents: 2,700.

Estimate Hour Per Response: 10 minutes (.166).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 448 hours.

Needs and Uses: Aviation Ground and Marine Coast Radio Station licensees are required to apply for renewal of their radio station authorization every five years. This form will be used for that purpose. The form is being revised to add spaces to collect the applicant's Internet or e-mail address and Taxpayer Identification Number (TIN) to comply with the Debt Collection Improvement Act of 1996. The Wireless Telecommunications Bureau has developed a generic renewal application for electronic filing, FCC Form 900.

Once implemented, applicants for renewal of Aviation Ground and Marine Coast licenses will have the option to use FCC Form 452-R or electronically file for renewal using the FCC Form 900. The FCC staff will use the data to determine eligibility for a renewed radio station authorization, and to issue a radio station license. Data is also used by Compliance personnel in conjunction with field engineers for enforcement and interference resolution purposes.

OMB Approval No.: 3060-0368.

Title: Section 97.523, Question Pools.

Type of Review: Reinstatement without change, of a previously approved collection for which approval has expired.

Respondents: Individuals or households.

Number of Respondents: 3.

Estimate Hour Per Response: 160.

Frequency of Response:

Recordkeeping requirement.

Total Annual Burden: 480 hours.

Needs and Uses: The recordkeeping requirement contained in Section 97.523 is necessary to permit question pools used in preparing amateur examinations to be maintained by Volunteer-Examiner Coordinators (VEC's). These question pools must be published and made available to the public before the questions are used in an examination. The information maintained by the VEC's is used to prepare amateur examinations. If this information was not maintained the amateur examination program would deteriorate and become outdated. These examinations would not adequately measure the qualifications of the applicants.

OMB Approval No.: 3060-0742.

Title: Telephone Number Portability (47 CFR Part 52, Subpart C, Sections 52.21-52.31).

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 237.

Estimate Hour Per Response: 4.75 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 1,125 hours.

Needs and Uses: In the *First Memorandum Opinion and Order on Reconsideration*, CC Docket 95-116, FCC 97-74, the Commission generally affirms and clarifies rules promulgated in the *First Report and Order* which implements the statutory requirements that local exchange carriers (LEC's) provide number portability as set forth in Section 251 of the

Telecommunications Act of 1996 (1996 Act). Performance guideline #4, prohibiting carrier's reliance on other carriers' databases, facilities or services is being deleted. QOR violates guideline #6. Limited extensions for deployment of Phase I and II are granted. Deployment is limited to request switches, etc. The information collected by the Commission under the field test report requirement will be used by the Commission to evaluate the implementation of long-term number portability measures and to safeguard the reliability of the public switched network. The specific request requirements will serve to trigger the obligation of LECs to provide long-term number portability. The requirement that states notify the Commission of their intention to opt out of the regional database system will assist the Commission in monitoring the nationwide implementation of number portability. The option for states to aggregate switch requests in the top 100 MSAs will also enable the states and Commission to monitor nationwide implementation. The requirement that any administrator selected prior to the *First Report and Order's* release must submit a new proposal to administer other databases ensures that such proposals conform with the requirements specified by the NANC, consistent with the principles enunciated by the Commission in the *First Report and Order*. Petitions to extend implementation deadlines will be used by the Commission to determine whether circumstances exist which warrant extension of any of the deadlines announced by the Commission in the *First Report and Order*. The list of switches for which portability has been requested as required by the *First Memorandum Opinion and Order on Reconsideration* in the top 100 MSAs will enable the Commission, states and carriers to monitor implementation of nationwide number portability.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

[FR Doc. 97-15444 Filed 6-11-97; 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 part 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.

Unik Fowarding, Inc., 146-42 Guy
Brewer Boulevard, Jamaica, NY
11434, Officer: Urban Mounsey,
Director

Jasbec International Co. Inc., 30015
Fernhill Drive, Farmington Hills, MI
48334, Officer: Steward Berger,
President

Rodi Cargo International, Inc., 2279
N.W. 102 Place, Miami, FL 33172,
Officers: Aida T. Robles, President,
James H. Cunningham, Secretary

J G International Freight Corporation,
105/107 Eucalyptus Drive, El
Segundo, CA 90245, Officer: Jaime
A.S. Galvez, President

Dated: June 9, 1997.

Joseph C. Polking,
Secretary.

[FR Doc. 97-15381 Filed 6-11-97; 8:45 am]

BILLING CODE 6730-01-M

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 July 7, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. *Central Bancompany, Inc.*, Jefferson City, Missouri; to acquire 100 percent of the voting shares of Farmers and Traders Bancshares, Inc., California, Missouri, and thereby indirectly acquire Farmers and Traders Bank, California, Missouri.

Board of Governors of the Federal Reserve System, June 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-15426 Filed 6-11-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. *Swiss Bank Corporation*, Basel, Switzerland; to acquire *Dillion, Read Holding, Inc.*, New York, New York, and thereby engage in providing merger and acquisition advice and other types of investment and financial advisory services, pursuant to § 225.28(b)(6) of the Board's Regulation Y; in providing discount and full-service brokerage services, and activities incidental thereto, pursuant to § 225.28(b)(7) of the Board's Regulation Y; in acting as agent in the private placement of all types of securities, and providing related advisory services, pursuant to § 225.28(b)(7) of the Board's Regulation Y; in acting as a futures commission merchant in the execution, clearance or execution and clearance of futures contracts and options on futures contracts, pursuant to § 225.28(b)(7) of the Board's Regulation Y; in making loans or other extensions of credit for the account of others, pursuant to § 225.28(b)(1) of the Board's Regulation Y; in dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in, pursuant to § 225.28(b)(8) of the Board's Regulation Y; and in underwriting and dealing in, to a limited extent, in all types of debt and equity securities, as authorized in *J.P. Morgan & Co., Incorporated*, 75 Fed. Res. Bull. 192 (1989), and the prudential framework of limitations established by the Board therein and in other decisions.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. *CoreStates Financial Corp.*, Philadelphia, Pennsylvania; to engage *de novo* through its subsidiary, *CoreStates Securities Corp.*, Philadelphia, Pennsylvania, in underwriting and dealing in bank ineligible securities *See, Citicorp J.P. Morgan & Co., and Bankers Trust New York Corp.*, 73 Fed. Res. Bull. 473 (1987); and in extending credit and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y; in activities related to extending credit, pursuant to § 225.28(b)(2) of the Board's Regulation Y; in financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y; in securities brokerage activities, pursuant to § 225.28(b)(7) of the Board's Regulation Y; in riskless principal transactions, pursuant to § 225.28(b)(7) of the Board's Regulation Y; in private placement services, pursuant to § 225.28(b)(7) of the Board's Regulation Y; in other transactional

services, pursuant to § 225.28(b)(7) of the Board's Regulation Y; in investment transactions as principal, pursuant to § 225.28(b)(8) of the Board's Regulation Y; and in management consulting and counseling activities, pursuant to § 225.28(b)(9) of the Board's Regulation Y. Applicants seek to conduct these activities in the United States and the United Kingdom.

Board of Governors of the Federal Reserve System, June 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97-15427 Filed 6-11-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

[Docket No. R-0974]

Enhancement of Federal Reserve Net Settlement Payment Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed service enhancement; Request for comment.

SUMMARY: The Board is requesting comment on a proposal for the Federal Reserve Banks to offer an enhanced net settlement service to depository institutions. The proposed service would combine and improve selected features from the Reserve Banks' existing net settlement services.

Under the proposal, the Federal Reserve Banks would offer an enhanced and fully automated net settlement service that would provide participants in clearing arrangements using the service with finality of settlement intraday on the settlement date. The service would facilitate improvements in the operational efficiency of clearing arrangements by providing the settling participants in such arrangements with an on-line mechanism to submit an electronic file of settlement information to the Federal Reserve. Besides providing operational improvements, the enhanced service is intended to facilitate a reduction in the duration of settlement risk for private-sector clearing arrangements.

DATES: Comments must be received on or before August 11, 1997.

ADDRESSES: Comments should refer to Docket No. R-0974 and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20051. Comments may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. on weekdays, and to the security control

room at all other times. The mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP-500, between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in Section 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Marquardt, Assistant Director (202/452-2360), Paul Bettge, Manager (202/452-3174), Myriam Payne, Senior Analyst (202/452-3219), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System; for the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452-3544).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Reserve Banks provide a variety of services to depository institutions. Included among these services are the distribution of currency and coin, the processing and collection of checks, wire transfers of funds, wire transfers of securities against payment, and automated clearing house (ACH) payments. In addition, the Federal Reserve Banks support a variety of clearinghouses and other clearing arrangements by providing net settlement services to depository institutions that participate in the arrangements.

Clearinghouses and similar arrangements for checks and for electronic payments, such as ACH, Automated Teller Machine (ATM), and Point-of-Sale (POS) networks, have typically been organized as groups of three or more participating depository institutions that exchange payment instructions, account for the value exchanged, and settle balances on a multilateral net basis. These settlements are a critical function of the clearing arrangements. Typically, a net amount is computed that represents the difference between what is owed by each participant to all others from the exchange of payment instructions during a netting cycle and what all others owe the participant. For some participants, the difference is a net debit. For others, the difference is a net credit. These multilateral differences are then settled by participants. The Reserve Banks' net settlement services facilitate settlements by providing mechanisms for transferring funds between the Federal Reserve accounts of

the settling participants in a clearing arrangement.¹

Currently, two types of net settlement services are offered by the Reserve Banks. In the first, which is the traditional model of the Reserve Banks' net settlement service, a settlement sheet (in either paper or electronic form) containing the net position (net debit or credit) of each settling participant in a clearing arrangement is typically provided by the arrangement, or a settlement agent, to a Reserve Bank on the settlement day (day T). Net debits and credits are then posted (often manually) by the Reserve Bank to participants' Federal Reserve accounts on day T. Posted credits represent available funds for the purposes of intraday cash management and overnight reserve management.²

Many Reserve Banks, however, reserve the right to reverse settlement debits and credits, if a settlement debit posted to a Federal Reserve account is not covered by the morning, or in some cases, early afternoon, of day T+1. This methodology creates the possibility of a settlement failure for a clearing arrangement on day T+1 with respect to the settlement on day T. Further, because these dating conventions refer to banking days, day T+1 may occur on the third or even fourth calendar day following settlement, after a holiday weekend. This policy of providing next-day finality increases the duration of settlement risk for private sector clearing arrangements.

In 1990, the Board approved a second type of net settlement service for national, small-dollar clearing and settlement systems. This service provides same-day finality (day T) to participants and was modeled after the CHIPS (Clearing House Interbank Payments System) settlement arrangement, which was established in 1981. The service is currently available to private ACH as well as check clearinghouses.

To accomplish settlement in these arrangements, the clearinghouse staff informs participants of their respective net settlement debit or credit position on day T. Settling participants with a net debit position send Fedwire funds transfers to a special settlement account at a designated Reserve Bank by a

specified deadline. Once all debits have been covered, clearinghouse staff sends Fedwire funds transfers from the special settlement account to the Federal Reserve accounts of settling participants with a net credit position. This process is completed during the banking day on day T, under normal circumstances.

II. Advantages and Disadvantages of Current Services

Traditional Service

The main advantage of the traditional next-day net settlement service is that it is familiar to clearinghouses and inexpensive for clearinghouses and participants to use. The main disadvantage of this service is that it increases the duration of settlement risk to clearinghouse participants and their customers. Another disadvantage is that some versions of this service use unsophisticated security methods to ensure authenticity, as well as to safeguard the integrity, of the settlement information.

The traditional next-day settlement service evolved from the existing Federal Reserve accounting application to maximize operational simplicity and minimize operating costs for users. As a result, a disadvantage of the traditional service to Reserve Banks is that automated risk-management tools for checking balances on day T were not part of the design. Instead, to help control credit risk, the Reserve Banks rely on the right to reverse net settlement entries on day T+1, if a clearinghouse participant cannot cover a settlement debit to its account.

Further, as interstate branch banking increases and the Federal Reserve policy of granting one Federal Reserve account per chartered bank, including banks with interstate branches, is phased in next year, more clearinghouses will need to conduct net settlements on an interdistrict basis. Without effective automated mechanisms to monitor and control credit risk at the time it is incurred on the settlement day, the Reserve Banks could be exposed to heightened risk.

Fedwire-Based Service

The main advantage to the private sector of the current Fedwire-based national net settlement service is that it provides intraday finality to clearinghouse participants and their customers on the settlement day. The main disadvantage is that it is logistically complex for certain clearing arrangements. For example, a settlement for a clearinghouse with a large number of participants would involve hundreds of individual Fedwire funds transfers

having to be sent and received within narrow time frames, and with limited coordination, in order to complete scheduled settlements. In contrast, for the net settlement service with next-day finality, Reserve Bank staff posts entries to settling participants' Federal Reserve accounts in order to simplify the settlement process and help ensure its orderly completion.

The main advantage to the Federal Reserve of the current Fedwire-based service is that Reserve Banks have significantly greater control over credit risk because of the use of Fedwire and the associated (intraday) Account Balance Monitoring System. Fedwire funds transfers can be monitored in real time against available account balances.³ Transfers that would cause overdrafts beyond established parameters can be rejected. These capabilities permit Reserve Bank risk managers to perform automated intraday risk management on day T, when settlement information becomes available and before settlement entries are posted to Federal Reserve accounts.

III. Proposed Net Settlement Service Enhancement

The Board proposes to enhance the net settlement services offered by the Reserve Banks to depository institutions. A net settlement service would be offered to depository institutions that would require the settling participants in a clearing arrangement, or their agent, to submit electronically to a designated Reserve Bank a file containing a net debit or credit for each participant. A Fedline terminal or other on-line mechanism would be used for submitting settlement files. Each settlement file would be identified by a code unique to that clearing arrangement and that particular settlement file.⁴ Files could be submitted at any time during an 8:30 a.m. to 4:00 p.m. Eastern Time (ET) settlement window, although each clearing arrangement would be expected to indicate a regular deadline for submitting its settlement files.

The service would include controls to ensure that a file has been submitted by a party authorized by the clearing arrangement, that the file contains net settlement entries for authorized settling participants only, that the sum of the net settlement debits equals the sum of the net settlement credits, and other

¹ A settling participant in a clearinghouse that uses a Reserve Bank net settlement service is a depository institution whose account at a Reserve Bank is debited or credited in order to transfer the funds needed to complete settlements. In contrast, non-settling participants typically conduct settlements through a settling participant.

² The posting time for net settlement entries is chosen by each clearing arrangement within the requirements of the Board's "Daylight Overdraft Transaction Posting Rules" (FRS 9-1000).

³ As used throughout this Federal Register notice, the term "available account balance" refers to a depository institution's Federal Reserve account balance plus any available intraday credit.

⁴ The service would support clearing arrangements that perform one or more settlements per day.

edits. Once all initial edits have been completed, the service would check the Federal Reserve account balance of each settling participant with a net debit position. If it is determined that sufficient balances are available to fund a participant's net debit, the Federal Reserve account of the participant would be debited and funds would be transferred to a settlement account held on the books of the designated Reserve Bank on behalf of the settling participants for the clearing arrangement. The transfer of funds from the Federal Reserve account of a settling participant in a net debit position would be treated as a final and irrevocable transaction from the perspective of that settling participant. Once the Federal Reserve accounts of all settling participants with net debit positions have been debited and the settlement account has been fully funded, the service would transfer funds out of the settlement account and credit the Federal Reserve account of each settling participant having a net credit position.⁵ These transfers would also be final and irrevocable.

The service might be designed to offer clearing arrangements different options to address potential situations in which a settling participant in a net debit position did not have sufficient balances in its Federal Reserve account to fund its settlement obligation. Under one scenario, the Federal Reserve would notify the designated agent for the clearing arrangement that settlement could not be completed and the service would automatically return funds from the settlement account to the settling participants whose Federal Reserve accounts had been debited. If desired, the agent could submit a revised settlement file to the Reserve Bank for processing.

Under a second scenario, the service would offer features that provide for one or more attempts to complete settlement without requiring the resubmission of settlement data (retry feature). The retry feature would allow the service (automatic retry) or the agent (optional retry) to attempt to debit the account of a settling participant with a net debit position multiple times until the debit is either covered or a predefined time interval has expired.

Under a third scenario, the clearing arrangement would request that the

service retain the funds in the settlement account for a period of time awaiting specific instructions from the clearinghouse agent. Depending on the final design of the proposed service, the agent might be able to direct the transfer of additional funds to the settlement account in order to complete the settlement, for example, by drawing on a preestablished line of credit. The settlement agent might also have the ability to request that funds in the settlement account be transferred to the account of a predetermined depository institution to hold overnight for the purpose of attempting to complete settlement the next business day.

In any event, after a predefined period of time, if settlement could not be completed, action would be taken to transfer funds out of a settlement account either by returning them to participants or by transferring funds to a designated depository institution. As noted above, the settlement agent would likely be permitted to submit a revised settlement file in the event of a settlement failure.

Extensions of the settlement window might be granted to accommodate operational disruptions or temporary funding problems. However, these occurrences are expected to be rare and not to extend beyond the operating hours of the Fedwire funds transfer service.

The enhanced service would improve the quality of the current net settlement services offered by the Reserve Banks in two important ways. First, it would improve operational efficiency and reduce the operational risks of conducting settlements with same-day finality by offering a settlement service with same-day finality that does not require the sending and receipt of individual Fedwire funds transfers. Instead, the proposed service would permit a clearinghouse or a settlement agent to submit settlement data to a Reserve Bank, as is now permitted in the traditional, next-day settlement service. This feature would help ensure that settlement debits and credits are addressed according to agreed procedures and in a timely and coordinated manner.

Second, the proposed service would reduce the duration of settlement risk to participants in clearing arrangements by providing finality for credits virtually immediately after it has been determined that sufficient balances to settle are available in the Federal Reserve accounts of the settling participants on day T. If widely employed, the enhanced service could significantly reduce the duration of settlement risk for check and ACH

clearinghouses and other clearing arrangements.

To manage and limit risk to the Reserve Banks, the enhanced service would incorporate effective credit risk monitoring procedures and controls, which involve the automated checking of Federal Reserve account balances, before final intraday settlement debits and credits are posted to settling participants' Federal Reserve accounts. As currently envisioned, the credit risk monitoring controls would be as robust as those used currently in the Fedwire-based net settlement model.

The Board expects that the proposed service would meet a number of key requirements. In particular, the proposed service should:

1. Provide a standardized nationwide net settlement service to private-sector clearing arrangements that also supports interdistrict net settlements;

2. Reduce settlement risks to participants in clearing arrangements that use the service, and to their customers, by providing final settlement on the same day that settlement information is submitted (day T);

3. Control and minimize credit risk to the Reserve Banks and the potential for settlement disruptions by using appropriate account balance monitoring tools to check balances in depository institution Federal Reserve accounts before granting finality to settlement entries;

4. Improve operational efficiency for participants in clearing arrangements by offering a service that does not require the sending of individual Fedwire funds transfers by participants to achieve settlement;

5. Provide a mechanism that facilitates the timely completion of daily settlements and that accommodates well-defined options for clearing arrangements to achieve orderly settlements in the event of settlement problems;

6. Enhance data security, including access controls, by including appropriate tools and procedures in a uniform, automated system;

7. Improve analysis of settlement activity and trends over time by incorporating statistical reporting capabilities; and

8. Provide for a clear legal basis and uniform understanding of the terms and conditions under which the service is offered by developing a standard Federal Reserve operating circular.

Time Frame for Implementation

The Federal Reserve expects to make the necessary system changes to be able to offer the proposed net settlement service by the end of 1998.

⁵ For purposes of measuring the daylight overdraft positions of settling participants, the net debit and net credit entries would be posted to participants' Federal Reserve accounts on a flow basis, as they are processed. In the net settlement service with next-day finality currently offered by the Reserve Banks, all net debit and net credit entries are posted at one predefined time chosen by the clearinghouse.

IV. Request for Comment

The Board requests comment on all aspects of the proposed service enhancement. The Board is also requesting specific comments on the following questions:

1. If the proposed service with same-day finality is offered, should the Federal Reserve continue to offer its existing net settlement service with next-day finality? What features, if any, of the existing service with next-day finality would make it preferable to some clearing arrangements over the proposed service with same-day finality?

2. If the proposed service is offered, should the Federal Reserve continue to offer the Fedwire-based net settlement service with same-day finality that is currently offered to national, small-dollar clearinghouses for check and ACH transactions?

3. If the proposed service is offered, files of settlement data would be submitted to a Reserve Bank for processing in a well-defined period during which the service would be available. If files were generally accepted between 8:30 a.m. and 4:00 p.m. ET, would this service period be adequate to support current and future needs of potential users of the service? Should there be a capability for the receipt and storage (also known as "warehousing") of settlement files prior to the opening of the settlement window? If files can be warehoused prior to the opening of the settlement window, what is the maximum period during which the service should permit files to be warehoused (for example, for a specified number of hours less than one business day, or possibly for one or more business days prior to the beginning of the settlement window)?

4. In order to provide high levels of data security, as well as operational efficiency, would it be reasonable to require clearing arrangements or their settlement agents to use a Fedline device, or other on-line electronic mechanism, to submit settlement data?

5. In the current Fedwire-based net settlement service with same-day finality, a settlement account is established at a Reserve Bank and a settlement agent for a clearing arrangement has the capability of monitoring whether individual participants have transferred funds to the settlement account to cover their settlement debits. In the proposed service, should a similar monitoring capability be provided to a settlement agent?

6. As described in Section III above, the settlement file submitted to the net

settlement service would contain only net settlement debits or credits for settling participants in a clearing arrangement. Should value-added services be offered that would provide information to settling participants regarding the individual settlement debit or credit positions of non-settling participants for which they settle? Should value-added services be offered that would provide a non-settling participant with information regarding its individual net debit or credit position?

7. In the event that a settlement account cannot be fully funded in the first automated attempt to debit the Federal Reserve accounts of settling participants, should the proposed service offer features that provide for one or more additional attempts to complete settlement without requiring the resubmission of settlement data (retry feature) or should the service automatically return all funds to the settling participants that have transferred funds to the settlement account and notify the agent that a settlement cannot be completed? Some of the retry features being considered are:

a. An automated retry feature that would attempt to debit the account of a settling participant with a net debit position multiple times during a predetermined time interval until the debit is either covered or a predefined time interval has expired;

b. A retry feature controlled by a settlement agent for the clearing arrangement that would allow the agent to instruct electronically the service to retry the debiting of accounts of settling participants that have not covered their net debits (the number of retries and the time interval between retries would be controlled by the agent within a "retry window" provided as part of the service).

8. If the service is designed with retry capabilities as described in the question above, how long should the retry window be (for example, 15 minutes, one hour)? In addition to the retry window, should there be a maximum number of retry attempts designated after which, if the settlement is not completed, funds in the settlement account would be returned to the appropriate settling participants?

9. In the proposed service, should the debit and credit entries to the Federal Reserve accounts of the settling participants be considered funds transfers under Regulation J and other laws applicable to funds transfers?

10. In the case of a default by a settling participant, should the service provide the capability for another

settling participant or depository institution to transfer additional funds (for example, from a preestablished line of credit or other liquidity facility) into the settlement account in order to complete the settlement?

11. To what types of clearing arrangements should the proposed service be offered (for example, check clearinghouses, ACH clearinghouses, ATM networks, POS networks, credit card arrangements, or clearing arrangements for emerging types of electronic payment transactions)? Should the service potentially be available for conducting money settlements between depository institutions in connection with arrangements for clearing financial contracts in the wholesale financial markets or for conducting interbank settlements of obligations arising from nonfinancial markets?

Competitive Impact Analysis

The Board has established procedures for assessing the competitive impact of rule or policy changes that have a substantial impact on payments system participants.⁶ Under these procedures, the Board will assess whether a change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints, or due to a dominant market position of the Federal Reserve deriving from such differences. If no reasonable modifications would mitigate adverse competitive effects, the Board will determine whether the anticipated benefits are significant enough to proceed with the change despite the adverse effects.

The Board's proposed enhancements to the net settlement service are intended to improve the clearance and settlement process for private sector clearing arrangements by increasing the efficiency of the services currently offered by the Federal Reserve and by reducing the duration of settlement risk to private-sector participants in such arrangements. The proposed net settlement service could indirectly enhance the ability of private-sector depository institutions to compete with the Reserve Banks in the provision of payment services such as check and ACH clearing.

The risk management features that would be implemented for the enhanced service would help protect the Federal

⁶These procedures are described in the Board's policy statement "The Federal Reserve in the Payments System," as revised in March 1990 (55 FR 11648, March 29, 1990).

Reserve Banks from the risk of loss. Certain features would help provide for orderly settlements in case of settlement difficulties. Overall, the Board believes that the proposed enhancements to the Federal Reserve's net settlement services would increase efficiency and reduce risk for private-sector clearing arrangements and their participants, while providing for the more efficient management of risk by the Reserve Banks.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CAR 1320, Appendix A.1), the Board reviewed the request for comments under the authority delegated to the Board by the Office of Management and Budget. No collection of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is contained in this notice.

By order of the Board of Governors of the Federal Reserve System, June 9, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-15435 Filed 6-11-97; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection

Activities: Submission to OMB Under Delegated Authority

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. Report title: Senior Loan Officer Opinion Survey on Bank Lending Practices

Agency form number: FR 2018

OMB Control number: 7100-0058

Frequency: Up to six times per year

Reporters: Large U.S. commercial banks and large U.S. branches and agencies of foreign banks

Annual reporting hours: 1,008

Estimated average hours per response: 2.0

Number of respondents: 84

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248 (a), 324, 335, 3101, 3102, and 3105) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2018 is conducted generally by means of telephone interview by a Federal Reserve Bank officer having in-depth knowledge of the area of bank lending practices, with a senior loan officer at each respondent bank. The reporting panel consists of sixty large domestically chartered commercial banks, distributed fairly evenly across Federal Reserve Districts, and twenty-four large U.S. branches and agencies of foreign banks. The survey seeks primarily qualitative information pertaining not only to current price and flow developments but also to evolving techniques and practices in banking. A significant fraction of the questions in each survey consists of unique questions on topics of timely interest. There is the option to survey other types of respondents (such as other depository institutions, bank holding companies, or corporations) should the need arise. The FR 2018 is a very important tool for monitoring and understanding the evolution of lending practices at banks and developments in credit markets generally.

2. Report title: Senior Financial Officer Survey

Agency form number: FR 2023

OMB control number: 7100-0223

Frequency: Up to four times per year

Reporters: Commercial banks, other depository institutions, corporations or large money-stock holders

Annual reporting hours: 240

Estimated average hours per response: 1.0

Number of respondents: 60

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 248(a), and 263);

confidentiality will be determined on a case-by-case basis.

Abstract: The FR 2023 requests qualitative and limited quantitative information about liability management and the provision of financial services from a selection of sixty large commercial banks or, if appropriate, from other depository institutions or corporations. Responses are obtained from a senior officer at each participating institution through a telephone interview conducted by Federal Reserve Bank or Board staff. The survey is conducted when major informational needs arise that cannot be met from existing data sources. The survey does not have a fixed set of questions; each survey consists of a limited number of questions directed at topics of timely interest.

Board of Governors of the Federal Reserve System, June 6, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-15326 Filed 6-11-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Commission on Consumer Protection and Quality in the Health Care Industry; Notice of Public Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given of the meeting of the Advisory Commission on Consumer Protection and Quality in the Health Care Industry. This two-day meeting will be open to the public, limited only by the space available.

Place of Meeting: The Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001. Exact locations of the sessions will be announced in the hotel lobby.

Times and Dates: The public meeting will span two days. On Wednesday, June 25, 1997, the subcommittee break-out sessions will take place from 10:00 a.m. until 4:30 p.m. On Thursday, June 26, 1997, the general plenary session will begin at 8:30 a.m. and it will continue until 4:00 p.m.

Purpose/Agenda: To hear testimony and begin formal proceedings of the Commission's four (4) subcommittees. Agenda items are subject to change as priorities dictate.

Contact Person: For more information, including substantive program information and summaries of the meeting, please contact: Edward (Chip) Malin, Hubert Humphrey Building, Room 118F, 200 Independence Avenue, SW., Washington, DC 20201; (202/205-3333).

Dated: June 5, 1997.

Richard Sorian,

Deputy Director, Advisory Commission on Consumer Protection and Quality in the Health Care Industry.

[FR Doc. 97-15391 Filed 6-11-97; 8:45 am]

BILLING CODE 4110-60-M

DEPARTMENT OF THE INTERIOR

[MT-960-1150-00]

District Advisory Council Meeting

AGENCY: Bureau of Land Management, Dakotas District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Dakotas District Resource Advisory Council will be held July 31-August 1, 1997, at the C & L Cafe, 21 North Main Street, Bowman, North Dakota. The sessions will convene at 8:00 a.m. on both days. Agenda items include updates on the North Dakota Mineral Exchange, South Dakota Land Exchange, and field examination of rangeland and mineral activities.

The meeting is open to the public and a public comment period is set for 8:00 a.m. on August 1st. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

The 12-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the Dakotas.

FOR FURTHER INFORMATION CONTACT: Jon Pinner, Administrative Officer, Dakotas District Office, 2933 3rd Avenue West, Dickinson, ND 58601. Telephone (701) 225-9148.

Dated: June 2, 1997.

Douglas J. Burger,

District Manager.

[FR Doc. 97-15401 Filed 6-11-97; 8:45 am]

BILLING CODE 4310-DN-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Meeting of the Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington, established by the Secretary of the Interior, will hold a public meeting. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary and the State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Wednesday, June 25, 1997, 9 a.m.-4 p.m.

ADDRESSES: Bureau of Reclamation Office, 1917 Marsh Road, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: Dave Kaumheimer, Acting Program Manager, Yakima River Water Enhancement Project, P.O. Box 1749, Yakima, Washington, 98907; (509) 575-5848, extension 232.

SUPPLEMENTARY INFORMATION: The Basin Conservation Program is structured to provide economic incentives with cooperative Federal, State, and local funding to stimulate the identification and implementation of structural and nonstructural cost-effective water conservation measures in the Yakima River basin. Improvements in the efficiency of water delivery and use will result in improved stream flows for fish and wildlife and improve the reliability of water supplies for irrigation.

Dated: June 4, 1997.

Hollis Pope,

Acting Area Manager, Upper Columbia Area.

[FR Doc. 97-15418 Filed 6-11-97; 8:45 am]

BILLING CODE 4310-94-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Chandra M. Katta, M.D.; Revocation of Registration

On January 29, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to show Cause to Chandra M. Katta, M.D., of Morgan City, Louisiana, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificates of Registration, AK3284647 and BK2580769, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registrations as a practitioner under 21 U.S.C. 823(f), for reason that he is not

currently authorized to handle controlled substances in the State of Louisiana.

In a letter dated March 4, 1997, Dr. Katta requested an extension of time of 30 days to respond to the Order to Show Cause in order to enable him to obtain legal counsel. By order dated March 10, 1997, Administrative Law Judge Mary Ellen Bittner granted Dr. Katta an extension of time to respond until April 10, 1997. Thereafter, on April 21, 1997, Judge Bittner issued an Order Terminating Proceedings in light of Dr. Katta's failure to file a request for a hearing on the issues raised by the Order to Show Cause.

The Acting Deputy Administrator concludes that since Dr. Katta failed to file a request for a hearing within the allotted time period, he is deemed to have waived his opportunity for a hearing. After considering the relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Acting Deputy Administrator finds that by a Consent Order dated August 24, 1995, the Louisiana State Board of Medical Examiners (Board) ordered the suspension of Dr. Katta's license to practice medicine for five years, beginning on September 1, 1995, but then stayed the suspension six months after the effective date, and placed his license on probation beginning on March 1, 1996 until September 1, 2000, subject to various conditions. One of the conditions imposed by the Board was that "Dr. Katta may not, at any time following the execution of this agreement by the Board and for the remainder of his medical career, prescribe, dispense, or administer any legally controlled dangerous substance. * * * The Board further ordered however, that "[t]his prohibition shall not extend to medications ordered or prescriptions written by Dr. Katta for institutional or hospital in-patients, under the permit or license of said institution or hospital."

The Acting Deputy Administrator concludes that in light of the Board's action, Dr. Katta is not currently authorized by the State of Louisiana to independently handle controlled substances. While the Board does not prohibit Dr. Katta from handling controlled substances in a hospital setting, he may only do so by using the hospital's permit or license, and not by using a permit or license issued to him.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant

is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here, in light of the Board's Consent Order, it is clear that Dr. Katta is not authorized to handle controlled substances on his own in the State of Louisiana, and is only authorized to handle controlled substances in a hospital setting using the state and DEA registrations issued to the hospital. Therefore, Dr. Katta is not entitled to a DEA registration in that state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificates of Registration, AK3284647 and BK2580769, previously issued to Chandra M. Katta, M.D., be, and they hereby are, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registrations, be, and they hereby are, denied. This order is effective July 14, 1997.

Dated: June 5, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97-15317 Filed 6-11-97; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated February 26, 1997, and published in the **Federal Register** on March 19, 1997, (62 FR 13170), Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of hydromorphone (9150), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Knoll Pharmaceuticals to manufacture hydromorphone is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Acting Deputy Assistant

Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above in granted.

Dated: May 23, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97-15318 Filed 6-11-97; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT:

Nancy E. Weiss, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* June 19, 1997.

Time: 9:00 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications for Public Programs, submitted to the Office of Enterprise for projects at the May 28, 1997 deadline.

Nancy E. Weiss,

Advisory Committee, Management Officer.

[FR Doc. 97-15434 Filed 6-11-97; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket 70-7001]

Notice of Amendment to Certificate of Compliance GDP-1 for the U.S. Enrichment Corporation, Paducah Gaseous Diffusion Plant, Paducah, KY

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental

assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the Decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the Decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see: (1) The application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: March 31, 1997.

Brief description of amendment: The amendment, in accordance with a commitment made in the USEC certificate application, changes the administrative Technical Safety Requirement (TSR) that limits the

working hours of facility staff who perform safety functions.

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

Limiting working hours of facility staff who perform safety functions may enhance safety by reducing occupational stresses and burdens on facility staff who perform safety functions. Therefore, this TSR amendment will not result in an increase in the amounts of effluents that may be released offsite or result in any impact to the environment.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed reductions in overtime limits, will not increase individual or cumulative occupational radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed changes will not result in any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed change involves revision of the hours of work TSR to establish more restrictive limitations than the current TSR. As such, these changes do not represent an increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed changes will not result in the possibility of a new or different kind of accident. In fact, the reductions in overtime limits described in the assessment of criterion 1, may enhance safety by reducing occupational stresses and burdens on facility staff who perform safety functions.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed changes, more restrictive work hour controls, will not reduce the margin of safety as defined in the Technical Safety Requirement. The change is needed to minimize the potential for adverse effects which may be associated with excessive work hours.

7. The proposed amendment will not result in an overall decrease in the

effectiveness of the plant's safety, safeguards or security programs.

Reduction in limits to overtime would not result in a decrease in the overall effectiveness of the plant's safety program. The staff has also not identified any safeguards or security related implications from the proposed amendment. Therefore, reducing the limits on overtime will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs.

Effective date: The amendment to Certificate of Compliance GDP-1 becomes effective 30 days after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificate of Compliance No. GDP-1: Amendment will revise the Technical Safety Requirement on overtime.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 5th day of June 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97-15387 Filed 6-11-97; 8:45 am]

BILLING CODE 7590-01-P

POSTAL RATE COMMISSION

[Docket No. MC97-3]

Bound Printed Matter Weight Limitations; Notice and Order Initiating Proceedings to Consider Changes in Domestic Mail Classification Schedule Provisions Governing Bound Printed Matter and Directing Parties to Initiate Informal Procedures

Issued June 5, 1997.

Before Commissioners:

Edward J. Gleiman, Chairman;

H. Edward Quick, Jr., Vice Chairman;

George W. Haley; W.H. "Trey" LeBlanc III

In Order No. 1175, the Commission gave notice of the Postal Service's withdrawal of its Request for various reforms in the classification of parcels, and granted the Service's motion to close the docket which had been established to consider that Request. Docket No. MC97-2, notice of withdrawal of Request by United States Postal Service and Order Granting Motion to Close Docket, May 9, 1997. The Order also noted the filing of a Joint Motion¹ asking the Commission to

¹ Joint Motion of Advertising Mail Marketing Association, Association of American Publishers

exercise its authority under 39 U.S.C. § 3623(b) by initiating a proceeding, *sua sponte*, to consider whether the maximum weight limitation applicable to the bound printed matter subclass should be increased from 10 pounds to 15 pounds, as the Postal Service proposed in its Request. *Id.* at 2, n. 2. In view of the nature of the relief requested in the Joint Motion, the Commission decided to consider it independently, rather than ruling upon it as a pending motion in Docket No. MC97-2. *Ibid.*

In a response filed on May 8, 1997,² the United States Postal Service opposed the joint movants' request. No other party has submitted a response to the Joint Motion.

For the reasons presented herein, the Commission has decided to initiate proceedings for the sole purpose of considering a possible modification in the Domestic Mail Classification Schedule provision limiting eligibility for mailing within the Bound Printed Matter subclass to "Standard Mail weighing * * * not more than 10 pounds[.]" DMCS § 322.31, 39 C.F.R. § 3001.322.31. While this proceeding is subject to the requirements of 39 U.S.C. § 3624(a), rather than establishing a formal procedural schedule in the docket at this time, the Commission shall direct interested parties to participate in informal conferences with a view to the potential settlement of the matter.

I. Bases of Joint Movants' Request for Proceedings

The movants note that the Postal Service's Request in Docket No. MC97-2 contained a proposal to increase the maximum allowable weight of a piece that otherwise meets the conditions of eligibility for mailing at the Bound Printed Matter (BPM) rates from 10 to 15 pounds. They further observe that this revision was the only change proposed by the Service in the conditions of eligibility for BPM rates, and that no change was proposed in the structure of those rates. Thus, under the Service's proposal, otherwise eligible pieces between 10 and 15 pounds would pay pre-existing BPM per-piece and per-pound rates according to their actual weight. Joint Motion at 1-2.

and the Direct Marketing Association for Bound Printed Matter (Joint Motion), April 23, 1997.

²The Postal Service's untimely Response was accompanied by a Motion for Late Acceptance. On May 21, the joint movants filed a Reply to the Postal Service's Response, together with a request for acceptance of the reply pleading. In light of the further elucidation of issues provided by these pleadings, and of the parties' mutual opportunities to respond, both motions shall be granted.

Notwithstanding the Postal Service's withdrawal of its Request in MC97-2, the joint movants argue that the Commission is authorized to consider the limited BPM proposal on its own initiative, and should do so at this time. They characterize the proposal as a "pure" classification matter, as "it would simply extend existing rates to mail matter made eligible for BPM as a result in the increase in the maximum rate limitation." *Id.* at 3. Because the proposal does not raise the "thorny question" of the Commission's authority to recommend a new rate in the absence of a Postal Service rate request, movants claim that the Commission's statutory power to establish a classification proceeding to consider the change is beyond dispute. *Id.* at 2-3.

Movants argue that the Commission should exercise its statutory authority and discretion to institute a classification proceeding at this time for three reasons. First, they claim that the proposed change warrants serious consideration because there is at least a *prima facie* question whether the current 10 pound limitation serves basic postal policy purposes any longer, and a change in the maximum to 15 pounds would be lawful on its face and responsive to the applicable policy considerations. To support this point, movants represent that some mailers, including book publishers, currently split their shipments in order to meet the 10-pound weight limitation. This practice purportedly increases costs to the mailer, and ultimately to its customers, while decreasing Postal Service operational efficiencies. *Id.* at 4.

Second, movants claim that failure to initiate the requested proceeding will harm those mailers who stand to benefit from a relaxation of the current maximum weight limitation, as well as their customers. Movants observe that the Postal Service's notice withdrawing its Request in MC97-2 did not state when an omnibus rate case might be filed, but they anticipate that there will be an interval of at least two years between the filing of the original Request and possible implementation of a higher BPM weight limit recommended in the next general rate case. Absent some countervailing consideration, movants argue that there is no reason to deprive mailers of the potential benefits of the classification change when there is an opportunity to implement it more quickly. *Id.* at 4-5.

Finally, the joint movants argue that instituting a proceeding at this time would not overburden the resources of either the Postal Service or the Commission, and would be consistent with administrative efficiency. In the

context of the instant proposal, they argue, the Postal Service's resources are not likely to be taxed because it has already done the surveys and prepared the testimony necessary for its support in Docket No. MC97-2. *Id.* at 5-6. They also claim that consideration of the proposed increase in the maximum weight limit for BPM would not be likely to require protracted proceedings because the proposed change would not produce significant impact upon Postal Service costs or revenues, or upon other users of Bound Printed Matter or other mail categories. Joint movants state a belief that a negotiated settlement in the proceeding is "distinctly possible." *Id.* at 6. Even if the matter cannot be resolved by a settlement among the parties, they anticipate that conduct of the proceeding should not require more than 90 days. *Id.* at 6. Expedient resolution of this issue would represent an efficient use of Commission and Postal Service resources, movants argue, because it would narrow the scope of the next general rate proceeding and remove uncertainty as to how potential pieces of BPM between 10 and 15 pounds should be treated for purposes of forecasting volumes, costs and revenues. *Id.* at 6-7.

II. Postal Service Response and Joint Movants' Rejoinder

In its Response of May 8, the Postal Service opposes institution of a proceeding to consider the requested BPM classification change at this time. The Service states that the proposal to increase the BPM weight limit was "part and parcel" of the initiatives which were withdrawn in Docket No. MC97-2, but that there is no reason to doubt that it will be included in the next omnibus rate case. Response at 1. Under these circumstances, and in light of the other work it is currently undertaking, the Service states that it is unwilling to refile the materials it submitted in support of the proposal and to provide a witness to sponsor those materials. *Ibid.*

The Service also disputes joint movants' position that the proposed change in the BPM weight limit is a "pure" classification change that the Commission can initiate *sua sponte*. According to the Service, the proposal raises "clear rate and revenue issues" that would be better considered as part of a more comprehensive proposal that would accommodate all potential rate and revenue effects. *Id.* at 1-2. The Service suggests that the next general rate case, "or, if it is not imminent, another parcel case" would be the appropriate setting in which to consider the proposed BPM change. *Id.* at 2.

The joint movants responded to the Service's arguments in a Reply filed on May 21. First, they argue that the Service's declared disinclination to refile supporting evidence or to sponsor a witness is irrelevant to the Commission's statutory authority to initiate classification proceedings pursuant to § 3623(b), which "does not accord the Postal Service veto power over such Commission initiatives by holding the Commission captive to the Postal Service's willingness to supply testimony and witnesses in such proceedings." Reply at 2. Should a witness appear to be required to advance the proposal in the Commission's proceeding, joint movants represent that "AMMA, AAP, and The DMA would almost certainly be in a position to provide such a witness." *Ibid.*

The joint movants also deny that the rate and revenue issues cited in the Postal Service's Response pose any obstacle to initiating the requested proceeding. Inasmuch as the requested classification change entails no change in BPM rates—just as the Service's proposal in MC97-2 did not—joint movants argue that no substantial rate issues are posed by the proposal. Citing the pre-filed direct testimony of a Postal Service witness in MC97-2, they also challenge the existence of any "knotty revenue issues" in connection with the proposed BPM classification change. Thus, they argue, the Postal Service has not advanced any meritorious basis for declining to go forward with the requested proceeding. *Ibid.*

III. Considerations Leading to Initiation of Proceedings

Upon consideration of the arguments presented by joint movants and the Postal Service, the Commission concludes that the topic of Bound Printed Matter weight limitations is a mail classification matter which the Commission is authorized to consider in a proceeding commenced on its own initiative. Moreover, in view of the factors cited by joint movants, the Commission has determined to initiate such a proceeding for the prompt consideration of potentially appropriate changes in the current BPM weight limit.

While implementation of a change in the current weight limit admittedly may have some associated revenue and cost effects, the Commission cannot agree with the Postal Service's argument that jurisdiction to initiate a proceeding on the Commission's own initiative is lacking because the proposal intrinsically raises revenue and other rate-related issues that would require a

rate request from the Governors. As joint movants have noted, the proposal does not involve any change in existing Bound Printed Matter rates, and its implementation would not require any change whatsoever in current rate schedules. On the contrary, an adjustment in the current BPM weight limit to include heavier pieces would be a classic exercise of the Commission's authority to recommend changes in mail classification, which consists of "grouping" of mailing matter for the purpose of assigning it a specific rate or method of handling. Relevant factors include size, weight, content ease of handling, and identity of both posting party and recipient." *National Retired Teachers Association v. U.S. Postal Service*, 430 F.Supp. 141, 146-47 (D.D.C. 1977), *aff'd*, 593 F.2d 1360 (D.C. Cir. 1979). (Emphasis added.)

Similarly, the Commission sees no procedural or evidentiary impediments to going forward with a proceeding to consider the requested change at this time. The proposed increase in the maximum weight limit for BPM is a limited and self-contained change in existing mail classifications, as movants note. This being the case, there is no compelling need to await the filing of other parcel classification initiatives prior to considering the requested change. With regard to evidentiary requirements, the proposal's effects on Postal Service revenues and costs are issues to be considered, but it is reasonable to anticipate that evidence bearing on them will be forthcoming. While the Postal Service has stated its disinclination to re-submit evidence from its direct case in MC97-2, the joint movants have undertaken the evidentiary burden of advancing the proposal, as noted above, and the Postal Service will of course have the opportunity to provide evidence in response.

On the other hand, there appear to be several affirmative reasons for going forward with the proceeding at this time. This particular proposal has already been considered by Postal Service management and approved for submission by the Governors in Docket No. MC97-2, and evidently was received with favor by a significant segment of Bound Printed Matter mailers. While the Postal Service's Request in MC97-2 is no longer before the Commission, these facts strongly suggest that the proposal merits consideration. Taken together with statements in the Postal Service's Response to the Joint Motion, they also suggest that the Commission ultimately will be called upon to make a recommendation regarding this

proposal, if not in the proceeding requested by joint movants, then in a subsequent case in the foreseeable future. In addition, the joint movants apparently are sanguine about the prospects of settlement on this proposal in the proceeding they request now.

Furthermore, consideration of the proposed change prior to the Postal Service's filing of an omnibus rate request, or initiation of another parcel classification reform docket, may serve to accelerate the removal of a restriction that, movants claim, induces mailer practices that are detrimental to the mailer, its customers, and arguably to the operational objectives of the Postal Service. Additionally, if the Commission determines that the proposal warrants recommendation, its adoption would constitute a modest first step in advancing classification reform of the parcel categories, and serve to simplify and facilitate the rest of the process.

For these reasons, the Commission shall initiate special proceedings to consider potential changes in the portion of Domestic Mail Classification Schedule section 322.31 (39 CFR 3001.322.31) which restricts eligibility for mailing within the Bound Printed Matter subclass to "Standard Mail weighing * * * not more than 10 pounds[.]" As a mail classification proceeding, this docket is subject to the formal procedural requirements specified in 39 U.S.C. § 3624(a). However, in light of the limited scope of the proceeding and the history of the BPM proposal in connection with Docket No. MC97-2,³ the Commission shall direct interested parties to participate in informal conferences with a view to the potential settlement of the matter initially, rather than establishing a formal schedule in the docket at this time. The first such conference will be scheduled for July 9, at 10:00 a.m., in the Hearing Room of the Commission, 1333 H Street, N.W., Suite 300, Washington, D.C. Those attending this conference should designate a spokesperson to inform the Commission by July 23, 1997, of the progress made toward reaching a negotiated settlement. The Commission itself will not take an active role in these informal discussions.

It is ordered:

(1) The Joint Motion of Advertising Mail Marketing Association, Association of American Publishers and the Direct

³ Because of the BPM proposal's presence in the Postal Service's Request in Docket No. MC97-2, the Commission will direct the Secretary to serve copies of this Notice and Order upon all parties of record in that proceeding.

Marketing Association for Bound Printed Matter, filed April 23, 1997, is granted.

(2) The Motion of United States Postal Service for Late Acceptance of Response to Joint Motion of AMMA, AAP, and DMA, filed May 8, 1997, is granted.

(3) The Joint Motion of Advertising Mail Marketing Association, Association of American Publishers and the Direct Marketing Association for Acceptance of Reply Pleading, filed May 21, 1997, is granted.

(4) Notices of intervention in this proceeding shall be filed no later than June 30, 1997.

(5) W. Gail Willette, Director of the Commission's Office of the Consumer Advocate, is designated to represent the general public in this proceeding.

(6) An informal conference among the parties for the purpose of exploring the potential for a negotiated settlement in this proceeding will be held on July 9, 1997, at 10:00 a.m. in the Hearing Room of the Commission.

(7) The Secretary shall cause this Notice and Order to be served upon each party of record in Docket No. MC97-2, and to be published in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,
Secretary.

[FR Doc. 97-15382 Filed 6-11-97; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL RATE COMMISSION

[Docket No. A97-22]

Ada, Kansas 67414 (Dennis Gasaway, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued June 5, 1997.

Before Commissioners:

Edward J. Gleiman, Chairman;
H. Edward Quick, Jr., Vice-Chairman;
George W. Haley; W.H. "Trey" LeBlanc III

Docket Number: A97-22.

Name of Affected Post Office: Ada, Kansas 67414.

Name(s) of Petitioner(s): Dennis Gasaway, et al.

Type of Determination: Closing.

Date of Filing of Appeal Papers: June 2, 1997.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

After the Postal Service files the administrative record and the

Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by June 17, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,
Secretary.

June 2, 1997 Filing of Appeal letter.

June 5, 1997 Commission Notice and Order of Filing of Appeal.

June 27, 1997 Last day of filing of petitions to intervene [see 39 CFR § 3001.111(b)].

July 7, 1997 Petitioners' Participant Statement or Initial Brief [see 39 CFR § 3001.115(a) and (b)].

July 28, 1997 Postal Service's Answering Brief [see 39 CFR § 3001.115(c)].

August 12, 1997 Petitioners' Reply Brief should Petitioner choose to file one [see 39 CFR § 3001.115(d)].

August 19, 1997 Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR § 3001.116].

September 30, 1997 Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)].

[FR Doc. 97-15383 Filed 6-11-97; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL RATE COMMISSION

[Docket No. A97-23]

Kingsdown, Kansas 67858 (Homer Schoonover, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

(Issued June 5, 1997)

Before Commissioners:

Edward J. Gleiman, Chairman;
H. Edward Quick, Jr., Vice-Chairman;
George W. Haley; W.H. "Trey" LeBlanc III

Docket Number: A97-23.

Name of Affected Post Office:

Kingsdown, Kansas 67858.

Name(s) of Petitioner(s): Homer Schoonover, et al.

Type of Determination: Closing.

Date of Filing of Appeal Papers: June 2, 1997.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by June 17, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Margaret P. Crenshaw,
Secretary.

Appendix

June 2, 1997 Filing of Appeal letter.

June 5, 1997 Commission Notice and Order of Filing of Appeal.
 June 27, 1997 Last day of filing of petitions to intervene [see 39 CFR § 3001.111(b)].
 July 7, 1997 Petitioners' Participant Statement or Initial Brief [see 39 CFR § 3001.115 (a) and (b)].
 July 28, 1997 Postal Service's Answering Brief [see 39 CFR § 3001.115(c)].
 August 12, 1997 Petitioners' Reply Brief should Petitioner choose to file one [see 39 CFR § 3001.115(d)].
 August 19, 1997 Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR § 3001.116].
 September 30, 1997 Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)].
 [FR Doc. 97-15384 Filed 6-11-97; 8:45 am]
 BILLING CODE 7710-FW-P

POSTAL RATE COMMISSION

[Docket No. A97-24]

Kinross, Iowa 52250 (Steve Miller, et al., Petitioners) Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued June 5, 1997.

Before Commissioners:

Edward J. Gleiman, Chairman;
 H. Edward Quick, Jr., Vice-Chairman;
 George W. Haley; W.H. "Trey" LeBlanc III

Docket Number: A97-24.

Name of Affected Post Office: Kinross, Iowa 52250.

Name(s) of Petitioner(s): Steve Miller, et al.

Type of Determination: Closing.

Date of Filing of Appeal Papers: June 2, 1997.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. § 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404(b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from

the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by June 17, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission,
Margaret P. Crenshaw,
Secretary.

Appendix

June 2, 1997 Filing of Appeal letter.
 June 5, 1997 Commission Notice and Order of Filing of Appeal.
 June 27, 1997 Last day of filing of petitions to intervene [see 39 CFR § 3001.111(b)].
 July 7, 1997 Petitioners' Participant Statement or Initial Brief [see 39 CFR § 3001.115 (a) and (b)].
 July 28, 1997 Postal Service's Answering Brief [see 39 CFR § 3001.115(c)].
 August 12, 1997 Petitioners' Reply Brief should Petitioner choose to file one [see 39 CFR § 3001.115(d)].
 August 19, 1997 Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR § 3001.116].
 September 30, 1997 Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)].
 [FR Doc. 97-15385 Filed 6-11-97; 8:45 am]
 BILLING CODE 7710-FW-P

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on June 18, 1997, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion open to the public:

- (1) Field Office Closures—Washington, DC Office
- (2) Regulations—Part 211. Pay for Time Lost
- (3) Guide to Railroad Retirement and Survivor Benefits (Spanish-language edition), RRB Form RB-4a
- (4) Year 2000 Issues
- (5) Labor Member Truth in Budgeting Status Report

Portion closed to the public:

- (A) Finality of Annuity Certification (Thomas E. Rainey)
- (B) *Pending Board Appeals*
 1. Edward Janatsch
 2. Billy D. LeMay
 3. Barbara Rock
 4. Ruth S. Schlegel
 5. Mary Ann Stapleton
 6. Gerald C. Wassenberg
 7. Esther Wolt
 8. Debra Zimmerman for the estate of Frances E. Kissell
- (C) Reorganization—Administration Group

The person to contact for more information is Beatrice Ezerski, Secretary to the Board. Phone No. 312-751-4920.

Dated: June 9, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97-15511 Filed 6-10-97; 9:36 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-26725]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 6, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 30 1997, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter.

After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corporation et al. (70-8037)

Central and South West Corporation ("CSW"), 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, a registered holding company, and its wholly-owned electric utility subsidiary, Central Power and Light Company ("CP&L"), P.O. Box 2121, Corpus Christi, Texas 78403, have filed a post-effective amendment to their application-declaration under sections 9(a), 10 and 13(b) of the Act and rules 54, 88 and 100 thereunder.

In May 1992, CSW and CP&L entered into a settlement ("Settlement") with Houston Industries Incorporated, a holding company exempt under section 3(a)(1) from all provisions of the Act except section 9(a)(2), and its electric utility subsidiary company, Houston Lighting & Power Company ("HL&P"), in order to resolve a number of disputes between the two systems, including allegations by CP&L that HL&P breached its duties and obligations in its performance as project manager for the South Texas Project Electrical Generating Station ("STP"). By orders of the Commission, the Commission authorized CSW and CP&L to engage in various transactions related to the Settlement.¹ In the Original Order the Commission reserved jurisdiction over the applicants' proposal to form a new Texas nonprofit, nonstock, nonmember corporation under the Texas Non-Profit Corporation Act to replace HL&P as the project manager for STP, pending completion of the record. The applicants represent that the joint-owners have approved in substantially final form the structure of the new operating company for STP and the applicants now request authorization to form it.

The owners of STP are CP&L, HL&P, the City of San Antonio, Texas ("San Antonio"), acting by and through the City Public Service Board of San Antonio, and the city of Austin, Texas ("Austin").² The principal assets and properties of STP consist of two 1250 megawatt nuclear-fueled generating units, a plant site and common station facilities and a 400 foot-wide transmission corridor.

The Owners have previously entered into a participation agreement

("Participation Agreement") and their relationship is one of tenants-in-common with respect to the ownership and operation of STP for the production of electric energy and for the delivery of such energy to each Owner according to its respective ownership interest in STP: CP&L-25.2%, HL&P-30.8%, San Antonio-28% and Austin-16%. The electric energy obtained by each Owner is distributed and sold by that Owner within its own system.

At present, with the exception of CP&L, which is responsible for maintenance of the transmission corridor, HL&P serves as the sole project manager of STP. A management committee composed of one representative of each Owner makes all material decisions and determinations incident to the operation of STP as set forth in the Participation Agreement. The Participation Agreement, among other things, authorizes the management committee to remove HL&P as project manager by a vote of the parties representing a majority ownership interest.

To better assure a proportionate sharing of costs, liabilities and benefits associated with the operation of STP, the applicants state that the Owners have agreed to form STP Nuclear Operating Company ("OPCO"), a nonprofit, nonstock, nonmember Texas corporation, to operate STP by contract and assume HL&P's obligations to manage STP. The Owners propose to effect the substitution of OPCO for HL&P by entering into an Amended and Restated Participation Agreement ("Amended Participation Agreement")³ and by entering into the South Texas Project Operating Agreement with OPCO ("Operating Agreement") pursuant to which OPCO will maintain and operate STP under the control and direction of the Owners, as provided in the Amended Participation Agreement. Specifically, OPCO would possess, use, maintain, repair, improve, operate, decontaminate and decommission STP⁴ and provide or arrange to provide all labor, supervision, supplies, equipment and services for the operation, maintenance, repair, replacement, reconstruction, decontamination and decommissioning of STP in order to

deliver electricity generated by STP to the Owners.

In accordance with the Operating Agreement, OPCO will have no ownership interest in property or utility assets constituting STP, power generated by STP, revenues received from the sale of power generated by STP or fuel used by STP to generate power. OPCO's proposed constituent documents will not authorize it to engage in any business other than the business of operating STP, as provided in the Operating Agreement, or to engage in any for-profit activities. The Owners will bear the costs and expenses incurred by OPCO in operating STP in proportion to their respective ownership interests in STP and indemnify OPCO from any damage resulting from its performance under the Operating Agreement. OPCO will not receive a management fee or derive any profit from its operation of STP. The applicants propose to treat OPCO as a subsidiary service company governed by section 13(b) of the Act.

The applicants request Commission authorization to form OPCO and to replace HL&P with OPCO as project manager and operator of STP. Further, the applicants seek an exemption from the requirement that a Declaration on Form U-13-1 be filed incident to the formation of OPCO.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-15406 Filed 6-11-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Agency Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [62 FR 30911, June 5, 1997]

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: June 5, 1997.

CHANGE IN THE MEETING: Deletion.

The following item will not be considered at the closed meeting scheduled for Wednesday, June 11, 1997:

Formal order of investigation.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

¹ Holding Co. Act Release Nos. 25696 (Dec. 8, 1992) ("Original Order") and 25720 (Dec. 29, 1992).

² CP&L, HL&P, San Antonio and Austin are sometimes referred to herein individually as an "Owner" and collectively as "Owners".

³ The applicants state that other than the replacement of HL&P by OPCO, the Amended Participation Agreement is not materially different from the Participation Agreement and, thus, should be characterized as a reorganization of the existing relationship among the Owners.

⁴ Operation of certain transmission corridors and switch yards will remain under the control of HL&P or CP&L.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 942-7070.

Dated: June 9, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97-15572 Filed 6-10-97; 12:40 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38719; File No. SR-CHX-97-14]

Self-Regulatory Organization's; Notice of Filing of and Order Granting Temporary Accelerated Approval to a Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Trading Variations

June 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 2, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval on a temporary basis to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Article XX, Rule 22 of the CHX's Rules, relating to trading variations in CHX-exclusive issues.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below.

¹ 15 U.S.C. 78s(b)(1).

The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Article XX, Rule 22 of the Exchange's Rules gives the Exchange's Committee on Floor Procedure the authority to fix minimum variations for bids and offers in specific securities or classes of securities. Pursuant to this authority, the Exchange proposes to change its minimum variation to 1/16 of \$1.00 per share for securities traded exclusively on the Exchange that are selling at greater than \$1.00, and 1/32 of \$1.00 per share for such securities that are selling at or below \$1.00. The proposed rule change will only be effective until such time as the Commission approves SR-CHX-97-13, a proposed rule change regarding general changes to the Exchange's Rules on trading variations.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act² in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments, concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

² 15 U.S.C. 78f(b)(5).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-97-14 and should be submitted by July 3, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6 and Section 11A of the Act.³

The Commission believes the proposed rule change will likely enhance the quality of the market for the affected CHX securities. The Exchange currently only allows quotes in eighths for CHX securities that are above \$1.00 and sixteenths for CHX securities that are below \$1.00 but above \$0.50. Allowing the CHX to quote these securities in finer increments will facilitate quote competition.⁴ This should help to produce more accurate pricing of such securities and can result in tighter quotations.⁵ In addition, if the quoted markets are improved by reducing the minimum increment, the change could result in added benefits to the market such as reduced transaction costs.

The Commission finds good cause for approving the proposed rule change

³ 15 U.S.C. §§ 78f(b) and 78k-1. In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* § 78c(f).

⁴ The rule change is consistent with the recommendation of the Division of Market Regulation ("Division") in its Market 2000 Study, in which the Division noted that the 1/8 minimum variation can cause artificially wide spreads and hinder quote competition by preventing offers to buy or sell at prices inside the prevailing quote. See SEC, Division of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments* 18-19 (Jan. 1994).

⁵ A study that analyzed the reduction in the minimum tick size from 1/8 to 1/16 for securities listed on the American Stock Exchange priced between \$1.00 and \$5.00 found that, in general, the spreads for those securities decreased significantly while trading activity and market depth were relatively unaffected. See Hee-Joon Ahn, Charles Q. Chao, and Hyuk Choe, *Tick Size, Spread, and Volume*, 5 J. Fin. Intermediation 2 (1996).

prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. This will allow the Exchange to quote all the securities listed on the Exchange in finer increments. Requiring the Exchange to wait the full statutory review period for the proposed rule change would unnecessarily complicate the CHX's transition to finer increments and could place the Exchange at a competitive disadvantage vis-a-vis other markets. At the same time, the proposal is effective only until the Commission acts on File No. SR-CHX-97-13.⁶ This will provide the Commission with a sufficient period to receive and assess comments on SR-CHX-97-14. Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval on a temporary basis to the proposed rule change.⁷

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-CHX-97-14) is hereby approved on an accelerated basis until the Commission acts on File No. SR-CHX-97-13.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-15403 Filed 6-11-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38718; File No. SR-CHX-97-13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Amending Rules Regarding Trading Variations

June 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 2, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested person.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, Rule 22, relating to trading variations, and to amend Article XX, Rule 35 to make technical changes necessitated by the changes to Rule 22.² The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

ARTICLE XX

Minimum [Fractional Changes] *Variations!*

Rule 22. [Bids or offers in stocks above \$1.00 per share not be made at a less variation than 1/8 of \$1.00 per share; in stocks below \$1.00 but above 50¢ per share, at a less fraction than 1/16 of \$1.00 per share; in stocks below 50¢ per share, at a less variation than 1/32 of \$1.00 per share; provided that the Committee on Floor Procedure may fix variations of less than the above for bids and offers in specific securities or classes of securities.] *Bids and offers in specific securities or classes of securities traded on the Exchange shall not be made in variations*

¹ 15 U.S.C. 78s(b)(1).

² The Commission notes that File Nos. SR-CHX-97-11, SR-CHX-97-12, and SR-CHX-97-14 are related filings whose effectiveness is linked to this file. See Securities Exchange Nos. 38704 (May 30, 1997) (approving File No. SR-CHX-97-11 on a temporary basis; reducing the trading increment from eighths to sixteenths for securities that are traded on the Exchange and on Nasdaq); 38717 (June 5, 1997) (approving File No. SR-CHX-97-12 on a temporary basis; a similar reduction in the trading increment for securities that are traded on the CHX and on the New York Stock Exchange); and 38719 (June 5, 1997) (approving File No. SR-CHX-97-14 on a temporary basis; a similar reduction in the trading increment for securities that are traded only on the Exchange).

less than the minimum variation established for such security or class of security as determined by the Committee on Floor Procedure from time to time.

Interpretations and Policies

- .01 The Committee on Floor Procedure has determined that the minimum variation for securities traded both on the Exchange and the American Stock Exchange, Inc. [that are selling above 25¢] shall be as follows: *for securities that are trading above 25¢, 1/16 of \$1.00 per share; and for securities that are selling at or below 25¢, 1/32 of \$1.00 per share.*
- .02 *The Committee on Floor Procedure has determined that the minimum variation for securities traded both on the Exchange and the Nasdaq National Market shall be as follows: for securities that are selling at or greater than \$1.00, 1/16 of \$1.00 per share; and for securities that are selling below \$1.00, 1/32 of \$1.00 per share.*
- .03 *The Committee on Floor Procedure has determined that the minimum variation for securities traded both on the Exchange and the New York Stock Exchange shall be as follows: for securities that are selling above \$1.00, 1/16 of \$1.00 per share; and for securities that are selling below \$1.00, 1/32 of \$1.00 per share.*
- .04 *The Committee on Floor Procedure has determined that the minimum variation for securities traded exclusively on the exchange shall be as follows: for securities that are selling above \$1.00, 1/16 of \$1.00 per share; and for securities that are selling below \$1.00, 1/32 of \$1.00 per share.*

Security Quoted "Ex-dividend," "Ex-distribution," "Ex-rights" or "Ex-interest"

Rule 35. When a security is quoted "ex-dividend," "ex-distribution," "ex-rights" or "ex-interest" the following kinds of orders shall be reduced by the value of the payment or rights, and increased in shares in the case of stock dividends and stock distributions which result in round lots, on the day the security sells. Should the disbursement be in an amount other than the [fraction] *minimum variation* in which bids and offers are made, or a multiple thereof, orders shall be reduced by the next higher [fraction] *minimum variation*.

Interpretations and Policies

.01 Reduction of orders—Proportional procedures.—Open buy orders and open stop orders to sell shall be reduced by the proportional value of a stock distribution on the day a security sells ex-dividend or ex-distribution. The new price of the order is determined by dividing the price of the original order by 100% plus the percentage value of the stock dividend or stock distribution. For example, in a stock dividend of 3%, the price of an order would be divided by 103%.

The chart at the end of .03 below lists, for the more frequent stock distributions, the percentages by which the prices of open buy orders and open stop orders to sell shall be divided to determine the new order prices.

⁶ File No. SR-CHX-97-13 is a companion filing that requests permanent approval of the procedures described herein. Securities Exchange Act Release No. 38718 (June 5, 1997). File Nos. SR-CHX-97-11 and SR-CHX-97-12 are related filings whose effectiveness is linked to SR-CHX-97-13. See Securities Exchange Act Release Nos. 38704 (May 30, 1997) (approving File No. SR-CHX-97-11 on a temporary basis; reducing the trading increment from eighths to sixteenths for securities that are traded on the Exchange and on Nasdaq) and 38717 (June 5, 1997) (approving File No. SR-CHX-97-12 on a temporary basis; a similar reduction in the trading increment for securities that are traded on the CHX and on the New York Stock Exchange).

⁷ 15 U.S.C. §§ 78f(b)(5) and 78s(b)(2).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 C.F.R. 200.30-3(a)(12).

If, as a result of this calculation, the price is not equivalent to or is not a multiple of the [fraction of a dollar] *minimum variation* in which bids and offers are made in the particular security, the price should be rounded to the next lower variation[s]; i.e., when a calculation results in a price of \$14.27, the price of an order is rounded to 14¹/₄; a calculation resulting \$14.47 is rounded to 14³/₈.

In reverse splits, all orders (including open sell orders and open stop orders to buy) should be cancelled.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Current Article XX, Rule 22 provides set trading variations for all securities, subject to exceptions made by the Committee on Floor Procedure. Recently, different markets have changed the variations in which securities are traded. In order to maintain flexibility in trading securities for which the Exchange is not the primary market, the proposed rule change allows the Exchange, through the Committee on Floor Procedure, to adopt as necessary appropriate trading variations for each security traded on the Exchange.

Earlier this year, the Committee on Floor Procedure determined to make an exception to the general trading variations used by the Exchange for securities traded on the American Stock Exchange ("Amex") to track the increments in which such securities are traded on the Amex. That exception was codified as Interpretation and Policy .01 to Rule 22. This proposed rule change amends Interpretation and Policy .01 relating to trading variations for Amex securities to conform the interpretation to changes in the text of Rule 22. The proposed rule change also adds to Rule 22, Interpretation and Policy .02 and .03, dealing with trading variations for stocks traded on the Exchange and the New York Stock Exchange ("NYSE") or

the Nasdaq National Market, as the case may be. In addition, the proposed rule change adds Interpretation and Policy .04 to Rule 22, to provide trading variations for securities traded exclusively on the Exchange.

The proposed change to Article XX, Rule 35 is a technical change to more accurately reflect the terminology used in Rule 22.

The Exchange proposes that proposed Interpretation and Policy .03 to Rule 22, dealing with trading variations in stocks traded on the NYSE, become effective at the later of (a) approval by the SEC of the proposed rule change and (b) such time as enhancement to Intermarket Trading System ("ITS") is made to permit trading in Tape A issues in minimum variations of a sixteenth through ITS. The Exchange further proposes that proposed Interpretation and Policy .02 to Rule 22 become effective on the later of (a) approval by the SEC of the proposed rule change and (b) such date as the National Association of Securities Dealers' pending rule filing to trade in sixteenths becomes effective and is implemented.³ Current Article XX, Rule 22 provides set trading variations for all securities, subject to exceptions made by the Committee on Floor Procedure. Recently, different markets have change the variations in which securities are traded. In order to maintain the flexibility of the Exchange in trading securities for which the Exchange is not the primary market, the proposed rule change allows the Exchange, through the Committee on Floor Procedure, to adopt as necessary appropriate trading variations for each security traded on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)⁴ of the Act in general and furthers the objectives of Section 6(b)(5)⁵ in particular in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

³The Commission notes that it approved File No. SR-NASD-97-27 on May 27, 1997, and it was implemented on June 2, 1997. Securities Exchange Act Release No. 38678 (May 27, 1997).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-97-13 and should be submitted by July 3, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-15404 Filed 6-11-97; 8:45 am]

BILLING CODE 8010-01-M

⁶ 17 C.F.R. 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38717; File No. SR-CHX-97-12]

Self-Regulatory Organizations; Notice of Filing of and Order Granting Temporary Accelerated Approval to a Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Trading Variations

June 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 29, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval on a temporary basis to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Article XX, Rule 22 of the CHX's Rules, relating to trading variations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Artical XX, Rule 22 of the Exchange's Rules gives the Exchange's Committee on Floor Procedure the authority to fix minimum variations for bids and offers in specific securities or classes of securities. Pursuant to this authority,

the Exchange proposes to change its minimum variation $\frac{1}{16}$ of \$1.00 per share for securities traded both on the Exchange and the New York Stock Exchange ("NYSE") that are selling at or greater than \$1.00 and to $\frac{1}{32}$ of \$1.00 per share for such securities that are selling below \$1.00.

The Exchange proposes that the proposed rule change become effective at such time as enhancement to the Intermarket Trading System ("ITS") is made to permit trading in Tape A issues in minimum variations of a sixteenth through ITS.² The proposed rule change will only be effective until such time as the Commission approves File No. SR-CHX-97-13, a proposed rule change regarding general changes to the Exchange's Rules on trading variations.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act³ in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-97-12 and should be submitted by July 3, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6 and Section 11A of the Act.⁴

The Commission believes the proposed rule change will likely enhance the quality of the market for the affected NYSE securities. The NYSE and CHX currently only allow quotes in eighths for NYSE securities whose bid price is above \$1.00. Allowing the CHX to quote these securities in increments finer than eighths will facilitate quote competition.⁵ This should help to produce more accurate pricing of such securities and can result in tighter quotations.⁶ In addition, if the quoted markets are improved by reducing the minimum increment, the change could result in added benefits to the market such as reduced transaction costs.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Currently, bids and offers for NYSE securities selling at or above \$1.00 are publicly displayed in eighths. On May 12, 1997, the ITS

⁴ 15 U.S.C. §§ 78f(b) and 78k-1. In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* § 78c(f).

⁵ The rule change is consistent with the recommendation of the Division of Market Regulation ("Division") in its Market 2000 Study, in which the Division noted that the $\frac{1}{8}$ minimum variation can cause artificially wide spreads and hinder quote competition by preventing offers to buy or sell at prices inside the prevailing quote. See SEC, Division of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments* 18-19 (Jan. 1994).

⁶ A study that analyzed the reduction in the minimum tick size from $\frac{1}{8}$ to $\frac{1}{16}$ for securities listed on the American Stock Exchange priced between \$1.00 and \$5.00 found that, in general, the spreads for those securities decreased significantly while trading activity and market depth were relatively unaffected. See Hee-Joon Ahn, Charles Q. Chao, and Hyuk Choe, *Tick Size, Spread, and Volume*, 5 J. Fin. Intermediation 2 (1996).

¹ 15 U.S.C. 78s(b)(1).

² Tape A disseminates last sale information for securities listed on the NYSE, while Tape B disseminates last sale information for securities listed on any other national securities exchange.

³ 15 U.S.C. 78f(b)(5).

Operating Committee agreed to modify ITS to permit Tape A securities to be quoted and traded in sixteenths. Shortly thereafter, several market centers publicly announced that they will allow the affected NYSE securities to be quoted in sixteenths as soon as modifications to ITS are implemented.⁷ The proposed rule change will enable the CHX to continue to competitively quote such securities. Requiring the Exchange to wait the full statutory review period for the proposed rule change could place the CHX at a significant competitive disadvantage vis-a-vis other markets. At the same time, the proposal is effective only until the Commission acts on File No. SR-CHX-97-13.⁸ This will provide the Commission with a sufficient period to receive and assess comments on SR-CHX-97-12. Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval on a temporary basis to the proposed rule change.⁹

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CHX-97-12) is hereby approved on an accelerated basis until the Commission acts on File No. SR-CHX-97-13.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-15405 Filed 6-11-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38176; File No. SR-NYSE-97-14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Shareholder Approval Policy

June 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 16, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to modify its shareholder approval policy ("Policy"), contained in Paragraphs 312.03 through 312.05 of the Exchange's Listed Company Manual ("Manual"). The Exchange believes the proposal will provide greater flexibility for listed companies to sell stock at a price at least as great as the higher of book and market value to substantial security holders, or in non-public sales, while preserving the significant shareholder rights afforded under the Policy.³

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ The complete text of the proposed rule change is attached as Exhibit A to File No. SR-NYSE-97-14, and is available for review at the principal office of the NYSE and in the Public Reference Room of the Commission.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Currently, the Exchange's shareholder approval policy requires a listed company to obtain shareholder approval in four situations:

- Related-Party Transactions: when selling more than one percent of the company's stock, for either cash or other assets, to a "related party," defined to mean officers, directors and holders of five percent or more of the company's common stock (or stock with five percent or more of the company's voting power);
- Private Sales: when selling 20 percent or more of the company's stock, other than in a public offering for cash;
- Stock Option Plans: when adopting stock option plans that are not "broadly-based"; or
- Change of Control: with respect to any issuance of stock that results in the change of control of the company.

The purpose of the rule change is to modify the first two of these requirements to provide listed companies with flexibility in their financing plans, while still substantially preserving the significant shareholder rights afforded under the Policy. In addition, the rule change restructures the wording of the Policy in order to simplify the language.

Related-party transactions. Issuers sometimes seek cash financing from one or more of their "substantial" security holders (which the Exchange defines as a person holding either five percent of the company's stock or five percent of the company's voting power). The Exchange now requires shareholder approval if a sale to a substantial security holder results in a one percent dilution.

The Exchange proposes that cash sales of stock to a substantial security holder be exempt from the Policy if the issuance is limited to five percent of the issuer's stock. The Exchange believes that cash sales do not give rise to the same valuation concerns as do sales of stock for non-cash assets. The exemption would apply only if the sale is at a price at least as high as each of the book and market value of the stock. The Exchange would continue to require shareholder approval for the following issuances that result in a dilution of more than one percent of the issuer's stock: sales of stock to any related party (including substantial security holders) for assets other than cash; and cash sales to officers and directors. The Exchange believes the proposed exemption from the policy would provide issuers with more

⁷ ITS estimates that the implementation date for this change is late June.

⁸ File No. SR-CHX-97-13 is a companion filing that requests permanent approval of the procedures described herein. Securities Exchange Act Release No. 38718 (June 5, 1997). File Nos. SR-CHX-97-11 and SR-CHX-97-14 are related filings whose effectiveness is linked to SR-CHX-97-13. See Securities Exchange Act Release Nos. 38704 (May 30, 1997) (approving File No. SR-CHX-97-11 on a temporary basis; reducing the trading increment from eighths to sixteenths for securities that are traded on the Exchange and on Nasdaq) and 38719 (June 5, 1997) (approving File No. SR-CHX-97-14 on a temporary basis; a similar reduction in the trading increment for securities that are traded only on the Exchange).

⁹ 15 U.S.C. §§ 78f(b)(5) and 78s(b)(2).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 C.F.R. 200.30-3(a)(12).

flexibility when selling stock for cash to a substantial security holder.

Private sales. The Exchange requires approval of all issuances that result in a 20 percent dilution, except for public offerings for cash. However, market practices have blurred the differences between public and private sales. For example, public offerings can resemble private placements, such as sales pursuant to a shelf registration to a small group of purchasers. In contrast, a company can engage in broad-based unregistered sales of stock, or securities convertible into stock, through private placements or pursuant to Commission Rule 144A under the Securities Act of 1933, as amended.⁴ Thus, certain types of private sales now are very similar to public offerings.

The Exchange proposes to make a private sale of 20 percent or more of a company's stock exempt from the policy if (i) the sale is at a price at least as high as each of the book and market value of the stock and (ii) the sale is a "bona fide financing." A bona fide financing would be either a sale through a broker-dealer acting as an intermediary (such as pursuant to Rule 144A) or a sale to multiple parties in which no one person acquires more than five percent of the issuer's stock. The five percent limit ensures that control persons do not disproportionately increase their ownership in a listed company through privately-negotiated sales, even if the sale price is at the market.⁵

(b) Basis

The Exchange believes the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁶ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes this proposed rule change does not impose any burden on competition that is not necessary or

appropriate in furtherance of the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members of other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-97-14 and should be submitted by July 3, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-15402 Filed 6-11-97; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38711; File No. SR-Phlx 97-14]

Self-Regulatory Organization; Notice of Filing and Order Granting Partial Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Rule 722, Margin Accounts

June 2, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 8, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. Phlx submitted amendment No. 1 on May 20, 1997.¹ Phlx submitted Amendment No. 2 on May 28, 1997.² Phlx submitted Amendment No. 3 on May 30, 1997.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval to the portions of the proposal relating to customer cash accounts, over-the-counter ("OTC") options, market-maker and specialist "good faith" margin requirements for permitted offset transactions, and

¹ See Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation ("Market Regulation"), Commission, dated May 19, 1997 ("Amendment No. 1"). Amendment No. 1 superseded the original rule filing in its entirety by addressing technical changes by making corrections to certain typographical errors appearing in the rule filing. Amendment No. 1 also makes a number of substantive changes.

² See Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated May 28, 1997 ("Amendment No. 2"). Amendment No. 2 supersedes Amendment No. 1 with regard to certain portions of the rule filing the Commission is approving today by accelerated approval.

³ See Letter from Diane Anderson, Vice President, Examinations Department, Phlx, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated May 30, 1997 ("Amendment No. 3"). Amendment No. 3 corrects an inadvertent omission to Amendment No. 2.

⁴ 17 CFR 230.144A.

⁵ The rule change also clarifies that shareholder approval is required if any one of the four requirements is triggered, notwithstanding the fact that the other requirements of the Policy have not been triggered. For example, a direct sale by a company of more than 20 percent of its stock in a bona fide financing still would require shareholder approval as a related-party transaction if the company sells more than one percent of the stock to an officer or director.

⁶ 15 U.S.C. § 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).

certain other portions of the proposal as discusses below.⁴

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b-4 of the Act, proposes to revise its rules governing margin in order to (i) establish Phlx rules to govern areas of margin regulation that will no longer be addressed by Regulation T of the Board of Governors of the Federal Reserve System ("Federal Reserve Board," "FRB," or "Board"), (ii) conform certain Phlx margin rules to those of the New York Stock Exchange ("NYSE"), and (iii) rearrange existing provisions of the Phlx margin rules for ease of reading. The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make revisions to the Phlx rules governing margin that will (i) establish Phlx rules to govern areas of margin regulation that will no longer be addressed by Regulation T of the Board of Governors of the Federal Reserve System, (ii) conform certain Phlx margin rules to those of the NYSE, and (iii) rearrange existing provisions of the Phlx margin rules for ease of reading.

The Exchange is proposing changes at this time because of recent amendments to Regulation T, the regulation that covers extensions of credit by and to brokers and dealers by the Federal Reserve Board.⁵ Among other things, the

amendments to Regulation T will modify or delete certain Board rules regarding options transactions in favor of rules that must be adopted by the options exchanges and approved by the Commission. The new options provisions in Regulation T became effective June 1, 1997. In the course of amending the Exchange's rules to accommodate the changes necessary because of the Regulation T amendments, it became necessary for the sake of clarity to propose changes to the margin rules that would conform certain Phlx rules to the rules of the NYSE and to rearrange existing provisions of Rule 722 for the sake of organization.

Definition Section

Rule 722 has been rearranged to set forth the definitions applicable to the rule in section (a) now instead of at the end of the rule. Accordingly, all of the definitions that are currently in section (e) have been moved to new section (a) with three additions: (1) the definition of the term "current market value" will now also incorporate a definition relevant to options and spot market prices which is currently in section (c)(2)(A) (i) and (ii); (2) a definition of the term "escrow agreement" has been added in subsection (6); and (3) a definition of the term "qualified stock basket" is added in subsection (7).

Customer Margin Accounts

The Exchange is also proposing to rearrange Rule 722 so that all provisions concerning customer margin accounts are in the same section. Currently, customer margin provisions appear throughout the rule. Paragraph (b) will now set forth the general rules for margin requirements on long and short positions in customer margin accounts. Paragraph (c) will set forth the exceptions for specific types of securities and positions held in margin accounts. Specific provisions relevant to options and warrants will be covered in paragraph (d) entitled *Derivative Securities*. Paragraph (b) is merely renumbered paragraph (a) from the current rule with headings added for clarity and the term stock is being changed to security for broader application.

The first exception in paragraph (c), *Margin Accounts-Exceptions*, will be for offsetting "long" and "short" positions. The margin treatment which currently is in section (b)(1) will be moved to section (c)(1) but will not be changed. Specifically, long positions in a security exchangeable or convertible into the security held in a short position will require that 10% of the current market

value of the "long" position be maintained and "long" and "short" positions on the same security will be margined at 5%. These provisions are consistent with NYSE Rule 431.

The margin treatment for exempted securities and marginable corporate debt is being moved from section (b)(2) in the current rule to new section (c)(2) but is not being changed in any substantive manner. Consistent with NYSE Rule 431, obligations of the United States are subject to a margin requirement of between 1% and 6% depending on the years to maturity for the obligation. Zero coupon bonds are subject to a margin requirement of 3% for bonds with five years or more to maturity. All other exempted securities are subject to an initial and maintenance margin requirement of 15% of the current market value or 7% of the principal amount, whichever is greater. The maintenance margin requirement for non-convertible debt securities will remain at 20% of the current market value or 7% of the principal amount, whichever amount is greater with the exception for mortgage related securities which have a 5% maintenance margin requirement.

The remainder of current paragraphs (b)(2) through (b)(6) is now renumbered as paragraphs (c)(2)(B) through (c)(5). All of the provisions applicable to *Special Provisions, Cash Transactions with Customers, Joint Accounts in which the Carrying Member Organization or a Partner Thereof or Shareholder Therein has an Interest, International Arbitrage Accounts and Broker Dealer Accounts* will remain in the rule as is except that Subpart (b)(5) is being removed from this section because the provisions for specialist and market maker accounts will now be covered under section (g). Subparagraph (b) which deals with joint accounts is being moved to section (g)(3) and since the Exchange no longer has odd-lot dealers, subparagraph (a) is being completely deleted.

New proposed section (d) of Rule 722 is entitled *Customer Margin Accounts—Derivative Securities*, and will contain all of the provisions applicable to options and warrants in customer margin accounts. The first paragraph states that active securities dealt in on a recognized exchange will be valued at current market prices but that other securities will be valued conservatively and that substantial additional margin will be required where the securities are unusually volatile or illiquid. This provision is being moved, unchanged, from section (c)(1).

The next provision sets forth the continuing rule that long positions in

⁴ The Commission is not approving the following portions of the proposed rule filing: the proposed definition of "qualified stock basket" (Rule 722(a)(7)); *Customer Margin Accounts—Derivative Securities* (Rule 722(d)); and *Commentary .14*.

⁵ 61 FR 20386 (May 6, 1996) (Federal Reserve Board's release adopting certain changes to Regulation T).

listed options and warrants will not have any loan value for purposes of computing margin in customer accounts. It is being moved from current paragraph (c)(2) and is renamed, *Long Positions—Listed Options and Currency, Currency Index or Stock Index Warrants*.

Paragraph (d)(3) restates the existing provisions of current paragraph (c)(2)(B)(i) regarding short listed options and warrants. The paragraph and accompanying chart sets forth the margin requirements for equity options, index options, foreign currency options, currency warrants, currency index warrants and stock index warrants listed or traded on a national securities exchange. It is not applicable to OTC options which are provided for in section (f) of the rule (current subsection (ii) to paragraph (c)(2)(B) which dealt with OTC options is also being deleted at this time). The one addition to the existing rule is the exception for short put options that would cap the margin requirement at no less than the option market value plus the minimum percentage applicable to that type of option in column III of the option's aggregate exercise price amount. The purpose of this cap is to assure that the margin requirement does not continue to increase as the risk of the put position decreases as it becomes farther out-of-the-money.

Existing paragraph (c)(2)(C) is being renumbered as (d)(4) and certain omitted words caused by typographical errors are being corrected.

The margin treatment for various related securities positions involving listed options and warrants carried in a customer margin account has been revised and rearranged from what is in the current rule. Current paragraph (c)(2)(D) is renumbered as (d)(5)(A)(i) and entitled *Straddles/Combinations*. The provision has not been changed and thus continues to state that where a call option contract (on a stock, index or foreign currency) is carried in a short position for the same customer for which a short put option is held, the margin on the put or call, whichever amount is greater, plus the current market value of the other option is required to be maintained. The first two paragraphs of current subpart (c)(2)(F)(i) applicable to warrant straddles has been moved into this section and numbered as (d)(5)(A) (ii) and (iii). Former subparagraph (E) is renumbered as (d)(5)(B) and entitled, *Short option offset by long option where long option expires with or after short option*. The substance of the section has not been changed but has been redrafted for the sake of clarity and brevity. The margin

treatment for spread positions on stock index, currency and currency index warrants in the present rule (in section (c)(2)(F)(i)) is continued in section (d)(5)(C). The margin treatment for covered write convertibles which was formerly in subparagraph (F)(i) will now be in (d)(5)(D) but the language in that section applicable to short puts will be deleted because it is covered under a new subsection (E) which is being added for covered calls and covered puts. Finally, a new provision for short equity call options offset by a warrant to purchase the underlying security has been added in new subsection (d)(5)(F). The provision, which is consistent with Regulation T, requires no margin for this position if the warrant to purchase the underlying security does not expire on or before the expiration date of the short call, and if the amount (if any) by which the exercise price of the warrant exceeds the exercise price of the short call is deposited in the account.

Customer Cash Accounts

The Exchange is proposing to add a provision to Rule 722 detailing the circumstances under which a customer may carry short equity options in a cash account, *i.e.*, an account for which no loan value is extended. This provision is consistent with a provision in Regulation T and is being added so that the Phlx rule is more complete and thus, easier for members to rely on the rule for all aspects of margin regulation. The proposed new paragraph (e)(1) of Rule 722 would permit either a call option contract or a put option contract held in a short position to be carried in a cash account if the option contract was a covered position and the account contained one of the specified offsets. In the case of a short call option, permitted offsets include: (i) the underlying security, in an amount equal or greater than that specified by the option contract, provided it is held in the account until full cash payment for the underlying security is received; (ii) a security immediately convertible without the payment of money into an equal or greater quantity of the underlying security specified by the option contract, if held in, or purchased on the same day, provided that the option premium is held in the account until full cash payment for the convertible security is received and the ability to convert does not expire before the expiration of the short call option; or (iii) an escrow agreement issued by a bank and either held in the account at the time the call is written or received in the account promptly thereafter. In the case of a short put option, allowable offsets include: (i) a cash or cash

equivalent as defined in Regulation T of not less than the aggregate put exercise amount; or (ii) an escrow agreement issued by a bank which is obligated to deliver the required cash in the event of assignment of the short put.

New proposed paragraph (e)(2) of Rule 722 would add a provision that permits a customer to hold certain index options in a cash account such as short European-style index options offset by long European-style index options on the same underlying index. In order to qualify for the cash account, the long position would have to be held in the account, or purchased for the account on the same day. In addition, the option premium would have to be held in the account until full cash payment for the long option is received; the long option must expire with the short option and the account must hold cash or cash equivalents of not less than any amount by which the aggregate exercise price of a long call (short put) exceeds the aggregate exercise price of a short call (long put). This new treatment is justified because the Federal Reserve Board decided to defer to the options exchanges the authority to determine the specific options-related strategies allowed to be effected in the cash account, provided that the risk of the strategy is defined and the account contains the securities and/or cash required to fully cover the exposure.

Options positions covered by escrow receipts meeting the requirements of Options Clearing Corporation ("OCC") Rule 610 or option guarantee letters have been moved from section (c)(2)(G) to paragraph (e)(3) of Rule 722 and entitled, *Certain Covered Options Transactions*. The provisions applicable to put and call option contracts on equity options, index options and foreign currency options have not been changed except to correct a typographical error.

Over-the-Counter Options

The Exchange is adopting margin requirements for OTC options which are the same as the OTC options margin rules in NYSE Rule 431. Within this section (proposed Rule 722(f)) is a chart showing the initial and/or maintenance margin required for options on various types of underlying instruments. The amount of margin required is the percentage of the current market value of the underlying component times the multiplier, if any (set forth on the chart) plus any "in-the-money amount." The amount of the margin required to be maintained may be reduced for a short put or call by any "out-of-the-money amount." The amount to which the

margin required may be reduced is set forth in a separate column.

The Exchange is proposing to add margin treatment for related securities positions involving OTC options held in a customer margin account. The Exchange is proposing to add special margin treatment provisions for covered write convertibles, covered calls and puts, and spreads and straddles involving OTC options which are the same as that found in NYSE Rule 431.

Specialist and Market Maker Accounts

Phlx rules as well as the rules of the other option exchanges have always distinguished the margin treatment for specialists and market makers from those of the customers because of the unique position of specialists and market makers in maintaining liquid markets. The rules recognize that options specialists and market makers must engage in various hedging transactions to manage the risk involved in fulfilling their role. Regulation T is deleting its provisions governing permitted offset treatment on specialists and market makers and is deferring this authority to the self-regulatory organizations ("SROs"). Consequently, the proposed rule (Rule 722(f)(2)) sets forth various permitted offset positions which may be cleared and carried by a member organization on behalf of one or more registered specialists or registered options traders (hereinafter collectively referred to as "market makers") upon a margin basis satisfactory to the concerned parties.

A permitted offset position will be defined to mean, in the case of an option in which a market maker makes a market, a position in the underlying instrument or other related instrument and in the case of other securities in which a market maker makes a market, a position in options overlying the securities in which the market maker makes a market, if the account holds the following positions: (i) a long position in the underlying instrument offset by a short position which is "in-the-money"; (ii) a short position in the underlying instrument offset by a long option position which is "in-the-money"; (iii) a stock position resulting from the assignment of a market maker short option position; (iv) a stock position resulting from the exercise of a market maker long position; (v) a net long position in a security (other than an option) in which a market maker makes a market; (vi) a net short position in a security (other than an option) in which the market maker makes a market; or (vii) an offset position as defined in SEC Rule 15c3-1. All permitted offset transactions must be effected for the

purpose of hedging, reducing the risk of rebalancing, liquidating open positions of market-makers, or accommodation of customer orders, or other similar market-making purpose.

For purposes of the rule, "in- or at-the-money" means that the current market price of the underlying security is not more than two standard exercise price intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option. In determining the types of instruments which are entitled to be carried in a permitted offset position, reference can be made to the definition of "related instrument" which is set forth in the rule. "Related instrument" within an option class or product group is any related derivative product that meets the offset level requirements for product groups under Rule 15c3-1 (the net capital rule) of the Act, or any applicable SEC staff interpretations or no-action positions (hereinafter referred to collectively as "Exchange Act Rule 15c3-1"). The term "product group" means two or more options classes, related instruments, and qualified stock baskets for which it has been determined that a percentage of offsetting profits may be applied to losses in the determination of net capital as set forth in Exchange Act Rule 15c3-1.

Commentary .14 will now address the manner in which the carrying firm may comply with its responsibility to extend credit properly to market maker permitted offset transactions effected on an exchange where the market maker is not registered. If a market maker fails to specify to which account such an order should be placed and the resulting transaction clears in a market maker account, and not a customer account, it will be presumed that the market maker elected market maker margin treatment for the position effected on an exchange of which he is not a member. Clearing firms are, however, responsible for implementing adequate procedures to ensure that such orders are recorded accurately and cleared into the appropriate accounts.

The Exchange is also proposing to add a provision regarding trading in an account in a deficit (see, section (g)(4)(C)(ii)). The addition generally states that nothing shall prohibit the carrying firm from effecting hedging transactions in a deficit account with the prior written approval of the carrying firm's SEC designated examining authority.

Finally, proposed paragraphs (h), *Foreign Currency Options-Letters of Credit* and (i) of Rule 722 entitled *Other Provisions*, will incorporate the

remainder of existing Rule 722 which includes provisions for *When Issued and When Distributed Securities, Guaranteed Accounts, Consolidation of Accounts, Time within which Margin or Mark-to-Market must be Obtained, Practice of Meeting Regulation T Margin Calls by Liquidation Prohibited, Margin Required in Excess of Letters of Credit, and CIPs*.

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change on an accelerated basis prior to the thirtieth day after publication in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule

change and Amendment Nos. 1, 2 and 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of all such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-97-14 and should be submitted by July 3, 1997.

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds the following portions of the proposed rule change to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act:⁶ moving the *Definition Section* of Rule 722 to the front of the rule, proposing to revise the definition of "current market value" and add the definition of "escrow agreement" (the proposed definition of "qualified stock basket" is not being approved at this time); proposed paragraphs (b) and (c) of Rule 722 relating to *Customer Margin Accounts* (but not proposed paragraph (d), which is not being approved at this time); that portion of the proposed rule concerning *Customer Cash Accounts*; that portion of the proposed rule concerning *OTC Options*; that portion of the proposed rule concerning *Specialists and Market-Maker Accounts*, incorporating certain permitted offset transactions from Regulation T and Exchange Act Rule 15c3-1 (proposed Rule 722 (g)); and proposed paragraphs (h) and (i) of Rule 722, relating to *Foreign Currency Options—Letters of Credit and Other Provisions*. Section 6(b)(5) requires, among other things, that the Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market

and, in general, to protect investors and the public interest.⁷

The Exchange proposes to move the definition section of Rule 722 from the back of the rule to the front, revise one definition and add new definitions of the terms "current market value" and "escrow agreement."

The revised definition of the term "current market value" will now also incorporate a definition relevant to options and spot market prices which is currently in section (c)(2)(A) (i) and (ii) of Rule 722. Accordingly, the proposed definition does not raise new or unique issues.

The term "escrow agreement" being adopted by the Exchange is nearly identical to that of Regulation T except that it represents a more restrictive approach. The Commission concludes that it is reasonable for the Exchange to limit the allowed issuers of escrow receipts to entities such as banks.

Paragraph (b) of Rule 722 (*Customer Margin Accounts—General Rule*) will not set forth the general rules for margin requirements on long and short positions in customer margin accounts. Paragraph (c) of Rule 722 (*Customer Margin Accounts—Exceptions*) will set forth the exceptions for specific types of securities and positions held in margin accounts. Neither of these paragraphs has been substantively revised, and, accordingly, they raise no new regulatory issues. The Commission concludes that it is reasonable for the Exchange to move these paragraphs to their new location in Rule 722.

The Exchange is proposing to add a provision to Rule 722 detailing the circumstances under which a customer may carry short equity options in a cash account, *i.e.*, an account for which no loan value is extended (Rule 722(e)(1)). This provision is consistent with a provision in Regulation T and accordingly does not raise new issues. The Exchange is also proposing to add a new paragraph (e)(2) permitting a customer to hold debit put spreads involving European-style broad-based stock index options to be carried in a cash account. This provision is substantially similar to an existing provision in the rules of the Chicago Board Options Exchange ("CBOE").⁸ Accordingly, the Commission finds this provision to be a reasonable one for the Phlx to adopt at this time, while noting that although in its *Statement of the Terms of Substance of the Proposed*

⁷ In approving these rules, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

⁸ See CBOE Rule 24.11A.

Rule Change the Phlx appears to be interpreting the provision broadly, the wording of the rule permits only the debit put spreads discussed above to be carried in a cash account.

The Exchange is proposing to move the section of its rule addressing Option positions covered by escrow receipts meeting the requirements of OCC Rule 610 or option guarantee letters from section (c)(2)(G) to paragraph (3) of the cash account section and rename it, *Certain Covered Options Transactions*. The provisions applicable to put and call option contracts on equity options, index options and foreign currency options have not been changed except to correct a typographical error, and, accordingly, do not raise any new regulatory issues. The Commission finds that this provision is a reasonable one at this time.

The Exchange is proposing to adopt margin requirements for over-the-counter options which are the same as the OTC option margin rules in NYSE Rule 431, and, accordingly, do not raise new regulatory issues.⁹ The Commission also believes that the Exchange's decision to model its margin treatment for OTC options and related securities positions based on the NYSE positions should help foster coordination between markets by achieving parity between the margin requirements of the various SROs. The Commission also believes that this approach will promote coordination in regulating, clearing, settling, and facilitating transactions in securities by providing for uniformity in this area of the SROs' margin schemes and reducing confusion among customers.

The Exchange has proposed to adopt specific provisions governing permitted offset treatment for market-makers and specialists that were deleted from Regulation T as of June 1, 1997. The proposed rule sets forth various permitted offset positions which may be cleared and carried by a member organization on behalf of one or more market-makers upon a margin basis satisfactory to the concerned parties "good faith" margin). In addition, it requires that the amount of any deficiency between the equity maintained by the market-maker and the haircuts specified in Exchange Act Rule 15c3-1 shall be considered as a deduction from net worth in the net capital computation of the carrying broker.

The six proposed offsets described in proposed Rule 722 (g)(4)(i) to (vi) codify the existing permitted offsets that were provided under Regulation T until June

⁹ See NYSE Rule 431(f)(2).

⁶ 15 U.S.C. 78f(b)(5).

1, 1997. These offsets reflect well-recognized market-making hedging transactions involving certain options offset strategies involving the related underlying stock. The addition of Rule 722(g)(4)(vii), allowing any offset position defined under Exchange Act Rule 15c3-1 constitutes a significant expansion of permitted offset positions. The inclusion of item (vii) recognizes that options market-makers and specialists must engage in various hedging transactions to manage the risk involved in fulfilling their role, and, therefore, allows a member organization to clear and carry market-maker's offset positions as defined in Exchange Act Rule 15c3-1 upon a good faith margin basis. The Exchange has clarified its proposal to reflect that market-makers are permitted to receive good faith margin for all permitted offset positions only if they are effected for market-making purposes such as hedging, reducing the risk of rebalancing, liquidating open positions of the market-maker, accommodating customer orders, or another similar market-making purpose. The Exchange is also proposing to add a provision regarding trading in an account in a deficit (section (g)(4)(C)(ii)). The addition generally states that nothing shall prohibit the carrying firm from effecting hedging transactions in a deficit account with the prior written approval of the carrying firm's SEC designated examining authority.

The Commission believes that the permitted offset proposal is a reasonable effort by the Phlx to accommodate the needs of Phlx market-makers in undertaking their market-making responsibilities as it recognizes the occasional need for market-makers to effect transactions in their course of dealing in options classes for which the market-maker is not registered. The Commission believes that this approach will not adversely affect the depth and liquidity necessary to maintain fair and orderly markets. The Commission expects Phlx clearing firms and other Phlx members that extend margin to market-makers to implement adequate procedures to ensure that offsets elected by market-makers are recorded accurately and cleared into appropriate accounts. In addition, such members should have a reasonable basis for determining that the offset transactions satisfy the market-making purpose requirements set forth in Phlx Rule 722(g). The Commission believes that these requirements will ensure that transactions effected by market-makers and specialists receiving the offset treatment are in fact directly related to

their market-making function and are not effected for speculative purposes on a margin basis which should be available only for bona fide market-making activity.

The Exchange's proposed definition of "in- or at-the-money," for purposes of permitted offset transactions, represents a codification of a long standing practice among the options markets of permitting the financing of options specialists and market-makers underlying stock positions on a good faith basis when offset on a share-for-share basis by options which are "in-or at-the-money," i.e., where the current market price of the underlying security is not more than two standard exercise price intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option. The Commission believes it is appropriate for the Phlx to codify this longstanding practice. This practice is also being codified today by the CBOE.¹⁰

Proposed paragraphs (h), *Foreign Currency Options-Letters of Credit* and (i) of Rule 722 entitled *Other Provisions*, will incorporate the remainder of existing Rule 722 which includes provisions for *When Issued and When Distributed Securities, Guaranteed Accounts, Consolidation of Accounts, Time within which Margin or Mark-to-Market must be Obtained, Practice of Meeting Regulation T Margin Calls by Liquidation Prohibited, Margin Required in Excess of Letters of Credit, and CIPs*. The Exchange is making no changes to either of these proposed paragraphs, and, accordingly, their relocation within Rule 722 raises no new regulatory issues. The Commission finds this to be a reasonable change.

The Commission finds good cause for approving the portions of the proposed rule change discussed above prior to the thirtieth day after the date of publication thereof in the **Federal Register**. The Commission believes that accelerated approval of those portions of the proposal is appropriate in part because it will enable the Exchange's members to continue the use of permitted offset transactions allowed until June 1, 1997 under Regulation T, and as defined in Exchange Act Rule 15c3-1. The Exchange has clarified its proposal to reflect that specialists and market-makers are permitted to receive good faith margin for all permitted offset positions only if they are effected for market-making purposes such as

hedging, reducing the risk of rebalancing, liquidating open positions of the market-maker or specialist, accommodating customer orders, or another similar market-making purpose.

Accelerated Approval of Amendments Nos. 1, 2 and 3

The Commission finds good cause for partially approving the proposed rule change including Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission also finds good cause for approving Amendment Nos. 2 and 3 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 1 supersedes the original rule filing in its entirety by addressing technical changes by making corrections to certain typographical errors appearing in the rule filing. Amendment No. 1 also makes a number of substantive changes to the rule filing. Amendment No. 2 supersedes Amendment No. 1 with regard to certain portions of the rule filing the Commission is approving today by accelerated approval order. Amendment No. 2 addresses technical changes by making corrections to certain typographical errors appearing in the rule filing and in Amendment No. 1. Amendment No. 3 also addresses technical changes by making corrections to certain inadvertent omissions in the rule filing and in Amendment No. 2. All of the amended changes strengthen and clarify the proposal. Based on the above, the Commission finds that there exists good cause consistent with Section 6(b)(5) of the Act, to partially accelerate approval of the amendments as discussed above.

It is therefore ordered pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change and amendments (SR-Phlx-97-14) are approved as discussed above, except for the proposed definition of "qualified stock basket" (Rule 722 (a)(7)); *Cutomer Margin Accounts—Derivative Securities* (Rule 722(d)); and *Commentary .14*.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-15330 Filed 6-11-97; 8:45 am]

BILLING CODE 8010-01-M

¹⁰ The Commission notes that the CBOE asserts that it has received oral no-action relief from the Federal Reserve Board permitting the two standard exercise price interval interpretation. See Securities Exchange Act Release No. 38709 (June 2, 1997).

¹¹ 15 U.S.C. § 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Agency Information Collection Activity Under OMB Review**

AGENCY: Department of Transportation, Federal Aviation Administration (DOT/FAA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) this notice announces that the information collection request described below has been forwarded to the Office of Management and Budget (OMB) for review. The FAA is requesting an emergency clearance by June 18, 1997, in accordance with 5 CFR § 1320.13. The following information describes the nature of the information collection and its expected burden.

DATES: Submit any comments to OMB and FAA by August 11, 1997.

SUPPLEMENTARY INFORMATION:

Title: Air Carrier Pilot Pre-Employment Screening Standards and Criteria.

Need: Under the 1996 Federal Aviation Reauthorization Act, Congress requested that the FAA appoint an industry task force to study pre-employment screening standards and criteria. The Aviation Rulemaking Advisory Committee (ARAC) is conducting this study for the FAA. ARAC has decided that it needs to conduct a survey to better understand recent and current pilot hiring trends, current pilot recruiting practices, and how candidate flying skills are being evaluated in the industry. ARAC will use the results of this survey as baseline for developing a report for Congress.

Respondents: 75 air carriers.

Frequency: One time.

Burden: 75 hours.

For Further Information: or to obtain a copy of the request for clearance submitted to OMB, you may contact Ms. Judith Street at the: Federal Aviation Administration, Corporate Information Division, ABC-100, 800 Independence Avenue, SW, Washington, DC 20591.

Comments may be submitted to the agency at the address above and to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, Attention FAA Desk Officer, 725 17th Street, NW, Washington, DC 20503.

Issued in Washington, DC on June 6, 1997.

Steve Hopkins,

Manager, Corporate Information Division, ABC-100.

[FR Doc. 97-15432 Filed 6-11-97; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****International Standards on the Transport of Dangerous Goods; Public Meeting**

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting in preparation for the thirteenth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held July 7-17, 1997 in Geneva, Switzerland.

DATES: July 1, 1997 at 9:30 a.m..

ADDRESSES: Room 6200, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting will be to prepare for the thirteenth session of the UNSCOE and to discuss U.S. positions on UNSCOE proposals. Topics to be covered during the public meeting include matters related to restructuring the UN Recommendations on the Transport of Dangerous Goods into a model rule, requirements for inhalation toxicity materials, international harmonization of classification criteria and labeling, review of intermodal portable tank requirements, review of the requirements applicable to small quantities of hazardous materials in transport (limited quantities), classification of individual substances, requirements for bulk and non-bulk packagings used to transport hazardous materials and criteria for environmentally hazardous substances.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the thirteenth session of the UNSCOE meeting may be obtained from RSPA.

Copies of UNSCOE proposals are available by linking to the UN Transport web site at <http://www.itu.int/itudoc/un/editrans/dgdb/dgscmm.html>. This site can be accessed through the RSPA Homepage at <http://www.volpe.dot.gov/ohm>. Documents and a summary of U.S. positions may also be ordered by contacting RSPA's Dockets Unit (202-366-5046).

Issued in Washington, DC, on June 5, 1997.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97-15424 Filed 6-11-97; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board**

[STB Finance Docket No. 33398]

Sammamish Transportation Company—Modified Rail Certificate

On May 13, 1997, Sammamish Transportation Company (STC), a non-profit corporation, filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C—Modified Certificate of Public Convenience and Necessity to operate an abandoned line of railroad of approximately 83.47 miles in length between milepost 646.0 near Caputa, SD, and milepost 562.53 near Kadoka, SD.

The line is formerly a portion of the bankrupt Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW). By Report served May 14, 1980, in Docket No. AB-7 (Sub-No. 88), Richard B. Ogilvie, Trustee of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company—Abandonment—in South Dakota, Iowa, and Nebraska, the Interstate Commerce Commission recommended that MILW's trustee be authorized to abandon 18 lines of trackage located in the states of South Dakota, Iowa, and Nebraska. Abandonment of these lines was authorized by the United States District Court for the Northern District of Illinois (Eastern Division), in *In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, No. 77-B-8999, Order No. 342, dated May 27, 1980,¹ and Order No. 342A, dated June 9, 1980.* The subject line was acquired by the State of South Dakota, through its Department of Transportation (State).

¹ Attached to Order No. 342 is a listing of MILW's trackage. The trackage involved in this proceeding is included under the heading "R.—Mitchell to Rapid City."

Pursuant to an operating agreement dated April 22, 1997, between the State and STC, STC will provide freight service over the line for a period of 20 years (subject to cessation of operations or termination of the agreement as provided in the agreement) if shippers timely ensure that the applicable rehabilitation costs will be recoverable. STC may also provide service over an additional state-owned railroad corridor into Rapid City, SD, where the connecting railroad would be the Dakota, Minnesota, and Eastern Railroad.

This rail line qualifies for a modified certificate of public convenience and necessity. See Common Carrier Status of States, State Agencies and Instrumentalities, and Political Subdivisions, Finance Docket No. 28990F (ICC served July 16, 1981).

At present, no entity has committed to subsidize operations on the line. Commencement of rehabilitation or operations is contingent upon shippers meeting the following preconditions by entering into binding written commitments to: (1) provide funding for rehabilitation purposes equal to a sum no less than \$3,500,000;² (2) provide funding for rail, track, and other track material in an amount no less than \$1,500,000 and for reimbursement of interest on such amount until paid; and (3) assure sufficient carloadings (or payments in lieu thereof) in an amount no less than 2,000 carloadings yearly, adequate to cover all costs associated with maintenance, operation and capitalization of the line.

This notice must be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F St., NW, Washington, DC 20001; and on the American Short Line Railroad Association, 1120 G St., NW, Suite 520, Washington, DC 20005.

Decided: June 3, 1997.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97-15265 Filed 6-11-97; 8:45 am]

BILLING CODE 4915-00-P

²This sum may be increased in the event a third party engineering study identifies needs requiring a greater amount of rehabilitation necessary to improve the facilities in order to achieve 15 mph operation in accordance with applicable standards, or to provide for rehabilitation of additional track needed for interconnections, up to \$30,000 per mile for such additional track.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 2, 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, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515-0063.

Form Number: CF 5129.

Type of Review: Extension.

Title: Crew Members Declaration.

Description: This document is used to accept and record importations of merchandise by crew members, and to enforce agricultural quarantines, the currency reporting laws, and the revenue collection laws.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 5,968,351.

Estimated Burden Hours Per

Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 298,418 hours.

OMB Number: 1515-0191.

Form Number: CF 5106.

Type of Review: Extension.

Title: Importer Input Record.

Description: This document is filed with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per

Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 100 hours.

Clearance Officer: J. Edgar Nichols (202) 927-1426, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, N.W., 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. 97-15352 Filed 6-11-97; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 5, 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, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515-0088.

Form Number: None.

Type of Review: Extension.

Title: Foreign Assembler's Declaration (With Endorsement by Importer).

Description: The Foreign Assembler's Declaration with Importer's Endorsement is used by Customs to substantiate a claim for duty free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the United States.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 2,730.

Estimated Burden Hours Per

Respondent: 50 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 302,402 hours.

Clearance Officer: J. Edgar Nichols (202) 927-1426, U.S. Customs Service, Printing and Records Management Branch, Room 6216 1301 Constitution Avenue, N.W., 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. 97-15353 Filed 6-11-97; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE TREASURY**Submission to OMB for Review;
Comment Request**

June 5, 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, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545-1065.

Form Number: IRS 9003.

Type of Review: Extension.

Title: Additional Questions to be Completed by All Applicants for Permanent Residence in the United States.

Description: Form 9003 is used by the State Department and the Immigration and Naturalization Service to gather certain additional information from "green card" applicants for the Internal Revenue Service (IRS) as required by Section 6039E of the Internal Revenue Code (IRC) of 1986. The answers are transcribed into a database for IRS computer processing.

Respondents: Individuals or households.

Estimated Number of Respondents: 933,000.

Estimated Burden Hours Per Respondent: 5 minutes.

Estimated Total Reporting Burden: 77,750 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. 97-15354 Filed 6-11-97; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Submission for OMB Review;
Comment Request**

June 5, 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, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512-0018.

Form Number: ATF F 6, Part II (5330.3B).

Type of Review: Extension.

Title: Application and Permit for Importation of Firearms, Ammunition and Implements of War.

Description: This information collected is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. This information is used to secure authorization to import such articles. Forms are used by persons who are members of the United States Armed Forces.

Respondents: Individuals or households, Business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 9,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,500 hours.

OMB Number: 1512-0215.

Form Number: ATF F 5110.75.

Recordkeeping Requirement ID

Number: ATF REC 5110/10.

Type of Review: Extension.

Title: Alcohol Fuel Plants (AFP) Records, Reports and Notices.

Description: Data is necessary to (1) determine that persons are qualified to produce alcohol for fuel purposes and identify such persons; (2) account for distilled spirits produced and verify its proper disposition; and, (3) keep registrations current and evaluate permissible variations from prescribed procedures.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 871.

Estimated Burden Hours Per

Respondent/Recordkeeper: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting/

Recordkeeping Burden: 871 hours.

OMB Number: 1512-0352.

Recordkeeping Requirement ID

Number: ATF REC 5170/1.

Type of Review: Extension.

Title: Importer's Records and Reports, Alcoholic Beverages.

Description: Importers are required to maintain usual and customary business records and file letter applications or notices related to specific regulatory activities.

Respondents: Federal Government.

Estimated Number of Recordkeepers: 500.

Estimated Burden Hours Per

Recordkeeper: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping

Burden: 251 hours.

OMB Number: 1512-0367.

Recordkeeping Requirement ID

Number: ATF REC 5220/1.

Type of Review: Extension.

Title: Tobacco Export Warehouse-Record of Operations.

Description: Tobacco Export Warehouses store untaxpaid tobacco products until they are exported. The record is used to maintain accountability over these products, allows ATF to verify that all products have been exported or tax liabilities satisfied, and protects revenue.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 221.

Estimated Burden Hours Per

Recordkeeper: 0 hours (usual and customary business records).

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1512-0378.

Recordkeeping Requirement ID

Number: ATF REC 5530/1.

Type of Review: Extension.

Title: Applications and Notices—Manufacturers of Nonbeverage Products.

Description: Reports (letterhead applications and notices) are submitted by manufacturers of nonbeverage products who are using distilled spirits on which drawback will be claimed. Reports ensure that operations are in compliance with law; prevents spirits from diversion to beverage use; and protects revenue.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 640.

*Estimated Burden Hours Per**Recordkeeper:* 1 hour.*Frequency of Response:* On occasion.*Estimated Total Recordkeeping**Burden:* 640 hours.*OMB Number:* 1512-0392.*Recordkeeping Requirement Number:* ATF REC 5190/1.*Type of Review:* Extension.*Title:* Records of Things of Value to Retailers, and Occasional Letter Reports from Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, etc., Under the Federal Alcohol Administration Act.*Description:* These records and occasional letter reports are used to show compliance with the provisions of the Federal Alcohol Administration Act which prevents wholesalers, producers, or importers from giving things of value to retail liquor dealers, and prohibits industry members from conducting certain types of sponsorships, advertising, promotions, etc.*Respondents:* Business or other for-profit, Individuals or households.*Estimated Number of Recordkeepers:* 12,665.*Estimated Burden Hours Per**Recordkeeper:* 0 hours (usually and customary business records).*Frequency of Response:* On occasion.*Estimated Total Recordkeeping**Burden:* 51 hours.*OMB Number:* 1512-0506.*Form Number:* ATF F 5600.38 (formerly ATF F 5300.29).*Type of Review:* Extension.*Title:* Application For Extension of Time For Payment of Tax.*Description:* ATF uses the information on the form to determine if a taxpayer is qualified to extend payment based on circumstances beyond the taxpayers control.*Respondents:* Business or other for-profit.*Estimated Number of Respondents:* 12.*Estimated Burden Hours Per**Respondent:* 15 minutes.*Frequency of Response:* On occasion.*Estimated Total Reporting Burden:* 3 hours.*OMB Number:* 1512-0514.*Form Number:* ATF F 5154.2.*Type of Review:* Extension.*Title:* Supporting Data for Nonbeverage Drawback Claims.*Description:* Data required to be submitted by manufacturers of nonbeverage products are used to verify claims for drawback of taxes and hence, protect the revenue, maintain accountability, and allow office (initial) verification of claims.*Respondents:* Business or other for-profit.*Estimated Number of Respondents:* 590.*Estimated Burden Hours Per**Respondent:* 1 hour.*Frequency of Response:* Quarterly, Monthly.*Estimated Total Reporting Burden:* 3,540 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. 97-15355 Filed 6-11-97; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review;
Comment Request

May 30, 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, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: New.*Form Number:* PD F 3871.*Type of Review:* New collection.*Title:* Application for Issue of United States Mortgage Guaranty Insurance Company and Loss Bonds.*Description:* PD F 3871 is submitted by companies engaged in the business of writing mortgage guaranty insurance for the purpose of purchasing "Tax and Loss" bonds.*Respondents:* Business or other for-profit.*Estimated Number of Respondents:* 37.*Estimated Burden Hours Per**Response:* 15 minutes.*Frequency of Response:* On occasion.*Estimated Total Reporting Burden:* 20 hours.*Clearance Officer:* Vicki S. Thorpe, (304) 480-6553, Bureau of the Public

Debt, 200 Third Street, Parkersburg, WV 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. 97-15356 Filed 6-11-97; 8:45 am]

BILLING CODE 4810-40-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review;
Comment Request

May 28, 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, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to begin the first three-week survey described below in June 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by June 6, 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 97-012-G.*Type of Review:* Revision.*Title:* Customer Service Satisfaction Survey.*Description:* This customer satisfaction survey is designed to measure customer satisfaction with the toll-free telephone system and assess the effectiveness of the Integrated Case Processing (ICP) system.*Respondents:* Individuals or households.*Estimated Number of Respondents:* 2,970.*Estimated Burden Hours Per**Response:* 10 minutes.*Frequency of Response:* Other (one-time only).*Estimated Total Reporting Burden:* 495 hours.*Clearance Officer:* Garrick Shear, (202) 622-3869, Internal Revenue

Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt,
 (202) 395-7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.
 [FR Doc. 97-15357 Filed 6-11-97; 8:45 am]
 BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service; Notice of Meeting

AGENCY: Departmental Offices, Treasury.
ACTION: Notice of meeting.

SUMMARY: This notice announces the date and location of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on June 27, 1997. The session will be held from 9:30 a.m. to 12:30 p.m. at the Treasury Executive Institute, 1255 22nd Street, NW., Washington, DC. The Institute is located within a 10-minute walk from either the Dupont Circle or Foggy Bottom Metro station. Tel.: (202) 622-9311.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary for Enforcement, Room 4004, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel.: (202) 622-0220.

SUPPLEMENTARY INFORMATION: This is the third meeting of the current two-year term of the Committee. The provisional agenda to be considered at the meeting is as follows:

1. Customs enforcement of the prison labor statute with respect to China.
2. The Automated Export System.
3. World Customs Organization Customs Modernization and Reform Symposium.
4. Trans/Atlantic Business Dialogue Customs Committee Progress.
5. Commercial Operations Resource Priorities.
6. Other new business.

The provisional agenda may be modified prior to the meeting. Meeting time is based on this agenda. Members of the public wishing to confirm the final content of the agenda may do so by calling the information number one

week prior to the meeting. The Committee, in its discretion, may take up other matters, time permitting.

The meeting is open to the public. However, participation in the discussion is limited to Committee members and Treasury and Customs staff. It is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give notice by contacting Ms. Theresa Manning no later than June 20, 1997 at 202-622-0220.

Dated: June 6, 1997.

John P. Simpson,

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

[FR Doc. 97-15332 Filed 6-11-97; 8:45 am]
 BILLING CODE 4810-25-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Joint Board For the Enrollment of Actuaries; Advisory Committee on Actuarial Examinations Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Conference Room 118 of the Aerospace Building, L'Enfant Plaza, 901 D Street, SW, Washington, DC, on Thursday and Friday, June 26 and 27, 1997, from 8:30 a.m. to 5:00 p.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B) and to review the May 1997 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board examination program for the November 1997 pension actuarial examination and the May 1998 basic actuarial examination will be discussed. In addition, the structure of future enrollment examinations, the elimination of commutation functions from the examinations, and the possibility of assigning different point values for different questions and the criteria to be used in assigning such values will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) that the portions of the meeting dealing with the discussion of questions which may appear on future Joint Board examinations and review of the May 1997 Joint Board examination fall

within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552 (c)(9)(B), and that public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the structure of future enrollment examinations, topics being tested, possibility of some form of open book examinations, the elimination of commutation functions from the examinations, and the possibility of assigning different point values for questions will commence at 1:30 p.m. on June 26 and will continue for as long as necessary to complete the discussion, but not beyond 3:00 p.m. This portion of the meeting will be open to the public as space is available. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements must notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length.

Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Persons planning to attend the public session must also notify the Committee Management Officer in writing to obtain building entry. Notifications should be faxed to (202) 401-6657 no later than June 20, 1997, Attention: Robert I. Brauer, Joint Board for the Enrollment of Actuaries, c/o Department of Treasury, Internal Revenue Service (C:AP:P), 1111 Constitution Avenue, NW, Washington, DC 20224.

Dated: June 3, 1997.

Robert I. Brauer,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 97-15442 Filed 6-11-97; 8:45 am]
 BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0154]

Proposed Information Collection Activity; Proposed Collection; Comment Request; Revision

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements to determine the applicant's eligibility to education benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 11, 1997.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to "OMB Control No. 2900-0154" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273-8310 or FAX (202) 275-4884.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Application for Education Benefits, VA Form 22-1990.

OMB Control Number: 2900-0154.

Type of Review: Revision of a currently approved collection.

Abstract: VA uses the information on the application to determine the

applicant's eligibility to education benefits under Chapters 30 and 32, Title 38 U.S.C., Chapter 1606, Title 10 U.S.C., or Public Law 96-342, Section 903. In order to receive VA educational assistance allowance, veterans and members of the selected reserve must complete VA Form 22-1990, Application for Education Benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 90,231 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: Once, initial application.

Estimated Number of Respondents: 154,682.

Dated: May 21, 1997.

By direction of the Secretary.

William Morgan,

Program Analyst, Information Management Service.

[FR Doc. 97-15347 Filed 6-11-97; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0442]

Proposed Information Collection Activity; Proposed Collection; Comment Request; Extension

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for verification of military service in order to establish entitlement to compensation or pension benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 11, 1997.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please

refer to "OMB Control No. 2900-0442" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273-8310 or FAX (202) 275-4884.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: Request for Armed Forces Separation Records, VA Form Letter 21-80e.

OMB Control Number: 2900-0442.

Type of Review: Extension of a currently approved collection.

Abstract: In order to establish entitlement to VA compensation or pension benefits, a veteran must have had active military service which resulted in separation under other than dishonorable conditions. VA Form Letter 21-80e is completed by the veteran to furnish information relative to his/her military service. The information is used to aid VA in requesting verification of military service. Benefits cannot be paid without verification of service.

Affected Public: Individuals or households.

Estimated Annual Burden: 17,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 102,000.

Dated: May 21, 1997.

By direction of the Secretary.

William Morgan,

Program Analyst, Information Management Service.

[FR Doc. 97-15348 Filed 6-11-97; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0045]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Extension

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements to determine the reasonable value of properties proposed as security for guaranteed or direct home loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 11, 1997.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to "OMB Control No. 2900-0045" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273-8310 or FAX (202) 275-4884.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: VA Request for Determination of Reasonable Value, VA Form 26-1805.

OMB Control Number: 2900-0045.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26-1805 is used to collect data necessary for VA compliance with the requirements of Title 38 U.S.C. 3710(b) (4), (5), and (6). These requirements prohibit the VA guaranty or making of any loan unless the suitability of the security property for dwelling purposes is determined, the loan amount does not exceed the reasonable value, and if the loan is for purposes of alteration, repair, or improvements, the work substantially improves the basic livability of the property. The data supplied by persons and firms completing VA Form 26-1805 is used by VA personnel to identify and locate properties for appraisal and to make assignments to appraisers. The VA is required to notify potential veteran-purchasers of such properties of the VA-established reasonable value. The VA will also use VA Form 26-1843, Certificate of Reasonable Value, as a notice to requesters of the reasonable (appraised) value or an authorized lender will issue a notice of value in connection with the Lender Appraisal Processing Program.

Affected Public: Individuals or households.

Estimated Annual Burden: 64,000 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 320,000.

Dated: May 21, 1997.

By direction of the Secretary.

William Morgan,

Program Analyst, Information Management Service.

[FR Doc. 97-15349 Filed 6-11-97; 8:45 am]

BILLING CODE 8320-01-P

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to customer satisfaction surveys.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 11, 1997.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (161A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900-0570" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273-8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Generic Clearance for the Veterans Health Administration Customer Satisfaction Surveys.

OMB Control Number: 2900-0570.

Type of Review: Revision of a currently approved collection.

Abstract: Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0570]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Revision

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. The VHA uses customer

satisfaction surveys to gauge customer perceptions of VA services as well as customer expectations and desires. The results of these information collections lead to improvements in the quality of

VHA service delivery by helping to shape the direction and focus of specific programs and services.

Affected Public: Individuals or households.

Year	Number of respondents	Estimated annual burden (hours)	Frequency of response
Nationwide Inpatient Survey			
1998	40,992	15,248	Annually.
1999	40,992	15,248	Annually.
2000	40,992	15,248	Annually.
Nationwide Outpatient Survey			
1998	30,672	15,336	Annually.
1999	30,672	15,336	Annually.
2000	30,672	15,336	Annually.
Special Emphasis (Different Special Emphasis Programs will be surveyed annually; for example, in 1997, VHA is surveying inpatient and outpatient Persian Gulf Veterans and inpatient and outpatient Spinal Cord Injury patients. Special Emphasis program selections have not been made for FYs 1998–2000. Burden hours for the out-years are based on 1997 estimates.)			
1998	46,800	18,200	Annually.
1999	46,800	18,200	Annually.
2000	46,800	18,200	Annually.
Long Term Care Inpatient (Long Term Care populations will be surveyed annually, and some may change from year to year: for example, in 1997 VHA is surveying Nursing Home Care and Home Based Primary Care patients. Estimates for the out-years are based on 1997 estimates.)			
1998	4,000	1,333	Annually.
1999	4,000	1,333	Annually.
2000	4,000	1,333	Annually.
Long Term Care Outpatient (Long Term Care populations will be surveyed annually, and some may change from year to year. Estimates for the out-years are based on 1997 estimates.)			
1998	2,507	627	Annually.
1999	2,507	627	Annually.
2000	2,507	627	Annually.
Local Facilities Surveys			
1998	12,000	3,000	One-time.
1999	12,000	3,000	One-time.
2000	12,000	3,000	One-time.

Most customer satisfaction surveys will be recurring so that the VHA can create ongoing measures of performance and to determine how well the agency meets customer service standards. Each collection of information will consist of the minimum amount of information necessary to determine customer needs and to evaluate the VHA's performance. The VHA expects to distribute written surveys with a total annual burden of approximately 53,744 hours in 1998, 1999, and 2000.

The areas of concern to the VHA and its customers may change over time, and it is important to have the ability to evaluate customer concerns quickly. OMB will be requested to grant generic clearance approval for a 3-year period to conduct customer satisfaction surveys

and focus groups. Participation in the surveys will be voluntary and the generic clearance will not be used to collect information required to obtain or maintain eligibility for a VA program or benefit. In order to maximize the voluntary response rates, the information collection will be designed to make participation convenient, simple, and free of unnecessary barriers. Baseline data obtained through these information collections will be used to improve customer service standards. The VHA will consult with OMB regarding each specific information collection during this approval period.

Dated: June 3, 1997.

By direction of the Secretary.

Donald L. Neilson,
 Director, Information Management Service.
 [FR Doc. 97-15350 Filed 6-11-97; 8:45 am]
 BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0548]

Proposed Information Collection Activity; Proposed Collection; Comment Request; Extension

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Board of Veterans' Appeals (BVA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to BVA's customer satisfaction survey.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 11, 1997.

ADDRESSES: Submit written comments on the collection of information to William J. Alexander, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900-0548" in any correspondence.

FOR FURTHER INFORMATION CONTACT: William J. Alexander at (202) 565-4059.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, BVA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of BVA's functions, including whether the information will have practical utility; (2) the accuracy of BVA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Generic Clearance for the Board of Veterans' Appeals Customer Satisfaction Survey.

OMB Control Number: 2900-0548.

Type of Review: Extension of a currently approved collection.

Abstract: Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. The BVA uses the customer satisfaction survey to evaluate customer services as well as customer expectations and desires. The results of this information collection lead to improvements in the quality of BVA service delivery by helping to shape the direction and focus of specific services.

Affected Public: Individuals or households.

Estimated Annual Burden: 400 hours.

Estimated Average Burden Per Respondent: 6 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 4,000.

The BVA anticipates the survey will identify those aspects of service that are most important to benefit claims appellants. The areas of concern to the BVA and its customers may change over time, and it is important to have the ability to evaluate customer concerns quickly. The OMB will be requested to grant generic clearance approval for a 3-year period to conduct a customer satisfaction survey. Participation in the survey will be voluntary and the generic clearance will not be used to collect information required to obtain or maintain eligibility for a VA program or benefit. In order to maximize the voluntary response rates, the information collection will be designed to make participation convenient, simple, and free of unnecessary barriers. Baseline data obtained through these information collections will be used to improve customer service standards. The BVA will consult with OMB regarding any changes to the information collection during this approval period.

Dated: June 3, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97-15351 Filed 6-11-97; 8:45 am]

BILLING CODE 8320-01-P

Corrections

Federal Register

Vol. 62, No. 113

Thursday, June 12, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 150

[Docket No. 28149]

Proposed Final Policy on Part 150 Approval and Funding of Noise Mitigation Measures

Correction

In proposed rule document 97-13953 beginning on page 28816 in the issue of Wednesday, May 28, 1997, make the following corrections:

1. On page 28816, in the third column, in the first full paragraph, in the 20th line "measure" should read "measures".

2. On page 28817, in the second column;

a. In the second full paragraph;

(1). The second line "meet" should read "met".

(2). The eighth line "basis" should read "basic".

(3). The ninth line "and" should read "land".

b. In the fourth line from the bottom, "of" should be inserted following "be".

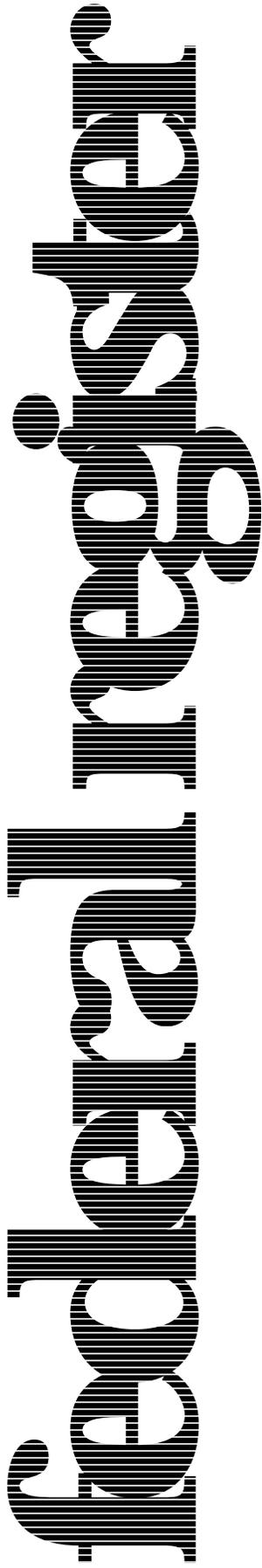
3. On page 28818, in the first column; remove line two, three and the first two words in line four.

4. On page 28819, in the third column, second full paragraph, in the second line "typing" should read "tying".

5. On page 28821, in the second column, under the first "Issue" entry, in the seventh line, "population" should read "populations".

6. On page 28822, in the second column, under the "**Proposed Final Policy Statement**", in the eighth line "edibility" should read "eligibility".

BILLING CODE 1505-01-D



Thursday
June 12, 1997

Part II

**Department of
Commerce**

**National Oceanic and Atmospheric
Administration**

**15 CFR Parts 922, 929, and 937
Florida Keys National Marine Sanctuary
Regulations; Final Rule**

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 922, 929, and 937

[Docket No. 9607292-6192-03]

RIN 0648-AD85

Florida Keys National Marine Sanctuary Final Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of effective date; modifications to final rule.

SUMMARY: Pursuant to the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act, NOAA developed the comprehensive final management plan for the Florida Keys National Marine Sanctuary (FKNMS or the Sanctuary). NOAA issued final regulations on January 30, 1997, to implement that plan and govern the conduct of activities within the Sanctuary. Congress and the Governor of the State of Florida (Governor) had forty-five days of continuous session of Congress beginning on the day on which the final regulations were published to review those regulations and management plan. After the forty-five day review period, the regulations would become final and take effect, except that any term or terms of the regulations or management plan the Governor certified to the Secretary of Commerce as unacceptable would not take effect in the area of the Sanctuary lying within the seaward boundary of the State.

During the forty-five day review period the Governor submitted to the Secretary of Commerce a certification that implementation of the management plan and certain regulations were unacceptable unless specific amendments were made to the regulations. In response to the Governor's certification, NOAA amended those regulations certified as unacceptable to incorporate the Governor's changes. Consequently, upon their effective date the regulations, as modified by this notice, and management plan, in their entirety, will apply throughout the Sanctuary, including within State waters of the Sanctuary.

This notice amends the regulations published in the January 30, 1997,

Federal Register, in response to the Governor's certification, and announces the effective date of the regulations.

EFFECTIVE DATE: The final rule published on January 30, 1997, at 62 FR 4578 and the revision of 15 CFR part 922, subpart P in this document are effective July 1, 1997.

ADDRESSES: Requests for a copy of the FMP/EIS, the Final Regulatory Flexibility Analysis, or the Federalism Assessment should be submitted to the Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, Florida 33050.

FOR FURTHER INFORMATION CONTACT: Billy Causey, Sanctuary Superintendent, 305/743-2437 or Edward Lindelof, East Coast Branch Chief, Sanctuaries and Reserves Division, 301/713-3137 Extension 131.

SUPPLEMENTARY INFORMATION:**I. Introduction**

The FKNMS was designated by an act of Congress entitled the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA, Pub.L. 101-605) which was signed into law on November 16, 1990. The FKNMSPA directed the Secretary of Commerce to develop a comprehensive management plan and regulations for the Sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (NMSA) (also known as Title III of the Marine Protection, Research, and Sanctuaries Act of 1972), as amended, 16 U.S.C. 1431 *et seq.* The NMSA authorizes the development of management plans and regulations for national marine sanctuaries to protect their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

The authority of the Secretary to designate national marine sanctuaries and implement designated sanctuaries was delegated to the Under Secretary of Commerce for Oceans and Atmosphere by the Department of Commerce, Organization Order 10-15, § 3.01(z) (Jan. 11, 1988). The authority to administer the other provisions of the NMSA was delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83-38, Directive 05-50 (Sept. 21, 1983, as amended).

II. Forty-Five Day Review Period Under the National Marine Sanctuaries Act

NOAA published the final Sanctuary regulations on January 30, 1997, (62 FR 4578) to implement the management plan and govern the conduct of

activities within the Sanctuary. Under the NMSA, Congress and the Governor had forty-five days of continuous session of Congress beginning on the day on which the final regulations were published to review the terms of designation (i.e., management plan and regulations). After forty-five days, the regulations would become final and take effect, except that any term or terms the Governor certified within the forty-five day period to the Secretary of Commerce as unacceptable would not take effect in the area of the Sanctuary lying within the seaward boundary of the State. Congress could also act on the terms of designation. The following discusses the Governor and Congress' actions during the forty-five day period and corresponding modifications to the final regulations made by NOAA in response to those actions.

Certification by the Governor of Florida

On March 20, 1997, during the forty-five day review period under the NMSA, the Governor of the State of Florida certified by letter to the Secretary of Commerce that implementation of the management plan and certain regulations were unacceptable in State waters. However, the management plan and regulations certified as unacceptable would be acceptable if NOAA amended the regulations and the Co-Trustees Agreement for Cooperative Management (Co-Trustees Agreement), contained in the management plan, as requested in the Governor's certification letter. NOAA has amended the regulations and the Co-Trustees Agreement to incorporate the modifications requested by the Governor in his letter. By doing so, the regulations and management plan, as modified, are accepted by the Governor and, therefore, will apply within State waters of the Sanctuary upon the effective date of these regulations.

The following is the text of the March 20, 1997, letter from the Governor of Florida to the Secretary of Commerce. Per the Governor's request, the letter is followed by the text of the Resolution passed by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (Board of Trustees). The Resolution was adopted on January 28, 1997, and provides the basis for many of the items in the Governor's certification.

Lawton Chiles
Governor
State of Florida
Office of the Governor
The Capitol
Tallahassee, Florida 32399-0001
March 20, 1997.

Honorable William M. Daley, Secretary,
United States Department of Commerce,
Herbert C. Hoover Building, 14 Street
and Constitution Avenue Northwest,
Washington, DC 20230.

Dear Mr. Secretary:

On January 28, 1997, the Florida Cabinet and I, sitting as the Board of Trustees of the Internal Improvement Trust Fund, adopted a resolution to include state sovereign submerged lands within the boundary of the Florida Keys National Marine Sanctuary (FKNMS). It is our intention to create a partnership with the National Oceanic and Atmospheric Administration (NOAA) for management under the provisions of the FKNMS Management Plan and the Memoranda of Agreement included in the management plan, with certain conditions to be applied to the portions of the sanctuary within Florida Territorial Waters. A copy of the resolution is enclosed. We request that the resolution be placed in the preamble to the final notice for the FKNMS regulations.

In accordance with subsection 304(b)(1) of the National Marine Sanctuaries Act and that resolution, the following terms are certified as unacceptable in state waters:

1. Sanctuary fees for allowed public uses unless first approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.
2. Sanctuary emergency regulations unless and until first approved by the Governor. Accordingly, the following sentence shall be added to section 922.165 CFR as published January 30, 1997: "Emergency regulations shall not take effect in Florida territorial waters until approved by the Governor of the State of Florida."
3. Requirements for governmental entities within the state, including but not limited to the State of Florida and Monroe County, to provide funding for the implementation of sanctuary regulations or other actions.
4. Sanctuary fisheries regulations unless established by the Florida Marine Fisheries Commission following promulgation under the provisions of section 370.025(2), F.S. (1995), which requires public input and final approval by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. Accordingly, the following sentence shall be added to section 922.42 CFR as published January 30, 1997: "Any fishery regulations in the Florida Keys National Marine Sanctuary shall not take effect in Florida Territorial Waters until established by the Florida Marine Fisheries Commission."
5. Sanctuary regulation of discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, if the discharging or depositing is authorized under

Monroe County land use permits or under state permits. Accordingly, 15 CFR section 922.163(a)(4)(ii), concerning prohibited activities, shall be amended to read as follows: "Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraph (a)(4)(I) (A) through (D) of this section and those authorized under Monroe County land use permits or under state permits."

6. The implementation of any additional ecological reserves or any other type of zoning or regulation unless first approved by the Board of Trustees. Accordingly, the following provision shall be added to 15 CFR section 922.163 as published January 30, 1997: "(h) Any amendment to these regulations shall not take effect in Florida Territorial Waters until approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida;" and the following provision shall be added to 15 CFR section 962.164: "(f) Additional wildlife management areas, ecological reserves, sanctuary preservation areas, or special use areas, and additional restrictions in such areas, shall not take effect in Florida Territorial Waters unless first approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida."

7. Implementation of the management plan in its entirety unless the Co-Trustees agreement is amended to provide as follows:

a. The Florida Department of Environmental Protection (FDEP) employee who has been designated by the Secretary of FDEP and confirmed by the Board of Trustees shall represent the Board of Trustees as an equal partner to work in consultation with the Sanctuary superintendent for the oversight of Sanctuary operations.

b. The FDEP and NOAA shall manage the FKNMS through a cooperative partnership and consult on all management activities throughout the Sanctuary. The intent of this partnership is that the final resolution of any management issues resulting in policy conflicts between the state and NOAA shall be decided by the managing partners consistent with state and federal laws.

c. The state reserves the right to initiate proposed changes to the plan, and NOAA, if necessary, shall initiate the federal rule promulgation process required to make revisions to sanctuary regulations requested by the Board of Trustees.

d. Section 304(e) of the National Marine Sanctuary Act requires the Secretary of Commerce to review the management plan and regulations for the Sanctuary every five years, evaluate the substantive progress toward implementing the management plan and goals for the Sanctuary; especially the effectiveness of site-specific management techniques, and revise the management plan and regulations as necessary to fulfill the purposes and policies of the Act. When the management plan and regulations for the FKNMS are re-evaluated, the Secretary of Commerce will re-propose the management plan and regulations in their entirety and the State of Florida will have the opportunity to

review the management plan and regulations, in their entirety, and indicate if any or all of the terms are unacceptable, in which case the unacceptable terms shall not take effect in state waters.

Accordingly, the following provisions shall be added to 15 CFR section 922.160: "Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the regulations in their entirety with any proposed changes thereto, including those regulations in subparts A and E of this part that apply to the Sanctuary. The Governor of the State of Florida will have the opportunity to review the re-proposed regulations before they take effect and if the Governor certifies such regulations as unacceptable, they will not take effect in State waters of the Sanctuary."

We also call to your attention the now erroneous reference in section 922.166(b)(2)(iii) to the Submerged Cultural Resources Agreement contained in Volume 1 of the management plan. We suggest striking that reference. The final agreement is that considered by the Board of Trustees on January 28, 1997 and executed by the signatory parties.

We believe that implementation of the plan provides balanced, common sense protection of this fragile, unique and endangered marine treasure and advances the state and federal commitment to jointly manage these resources. We look forward to that continuing relationship.

With kind regards, I am
Sincerely,

Lawton Chiles

LC/khw/mlp

Enclosure

cc: Honorable Frank Brogan
Honorable Bob Butterworth
Honorable Bob Crawford
Honorable Debbie Horan
Honorable Bob Milligan
Honorable Sandra Mortham
Honorable Bill Nelson

Resolution

WHEREAS, the United States Congress passed the Florida Keys National Marine Sanctuary and Protection Act (PL 101-605, "the Act") to protect the unique and invaluable natural and cultural resources of the Florida Keys; and

WHEREAS, the President of the United States signed this legislation into law on November 16, 1990; and

WHEREAS, the Florida Keys National Marine Sanctuary (FKNMS) boundary encompasses 2800 square nautical miles of the Atlantic Ocean, Gulf of Mexico, and Florida Bay, of which approximately 65% is Florida state territorial waters; and

WHEREAS, the Board of Trustees of the Internal Improvement Trust Fund ("the Board of Trustees") is vested with the authority and charged with the responsibility for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of

all state lands, including sovereignty submerged lands, as set forth in Chapter 253, Florida Statutes; and

WHEREAS, upon enactment of the Act, the Board of Trustees resolved on December 16, 1990, to include state waters within the sanctuary boundary under certain specified conditions; and

WHEREAS, the Florida Coastal Resources Interagency Management Committee resolved in February of 1991 to include appropriate state representation in the Florida Keys National Marine Sanctuary Management Plan development process; and

WHEREAS, an "Interim Memorandum of Agreement" was executed on September 15, 1992, between the National Oceanic and Atmospheric Administration (NOAA) and Board of Trustees specifying the conditions under which state sovereign submerged lands were to be included in the Sanctuary and managed during the management plan development process; and

WHEREAS, the management plan development period was extended to six years to provide the maximum opportunity for participation by all segments of government, industry, and the citizens of Florida and the United States; and

WHEREAS, Memoranda of Agreement to manage the marine ecosystem of the Florida Keys through a cooperative partnership have been developed and included in the management plan, including the:

- (1) Interagency Compact Agreement
- (2) Co-Trustees Agreement for Cooperative Management
- (3) Submerged Cultural Resources Agreement
- (4) Cooperative Enforcement Agreement
- (5) Agreement for Coordination of Civil Claims
- (6) Protocol for Cooperative Fisheries Management
- (7) Protocol for Emergency Response Notification
- (8) Certification/Authorization of Permits Agreement
- (9) Water Quality Program Steering Committee By-laws; and

WHEREAS, the citizens and government of the State of Florida have expressed continuing interest in issues not specifically addressed or resolved in the management plan or memoranda of agreement relating to the:

- (1) Imposition of fees for public use of the marine resources;
- (2) Disposition of funds recovered from natural resource damage claims;
- (3) Imposition of emergency regulations on state sovereign submerged lands;
- (4) Obligation of governmental entities, including the State of Florida, to implement the regulations of the management plan without having been allocated additional funding for that specific purpose;
- (5) Promulgation of federal fisheries regulations that are more restrictive than those established by the Florida Marine Fisheries Commission under Florida statutory authority;
- (6) Imposition of restrictions on the use of adjacent uplands exceeding those established by the State of Florida;

(7) Purpose, goals and measures of success associated with the Western Sambos Ecological Reserve;

(8) Parity of state and federal management authority for the implementation and ongoing operations of the FKNMS;

(9) Prospects of designating additional ecological reserves in the future as proposed in the draft management plan;

(10) Periodic evaluation of the effectiveness of the sanctuary management plan in the protection and preservation of the marine resources of the Florida Keys;

(11) Resolution of differences between the respective government agencies with Sanctuary management authority for the State of Florida and the United States of America;

(12) Right of the State to initiate changes to the plan;

(13) Article V of the Designation Document; and

(14) Right of the State to revisit the plan and regulations in their entirety.

NOW, THEREFORE, BE IT RESOLVED that the sovereign submerged lands of the State of Florida located within the boundaries of the Florida Keys National Marine Sanctuary, as specified by the United States Congress in PL 101-605, are hereby included in the Sanctuary for management in partnership between the Board of Trustees and NOAA under the provisions of: the Florida Keys National Marine Sanctuary Management Plan; the Memoranda of Agreement included in the management plan; and, the following conditions to be applied to the portions of the Sanctuary within Florida territorial waters:

(1) Federal sanctuary fees for allowed public uses of the marine resources shall not be imposed without having first been approved by the Board of Trustees;

(2) The Memorandum of Agreement for the Coordination of Civil Claims shall be amended to provide that, with regard to proceedings to recover compensation for injury to state resources within the Sanctuary, Board of Trustees' approval on the use of funds recovered by NOAA under section 312 is required;

(3) The imposition of federal sanctuary emergency regulations shall not be authorized without the Governor's approval;

(4) No provision of the management plan will require governmental entities within the state, including but not limited to the State of Florida and Monroe County, to provide funding for the implementation of regulations or other actions;

(5) The implementation of fisheries regulations is unacceptable unless established by the Florida Marine Fisheries Commission following promulgation under the provisions of section 370.025(2), F.S. (1995), which requires public input and final Board of Trustees' approval;

(6) The Certification/Authorization of Permits Agreement shall be amended to provide that NOAA will have only a review and comment role on state permits for activities beyond the boundary of the Sanctuary. To the maximum extent possible the state will consider NOAA's comments as specified in the agreement. However, NOAA shall not require an additional permit. In

addition, 15 CFR section 922.163(a)(4)(ii), concerning prohibited activities, shall be amended to read as follows: "Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraph (a)(4)(i) (A) through (D) above and those authorized under Monroe County land use permits or under state permits.";

(7) The purpose of the Ecological Reserve in the Western Sambos is to maintain a natural assemblage of living marine resources by setting aside an area that assures minimal human disturbance and is not designed to perform any fishery enhancement or fishery management functions. Monitoring of ecological parameters will be performed to provide information on the status of fish, coral and other benthic components of the Reserve. At the end of five years the success of the Ecological Reserve in the Western Sambos will be assessed. If the state or NOAA finds the area is not fulfilling the purpose for which the reserve was established, the Board of Trustees may take action to initiate the removal of the site;

(8) The Secretary of the FDEP shall designate, with subsequent confirmation by the Board of Trustees, a DEP employee as its representative as an equal partner to work in consultation with the Sanctuary superintendent for the oversight of Sanctuary operations;

(9) The implementation of any additional ecological reserves, or any other type of zoning or regulation, which is applicable to state waters shall require advance Board of Trustees' approval;

(10) The FDEP, in cooperation with NOAA, shall submit to the Board of Trustees an annual status report of the Sanctuary, and a five-year evaluation of the overall effectiveness of the implementation of the Sanctuary management plan toward the goal of protecting the marine resources of the Florida Keys including recommendations for change;

(11) The FDEP and NOAA shall manage the FKNMS through a cooperative partnership and consult on all management activities throughout the Sanctuary. The intent of this partnership is that the final resolution of any management issues resulting in policy conflicts between the state and NOAA shall be decided by the managing partners consistent with state and federal laws. The Board of Trustees has not conveyed title to or relinquished authority over any state-owned lands or other state-owned resources by agreeing to include state-owned land and resources within the Sanctuary boundary. If necessary, NOAA shall initiate the federal rule promulgation process required to make Board of Trustees' requested revisions to the regulations of the FKNMS management plan;

(12) The state reserves the right to initiate proposed changes to the plan. The FDEP will monitor public opinion and provide a process for consideration of grievances and petitions for change;

(13) Article V of the Designation Document shall be amended to strike the first paragraph which states: "If any valid regulation issued

by any Federal, State or local authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation the regulation deemed by the Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, or his or her designee to be more protective of Sanctuary resources and qualities shall govern." Further, it shall be amended to strike the last sentence of the second paragraph which states: "However, the Secretary of Commerce or designee may regulate the exercise (including, but not limited to, the imposition of terms and conditions) of such authorization or right consistent with the purposes for which the Sanctuary is designated."; and

(14) The Co-Trustees Agreement for Cooperative Management shall be amended to add: Section 304(e) of the National Marine Sanctuary Act requires the Secretary of Commerce to review the management plan and regulations for the Sanctuary every five years, evaluate the substantive progress toward implementing the management plan and goals for the Sanctuary, especially the effectiveness of site-specific management techniques, and revise the management plan and regulations as necessary to fulfill the purposes and policies of the Act. When the management plan and regulations for the Florida Keys National Marine Sanctuary are re-evaluated, the Secretary will re-propose the management plan and regulations in their entirety. The State of Florida will have the opportunity to review the management plan and regulations, in their entirety, and indicate if any or all of its terms are unacceptable in which case the unacceptable terms shall not take effect in state waters.

IN TESTIMONY WHEREOF, the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida have hereunto subscribed their names and have caused the Official Seal of the State of Florida to be hereunto affixed in the City of Tallahassee on the 28th day of January, 1997.

Lawton Chiles,
Governor.

Sandra B. Mortham,
Secretary of State.

Bob Butterworth,
Attorney General.

Robert F. Milligan,
Comptroller.

Bill Nelson,
Treasurer.

Bob Crawford,
Commissioner of Agriculture.

Frank T. Brogan,
Commissioner of Education.

NOAA's Response to Governor's Certification

In response to the Governor's certification of March 20, 1997, NOAA has amended those regulations certified by the Governor as being unacceptable in State waters. With the modifications, the entire regulations and management

plan are accepted by the Governor and will apply throughout the Sanctuary, including within State waters of the Sanctuary, upon their effective date. The basis and purpose of the changes to the regulations are as follows.

(1) Per item number 2 of the Governor's letter which certified as unacceptable in State waters emergency regulations unless approved by the Governor, § 922.165 of subpart P is amended by adding "Emergency regulations shall not take effect in Florida State waters until approved by the Governor of the State of Florida." This is consistent with the management plan which provides that any new regulation or substantive modification to existing Sanctuary regulations will require the Governor's approval in order to take effect in State waters of the Sanctuary.

(2) Per item number 4 of the Governor's letter which certified as unacceptable in State waters Sanctuary fishing regulations unless established by the Florida Marine Fisheries Commission pursuant to section 370.025(2), F.S. (1995), § 922.163 of subpart P is amended by adding a new paragraph (h) to read in pertinent part "Any fishery regulations in the Sanctuary shall not take effect in Florida State waters until established by the Florida Marine Fisheries Commission." The Governor's certification proposed including this language in § 922.42 of part 922, which is a programmatic sanctuary regulation applicable to all sanctuaries. NOAA determined that a more appropriate place for the language is in the Sanctuary specific regulations at a new § 922.163(h) of subpart P, which has been added in response to item number 6 of the Governor's certification.

Item number 4 of the Governor's certification reflects actions already initiated by NOAA. In the January 30 **Federal Register** notice publishing the final regulations and triggering the forty-five day review period under the NMSA, NOAA stated that § 922.164(d), which pertains to Ecological Reserves (Reserves) and Sanctuary Preservation Areas (SPAs), will not take effect in State waters before July 1, 1997, to allow the State of Florida Marine Fisheries Commission (Commission) time to complete its rulemaking process related to the Western Sambos Ecological Reserve and those Sanctuary Preservation Areas located in State waters. The Commission's rule was adopted on May 13, 1997, and is substantively similar to NOAA's except in two instances. First, the Commission's Rule 46-6.003(1)(B), pertaining to the issue of possession of

fishing gear, which essentially mirrors 15 CFR § 922.164(d)(1)(iii) of NOAA's regulations, does not contain the phrase "no presumption of fishing activity shall be drawn" from possession of gear, because, according to the State, the Commission has no authority to address the issue of presumptions. Further, the Commission's Rule 46-6.003(1)(a), pertaining to possession of marine organisms within a Reserve or SPA, which mirrors 15 CFR § 922.164(d)(1)(ii) of NOAA's regulations, adds the element that to fall within the exception allowing possession of marine organisms in such areas, a vessel must be in "continuous transit" through the Reserve or SPA. NOAA's regulation did not require continuous transit.

In the January 30 **Federal Register** notice, NOAA stated that if the Commission's rule is not substantively the same as NOAA's, then NOAA would modify its regulations to conform with the State's, or would consult on whether the non-conforming portions of the Sanctuary regulations should be withdrawn from applying in State waters. NOAA consulted with the State and agreed that no changes are necessary to 15 CFR § 922.164(d)(1)(iii). As regards § 922.164(d)(1)(ii), the Governor requested that NOAA revise it to conform to the Commission's Rule 46-6.003(1)(a). In response to the Governor's request, and consistent with NOAA's January 30 **Federal Register** notice, therefore, NOAA has amended § 922.164(d)(1)(ii) to read as follows:

(ii) Possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities. However, fish, invertebrates, and marine plants may be possessed aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such resources can be shown not to have been harvested within, removed from, or taken within, the Ecological Reserve or Sanctuary Preservation Area, as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through such reserves or areas, provided further that in an Ecological Reserve or Sanctuary Preservation Area located in Florida State waters, such vessel is in continuous transit through the Ecological Reserve or Sanctuary Preservation Area.

Therefore, § 922.164(d)(1)(ii), consistent with the Commission's rule, now requires vessels possessing fish, invertebrates, or marine plants that are transiting through a Reserve or SPA located in State waters to be in continuous transit through the Reserve or SPA. These areas are the Western

Sambos Ecological Reserve, and the Cheeca Rocks, Eastern Dry Rocks, Hens and Chickens, Newfound Harbor Key, Rock Key, and Sand Key Sanctuary Preservation Areas.

The conforming change to § 922.164(d)(1)(ii) is made to the regulation only as it applies to Reserves and SPAs located in State waters because under the National Marine Sanctuaries Act, the Governor's actions during the forty-five day review period apply to the management plan and regulations as they pertain to the area of the Sanctuary lying within the seaward boundary of the State. Further, under the sanctuary program regulations as 15 CFR § 922.42, all activities may be conducted unless specifically prohibited by a sanctuary's regulations, "subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including Federal and State fishery management authorities."

Consequently, as regards State waters of the Sanctuary, regardless of whether NOAA amends § 922.164(d)(1)(ii), users would be subject to the State prohibition requiring continuous transit through a Reserve or SPA in State waters if such vessel possesses fish, invertebrates or marine plants. Finally, under the amended Sanctuary regulation, vessels possessing such marine organisms are not precluded from transiting the Reserve or SPA, which addresses the primary concern raised in the public comments NOAA received on the proposed regulation. In addition, during the State's rulemaking proceeding, it received no comments regarding the provision requiring continuous transit, supporting that there appear to be no significant concerns over the provision.

For consistency throughout the Sanctuary, NOAA will propose to amend the regulation as it pertains to the Ecological Reserves and Sanctuary Preservation Areas in federal waters in a separate rulemaking.

(3) Per item number 5 of the Governor's letter which certified as unacceptable in State waters the prohibition of discharging or depositing from beyond the Sanctuary boundary any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, § 922.163(a)(4)(ii) of subpart P is amended by adding "or under state permits" after "Monroe County land use permits." This modification broadens the subject exception to include discharge or deposit activities authorized under State permits. Many upland projects that could result in

discharges or deposits outside the Sanctuary that end up in the Sanctuary require Monroe County land use permits, which were already excepted from the Sanctuary prohibition.

(4) Per item number 6 of the Governor's letter which certifies as unacceptable in State waters the implementation of any additional Ecological Reserves or any other type of zoning or regulation unless first approved by the Board of Trustees, § 922.163 of subpart P is amended by adding new paragraph (h) to read "Any amendment to these regulations shall not take effect in Florida State waters until approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida." Further, § 922.164 is amended by adding a new paragraph (f) to read: "Additional Wildlife Management Areas, Ecological Reserves, Sanctuary Preservation Areas, or Special-use Areas, and additional restrictions in such areas, shall not take effect in Florida State waters unless first approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida." As discussed above, this modification merely codifies in the regulations what is contained in the management plan.

(5) Per item number 7 of the Governor's letter which certifies as unacceptable in State waters the implementation of the management plan unless the Co-Trustee Agreement and § 922.160 is amended to add a provision regarding the five year review of the management plan and regulations, § 922.160 of subpart P is amended by adding:

Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the regulations in their entirety with any proposed changes thereto, including those regulations in subparts A and E of this part that apply to the Sanctuary. The Governor of the State of Florida will have the opportunity to review the re-proposed regulations before they take effect and if the Governor certifies such regulations as unacceptable, they will not take effect in State waters of the Sanctuary.

A corresponding amendment, as well as other amendments, have also been made to the Co-Trustees Agreement per item 7 of the Governor's letter. The modification to the regulation essentially codifies the requirement under the NMSA to conduct reviews of sanctuary management plans and regulations every five years. In the FKNMS context, NOAA has determined that at the conclusion of the five year

review of the Sanctuary, it will repropose the regulations for the Governor's review, similar to the forty-five day review period under the NMSA that preceded this notice.

(6) The erroneous reference to the Submerged Cultural Resources Agreement has been corrected by eliminating the reference to Volume I of the management plan.

For clarity, this notice publishes the revised Sanctuary specific regulations at 15 CFR part 922, subpart P in their entirety, which will replace subpart P as published in the January 30, 1997 **Federal Register** notice. Consequently, subpart P as published in this notice and all remaining regulations in the January 30, 1997, notice shall become effective on July 1, 1997.

Congressional Action on the Final Regulations

During the comment period on the draft management plan/environmental impact statement (DMP/EIS), the Sanctuary Advisory Council (SAC) and other public commentators singled out the operation of personal watercraft (PWC) in the Sanctuary as a matter of concern. In response to comments received on the DMP/EIS, NOAA stated the following in the FMP/EIS, and January 30 **Federal Register** notice regarding the operation of personal watercraft (PWC) in the Sanctuary:

NOAA has developed a multi-pronged approach to address the public's concern about the use of personal watercraft. NOAA has accepted the SAC's recommendation to add a new section to the final regulations (§ 922.163(a)(v)) which prohibits reckless operation of all watercraft. Additionally, proposed § 922.163(a)(5)(iii) has been modified to prohibit operating a vessel at greater than idle speed only/no wake (except in marked channels) in designated areas within 100 yards from residential shorelines, stationary vessels and navigational aids marking emerging or shallow reefs. NOAA has also incorporated into its regulations the authority to enforce all idle-speed only/no wake areas throughout the Sanctuary. NOAA will use the existing county and State process for designating these areas. NOAA accepts that the industry is seriously committed to self regulation and will develop successful educational efforts geared toward changing user behavior. The final component of NOAA's approach is a modification of the SAC's recommendation. NOAA will begin establishing broad zones with restrictions on the use of personal watercraft (consistent with the SAC recommendation) in one year only if these initial efforts are not successful at significantly reducing or eliminating the nuisance and safety problems, as well as the threats to the natural resources.

FMP/EIS Vol. III, page L-10; 62 FR 4578, 4591.

During the forty-five day review period under the NMSA, no

Congressional hearings were held. However, NOAA received inquiries from Representative Don Young, Chair of the House of Representatives Committee on Resources, and Representative Walter B. Jones, Jr. regarding how NOAA was going to measure "success" of the PWC industry's educational efforts at significantly reducing or eliminating threats to natural resources and the nuisance and safety problems posed by the operation of personal watercraft, and how evaluation criteria will be developed. There was also one meeting with Congressional aides where concern was expressed about the Sanctuary regulating the safety of vessel operations in general and PWC (e.g., jet skis) in particular.

As indicated above, the FMP/EIS carefully considered the SAC recommendations and public comments, including those from the PWC industry in setting forth its multi-pronged approach to the PWC issue. In general, the success of any Sanctuary action plan or management strategy is measured primarily against whether the Sanctuary resource protection goals are being met, and whether the multiple uses of the Sanctuary are being facilitated consistent with the primary objective of resource protection. The FMP/EIS is the result of a long and laborious public process to identify the threats to Sanctuary resources and qualities, and then to develop management strategies and action plans to address these resource management issues, including resource protection and multiple use management, which includes addressing user conflicts.

The FMP/EIS sets forth an action plan and strategies to address the concerns arising from the use of PWCs in regards to protecting Sanctuary resources, and facilitating compatible multiple use of the Sanctuary. The FMP/EIS therefore provides additional criteria for the measurement of success. The *STRATEGY FOR STEWARDSHIP* (Overview or Executive Summary of the FKNMS MP/EIS—pages 9, 11–12, 19–20, 23) discusses these concerns, and a plan to address problems arising from PWCs, as well as other vessels. NOAA's decision to modify the SAC's recommendations on PWC regulation was in part based on PWC industry statements on how it should be given an opportunity to "self-regulate" PWCs, work with NOAA on education geared toward changing user behavior, and establish criteria for the management of commercial PWC rental operations.

The problems regarding operation of PWCs and the planned solutions are identified and discussed throughout the

FMP/EIS and therefore provide criteria against which success can be measured. See Volume I pp. 16–17 (noise and operation harass wildlife as well as other users), pp. 108–109 (PWC strategy B–17 discussed under NOAA Regulatory Actions); Vol. II Environmental Impact Analysis, p. 124 (user conflicts and habitat impacts), p. 141 (alternative strategies); p. 151 (strategy Z–5 Special Use Zones to address PWC problems), pp. 182, 203 (PWC strategy B–17); Vol. III H–3, K–3, L–9, L–10, L–17, M–1, M–2, M–3, M–6, M–11, M–12, M–22, M–26, M–27, M–28. The public comments on this issue also provide important input for developing criteria to measure the success for both the PWC industry and NOAA.

NOAA is already working with the PWC industry to develop broad measurable milestones by which the industry will increase public awareness and educate the public about the use of PWCs in the Sanctuary. When these are achieved by the PWC industry, NOAA is confident that the proposed education and self-regulation activities should address concerns that surfaced during the development of the final management plan. Such measures include the industry conducting training workshops and school programs, information distribution, and community awareness. In addition, the PWC industry, NOAA and Florida Department of Environmental Protection will also develop a two to five year work plan for the industry based on strategies included in the Education and Outreach Action Plan contained in the management plan for the Sanctuary. Further, the PWC industry will conduct research on the effects of PWC operation on shallow-water seagrass and hardbottom communities in the Florida Keys. If the PWC industry adequately implements these measures within the first year after the effective date of these regulations, NOAA would view this as a significant effort to address the concerns raised during the development of the final management plan. In the event zones are subsequently determined to be necessary, NOAA would seek to discuss such measures with the PWC industry early in the process. Further, at a minimum under the Administrative Procedure Act, there would have to be a public notice of a proposed rule as well as a public comment period. This would likely involve public hearings before any rule would become final. Moreover, the rule would also have to be approved by the Governor through the Board of Trustees

in order to become effective in State waters.

Other Modifications to the Final Regulations

In the **Federal Register** notice of January 30, 1997, appendices II, IV and V of subpart P, which delineate the boundary coordinates of Existing Management Areas, Ecological Reserves, and Sanctuary Preservation Areas, respectively, stated that "When differential Global Positioning Systems [GPS] data becomes available, these coordinates may be revised by **Federal Register** notice to reflect the increased accuracy of such data." Since publication of the final regulations on January 30, NOAA has ground-truthed, using differential GPS, the Western Sambos Ecological Reserve, the Sanctuary Preservation Areas, and the four Special-use Areas (listed in appendix VI to subpart P). Consequently, NOAA has modified the regulations to incorporate the more accurate coordinates for those areas it has ground-truthed using differential GPS. When differential GPS data become available for the Existing Management Areas, their coordinates may be revised by **Federal Register** notice to reflect the increased accuracy of such data.

III. Summary of the Changes to the Final Regulations at Subpart P

The following summarizes the Sanctuary regulations at 15 CFR part 922, subpart P, modified by this notice. Except as noted below, this section remains the same as in the January 30, 1997, **Federal Register** notice. With the changes, the final rule published on January 30, 1997, at 62 FR 4578, and the revision of 15 CFR part 922, subpart P, in this document shall apply throughout the Sanctuary, including within State waters of the Sanctuary, on July 1, 1997.

Section 922.160 sets forth the purpose of the regulations—to implement the comprehensive final management plan for the Sanctuary by regulating activities affecting the Sanctuary in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of the area. Section 922.160 also describes the five-year review of the management plan and regulations for the Sanctuary.

Section 922.163 prohibits a variety of activities within the Sanctuary and in limited instances, outside the Sanctuary, thus making it unlawful for any person to conduct them or cause them to be conducted.

The fourth activity prohibited, § 922.163(a)(4), is the discharge or

deposit of materials or other matter. Exceptions are made for such things as fish baits in connection with and during traditional fishing, biodegradable vessel effluents, graywater, and vessel exhaust and cooling water. Under § 922.163(a)(4)(ii), upland discharge or deposit activities conducted pursuant to Monroe County and State permits are also excepted from the prohibition against discharging or depositing outside the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures any Sanctuary resource.

Section 922.163(h) provides that any substantive (non-technical, non-editorial) amendment to the regulations will not take effect in State waters until approved by the Florida Board of Trustees. Fishing regulations will not take effect in State waters until established by the Florida Marine Fisheries Commission.

Section 922.164 sets forth by Sanctuary zone, restrictions and prohibitions above and beyond those applicable on a Sanctuary-wide basis (most of the Sanctuary is not zoned and, therefore, only the Sanctuary-wide prohibitions of § 922.163 apply). The six types of Sanctuary zones are: (1) Areas to be Avoided (ATBAs); (2) Existing Management Areas; (3) Wildlife Management Areas; (4) Ecological Reserves; (5) Sanctuary Preservation Areas; and (6) Special-use Areas. Details on the location of these zones are specified in Appendices II, III, IV, V and VI to subpart P, respectively. The intent of the zoning regulations is to protect Sanctuary resources, ecosystem and biodiversity, and provide for effective management and facilitation of multiple, compatible uses, consistent with the purposes of the Sanctuary. Activities located within two or more overlapping Sanctuary zones are concurrently subject to the regulations applicable to each overlapping area.

Section 922.164(d)(1)(ii) prohibits possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities. However, fish, invertebrates, and marine plants may be possessed aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such resources can be shown not to have been harvested within, removed from, or taken within, the Ecological Reserve or Sanctuary Preservation Area, as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and

during transit through such reserves or areas, provided further that in an Ecological Reserve or Sanctuary Preservation Area located in Florida State waters, such vessel is in continuous transit through the Ecological Reserve or Sanctuary Preservation Area.

Section 922.164(f) provides that any additional Wildlife Management Areas, Ecological Reserves, Sanctuary Preservation Areas, or Special-Use Areas, and additional restrictions in such areas will not take effect in State waters unless first approved by the Florida Board of Trustees.

Section 922.165 provides that where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or imminent risk of such destruction of, loss of, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Any such temporary regulation may be in effect for up to 60 days with one 60-day extension. Additional or extended action is subject to the provisions of the Administrative Procedure Act. No emergency regulation will take effect in State waters of the Sanctuary until approved by the Governor of Florida.

IV. Miscellaneous Rulemaking Requirements

Except as noted below, this section remains the same as in the January 30, 1997 **Federal Register** notice.

National Marine Sanctuaries Act

Section 304 of the National Marine Sanctuaries Act provides that Congress and the Governor have forty-five days of continuous session of Congress beginning on the day on which the final regulations were published to review the terms of designation (i.e., regulations and management plan). After forty-five days, the regulations would become final and take effect, except that any term or terms of designation the Governor certified to the Secretary of Commerce as unacceptable would not take effect in the State waters portion of the Sanctuary. The forty-five day review period began on January 30, 1997, the date the final regulations were published in the **Federal Register**, and concluded on April 16, 1997. During that period the Governor submitted to the Secretary a certification that the management plan and certain regulations were unacceptable unless specific amendments were made to such regulations. NOAA amended those regulations certified as unacceptable by incorporating the Governor's changes. Consequently, upon their effective date the regulations, as revised by this

Federal Register notice, and management plan, in their entirety, will apply throughout the Sanctuary, including within State waters of the Sanctuary.

Administrative Procedure Act

The final Sanctuary regulations at 15 CFR part 922, subpart P, which were promulgated on January 30, 1997, through notice and comment rulemaking, have been amended pursuant to and consistent with the procedures required under the National Marine Sanctuaries Act. The NMSA provides that during the review period of forty-five day continuous session of Congress, the Governor may certify to the Secretary of Commerce any regulation as unacceptable and, if the Governor so certifies, the regulation shall not take effect in the State waters portion of the Sanctuary. As the changes requested by the Governor and herein made by NOAA are within the scope of the proposed rule, additional prior notice and opportunity for public comment are not required by the Administrative Procedure Act (APA), 5 U.S.C. 553. The basis and purpose of the changes to the final regulations requested by the Governor have been set forth above.

The Assistant Administrator for Ocean Services and Coastal Zone Management has determined that, pursuant to 5 U.S.C. 553(d)(3), there is good cause for making the modifications to the final regulations published in this document effective without a thirty day delay in effective date. The primary purpose of the delayed effective date is to provide the public a reasonable time to prepare to comply with the regulations. The modifications to the final regulations pertaining to the Governor's approval of new and emergency regulations, and the five year review of the management plan and regulations do not require compliance by the general public and, therefore, a delayed effective date is unnecessary. Further, the requirement that vessels possessing fish, invertebrates or marine plants must be in continuous transit through SPAs and Reserves located in State waters is currently a requirement under State regulations and, therefore, a delayed effective date is also unnecessary as the general public must already comply with that corresponding restriction. Finally, the modification to the exception to the prohibition against discharging and depositing outside the Sanctuary any material or other matter that subsequently enters and injures a Sanctuary resource broadens the exception to include activities authorized by State permit and,

therefore, relieves a restriction, specifically excepted from a delay in effective date under 5 U.S.C. 553(d)(1). Consequently, the final rule published on January 30, 1997, at 62 FR 4578 and the revision of 15 CFR part 922, subpart P in this document are effective July 1, 1997.

Regulatory Flexibility Act

The January 30, 1997 **Federal Register** notice stated:

Because 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 regulations, if adopted, would not have a significant economic impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis (IRFA) was not prepared. Nevertheless, because the final regulations will affect a substantial number of small entities, although not in an economically significant way, and particularly because some representatives of the small entity fishing industry criticized the DEIS socioeconomic assessment of the zoning scheme, a Final Regulatory Flexibility Analysis (FRFA) was prepared that fully complies with the requirements of Regulatory Flexibility Act.

The changes made in response to the Governor's request do not change the basis for that certification. In response to the FRFA, the Office of the Chief Counsel for Advocacy of the Small Business Administration (SBA) received several comments critical of certain portions of the FRFA, specifically as regards the treatment of submerged cultural resources and the impacts to treasure salvors. Comments were also received from the Florida Keys Marine Life Association raising concerns that the impacts to their industry have not been properly qualified in the economic impact analysis. Because of the time provided by the forty-five day review period under the National Marine Sanctuaries Act, NOAA is supplementing the FRFA to address the comments received by the SBA. The final supplemental FRFA will be completed prior to the effective date of these regulations. Upon its completion, NOAA will publish a **Federal Register** notice summarizing the supplemental FRFA and announcing its availability, and, if appropriate, making any changes to the regulations NOAA determines are necessary as a result of the supplemental FRFA.

List of Subjects in 15 CFR Parts 922, 929, and 937

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties,

Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: June 5, 1997.

Nancy Foster,
Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Part 922 is amended by revising subpart P to read as follows:

Subpart P—Florida Keys National Marine Sanctuary

- Sec.
- 922.160 Purpose.
- 922.161 Boundary.
- 922.162 Definitions.
- 922.163 Prohibited activities—Sanctuary-wide.
- 922.164 Additional activity regulations by Sanctuary area.
- 922.165 Emergency regulations.
- 922.166 Permits—application procedures and issuance criteria.
- 922.167 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.
- Appendix I to Subpart P of Part 922—Florida Keys National Marine Sanctuary Boundary Coordinates
- Appendix II to Subpart P of Part 922—Existing Management Areas Boundary Coordinates
- Appendix III to Subpart P of Part 922—Wildlife Management Areas Access Restrictions
- Appendix IV to Subpart P of Part 922—Ecological Reserves Boundary Coordinates
- Appendix V to Subpart P of Part 922—Sanctuary Preservation Areas Boundary Coordinates
- Appendix VI to Subpart P of Part 922—Special-use Areas Boundary Coordinates and Use Designations
- Appendix VII to Subpart P of Part 922—Areas To Be Avoided Boundary Coordinates
- Appendix VIII to Subpart P of Part 922—Marine Life Rule [As Excerpted From Chapter 46–42 of the Florida Administrative Code]

Subpart P—Florida Keys National Marine Sanctuary

§ 922.160 Purpose.

(a) The purpose of the regulations in this subpart is to implement the comprehensive management plan for the Florida Keys National Marine

Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary is designated, in order to protect, preserve and manage the conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities of the area. In particular, the regulations in this part are intended to protect, restore, and enhance the living resources of the Sanctuary, to contribute to the maintenance of natural assemblages of living resources for future generations, to provide places for species dependent on such living resources to survive and propagate, to facilitate to the extent compatible with the primary objective of resource protection all public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities, to reduce conflicts between such compatible uses, and to achieve the other policies and purposes of the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act.

(b) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the regulations in their entirety with any proposed changes thereto, including those regulations in subparts A and E of this part that apply to the Sanctuary. The Governor of the State of Florida will have the opportunity to review the re-proposed regulations before they take effect and if the Governor certifies such regulations as unacceptable, they will not take effect in State waters of the Sanctuary.

§ 922.161 Boundary.

The Sanctuary consists of all submerged lands and waters from the mean high water mark to the boundary described in Appendix I to this subpart, with the exception of areas within the Dry Tortugas National Park. Appendix I to this subpart sets forth the precise Sanctuary boundary established by the Florida Keys National Marine Sanctuary and Protection Act. (See FKNMSPA § 5(b)(2)).

§ 922.162 Definitions.

(a) The following definitions apply to the Florida Keys National Marine Sanctuary regulations. To the extent that a definition appears in § 922.3 and this section, the definition in this section governs.

Acts means the Florida Keys National Marine Sanctuary and Protection Act, as amended, (FKNMSPA) (Pub. L. 101-605), and the National Marine Sanctuaries Act (NMSA), also known as Title III of the Marine Protection, Research, and Sanctuaries Act, as amended, (MPRSA) (16 U.S.C. 1431 *et seq.*).

Adverse effect means any factor, force, or action that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms any Sanctuary resource, as defined in section 302(8) of the NMSA (16 U.S.C. 1432(8)) and in this section, or any of the qualities, values, or purposes for which the Sanctuary is designated.

Airboat means a vessel operated by means of a motor driven propeller that pushes air for momentum.

Areas To Be Avoided means the areas in which vessel operations are prohibited pursuant to section 6(a)(1) of the FKNMSPA (see § 922.164(a)). Appendix VII to this subpart sets forth the geographic coordinates of these areas, including any modifications thereto made in accordance with section 6(a)(3) of the FKNMSPA.

Closed means all entry or use is prohibited.

Coral means the corals of the Class Hydrozoa (stinging and hydrocorals); the Class Anthozoa, Subclass Hexacorallia, Order Scleractinia (stony corals) and Antipatharia (black corals).

Coral area means marine habitat where coral growth abounds including patch reefs, outer bank reefs, deepwater banks, and hardbottoms.

Coral reefs means the hard bottoms, deep-water banks, patch reefs, and outer bank reefs.

Ecological Reserve means an area of the Sanctuary consisting of contiguous, diverse habitats, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, intended to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary. Appendix IV to this subpart sets forth the geographic coordinates of these areas.

Existing Management Area means an area of the Sanctuary that is within or is a resource management area established by NOAA or by another Federal authority of competent jurisdiction as of the effective date of these regulations where protections

above and beyond those provided by Sanctuary-wide prohibitions and restrictions are needed to adequately protect resources. Appendix II to this subpart sets forth the geographic coordinates of these areas.

Exotic species means a species of plant, invertebrate, fish, amphibian, reptile or mammal whose natural zoogeographic range would not have included the waters of the Atlantic Ocean, Caribbean, or Gulf of Mexico without passive or active introduction to such area through anthropogenic means.

Fish means finfish, mollusks, crustaceans, and all forms of marine animal and plant life other than marine mammals and birds.

Fishing means:

(1) The catching, taking, or harvesting of fish; the attempted catching, taking, or harvesting of fish; any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or any operation at sea in support of, or in preparation for, any activity described in this subparagraph (1).

(2) Such term does not include any scientific research activity which is conducted by a scientific research vessel.

Hardbottom means a submerged marine community comprised of organisms attached to exposed solid rock substrate. Hardbottom is the substrate to which corals may attach but does not include the corals themselves.

Idle speed only/no-wake means a speed at which a boat is operated that is no greater than 4 knots or does not produce a wake.

Idle speed only/no-wake zone means a portion of the Sanctuary where the speed at which a boat is operated may be no greater than 4 knots or may not produce a wake.

Live rock means any living marine organism or an assemblage thereof attached to a hard substrate, including dead coral or rock but not individual mollusk shells (e.g., scallops, clams, oysters). Living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to: sea anemones (Phylum Cnidaria: Class Anthozoa: Order Actinaria); sponges (Phylum Porifera); tube worms (Phylum Annelida), including fan worms, feather duster worms, and Christmas tree worms; bryozoans (Phylum Bryozoa); sea squirts (Phylum Chordata); and marine algae, including Mermaid's fan and cups (*Udotea* spp.), coralline algae, green feather, green grape algae (*Caulerpa* spp.) and watercress (*Halimeda* spp.).

Marine life species means any species of fish, invertebrate, or plant included in sections (2), (3), or (4) of Rule 46-42.001, Florida Administrative Code, reprinted in Appendix VIII to this subpart.

Military activity means an activity conducted by the Department of Defense with or without participation by foreign forces, other than civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers.

No-access buffer zone means a portion of the Sanctuary where vessels are prohibited from entering regardless of the method of propulsion.

No motor zone means an area of the Sanctuary where the use of internal combustion motors is prohibited. A vessel with an internal combustion motor may access a no motor zone only through the use of a push pole, paddle, sail, electric motor or similar means of operation but is prohibited from using its internal combustion motor.

Not available for immediate use means not readily accessible for immediate use, e.g., by being stowed unbaited in a cabin, locker, rod holder, or similar storage area, or by being securely covered and lashed to a deck or bulkhead.

Officially marked channel means a channel marked by Federal, State of Florida, or Monroe County officials of competent jurisdiction with navigational aids except for channels marked idle speed only/no wake.

Personal watercraft means any jet or air-powered watercraft operated by standing, sitting, or kneeling on or behind the vessel, in contrast to a conventional boat, where the operator stands or sits inside the vessel, and that uses an inboard engine to power a water jet pump for propulsion, instead of a propeller as in a conventional boat.

Prop dredging means the use of a vessel's propulsion wash to dredge or otherwise alter the seabed of the Sanctuary. Prop dredging includes, but is not limited to, the use of propulsion wash deflectors or similar means of dredging or otherwise altering the seabed of the Sanctuary. Prop dredging does not include the disturbance to bottom sediments resulting from normal vessel propulsion.

Prop scarring means the injury to seagrasses or other immobile organisms attached to the seabed of the Sanctuary caused by operation of a vessel in a manner that allows its propeller or other running gear, or any part thereof, to cause such injury (e.g., cutting seagrass rhizomes). Prop scarring does not include minor disturbances to bottom sediments or seagrass blades resulting from normal vessel propulsion.

Residential shoreline means any man-made or natural:

- (1) Shoreline,
- (2) Canal mouth,
- (3) Basin, or
- (4) Cove adjacent to any residential land use district, including improved subdivision, suburban residential or suburban residential limited, sparsely settled, urban residential, and urban residential mobile home under the Monroe County land development regulations.

Sanctuary means the Florida Keys National Marine Sanctuary.

Sanctuary Preservation Area means an area of the Sanctuary that encompasses a discrete, biologically important area, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Appendix V to this subpart sets forth the geographic coordinates of these areas.

Sanctuary wildlife means any species of fauna, including avifauna, that occupy or utilize the submerged resources of the Sanctuary as nursery areas, feeding grounds, nesting sites, shelter, or other habitat during any portion of their life cycles.

Seagrass means any species of marine angiosperms (flowering plants) that inhabit portions of the seabed in the Sanctuary. Those species include, but are not limited to: *Thalassia testudinum* (turtle grass); *Syringodium filiforme* (manatee grass); *Halodule wrightii* (shoal grass); *Halophila decipiens*, *H. engelmannii*, *H. johnsonii*; and *Ruppia maritima*.

Special-use Area means an area of the Sanctuary set aside for scientific research and educational purposes, recovery or restoration of Sanctuary resources, monitoring, to prevent use or user conflicts, to facilitate access and use, or to promote public use and understanding of Sanctuary resources. Appendix VI to this subpart sets forth the geographic coordinates of these areas.

Tank vessel means any vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

- (1) Is a United States flag vessel;
- (2) Operates on the navigable waters of the United States; or
- (3) Transfers oil or hazardous material in a port or place subject to the

jurisdiction of the United States [46 U.S.C. 2101].

Traditional fishing means those commercial or recreational fishing activities that were customarily conducted within the Sanctuary prior to its designation as identified in the Environmental Impact Statement and Management Plan for this Sanctuary.

Tropical fish means any species included in section (2) of Rule 46-42.001, Florida Administrative Code, reproduced in Appendix VIII to this subpart, or any part thereof.

Vessel means a watercraft of any description, including, but not limited to, motorized and non-motorized watercraft, personal watercraft, airboats, and float planes while maneuvering on the water, capable of being used as a means of transportation in/on the waters of the Sanctuary. For purposes of this part, the terms "vessel," "watercraft," and "boat" have the same meaning.

Wildlife Management Area means an area of the Sanctuary established for the management, protection, and preservation of Sanctuary wildlife resources, including such an area established for the protection and preservation of endangered or threatened species or their habitats, within which access is restricted to minimize disturbances to Sanctuary wildlife; to ensure protection and preservation consistent with the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. Appendix III to this subpart lists these areas and their access restrictions.

(b) Other terms appearing in the regulations in this part are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*

§ 922.163 Prohibited activities—Sanctuary-wide.

(a) Except as specified in paragraph (b) through (e) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) *Mineral and hydrocarbon exploration, development and production.* Exploring for, developing, or producing minerals or hydrocarbons within the Sanctuary.

(2) *Removal of, injury to, or possession of coral or live rock.* (i) Moving, removing, taking, harvesting, damaging, disturbing, breaking, cutting, or otherwise injuring, or possessing (regardless of where taken from) any living or dead coral, or coral formation, or attempting any of these activities,

except as permitted under 50 CFR part 638.

(ii) Harvesting, or attempting to harvest, any live rock from the Sanctuary, or possessing (regardless of where taken from) any live rock within the Sanctuary, except as authorized by a permit for the possession or harvest from aquaculture operations in the Exclusive Economic Zone, issued by the National Marine Fisheries Service pursuant to applicable regulations under the appropriate Fishery Management Plan, or as authorized by the applicable State authority of competent jurisdiction within the Sanctuary for live rock cultured on State submerged lands leased from the State of Florida, pursuant to applicable State law. See § 370.027, Florida Statutes and implementing regulations.

(3) *Alteration of, or construction on, the seabed.* Drilling into, dredging, or otherwise altering the seabed of the Sanctuary, or engaging in pro-dredging; or constructing, placing or abandoning any structure, material, or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels in a manner not otherwise prohibited by this part (see §§ 922.163(a)(5)(ii) and 922.164(d)(1)(v));

(ii) Traditional fishing activities not otherwise prohibited by this part;

(iii) Installation and maintenance of navigational aids by, or pursuant to valid authorization by, any Federal, State, or local authority of competent jurisdiction;

(iv) Harbor maintenance in areas necessarily associated with Federal water resource development projects in existence on July 1, 1997, including maintenance dredging of entrance channels and repair, replacement, or rehabilitation of breakwaters or jetties;

(v) Construction, repair, replacement, or rehabilitation of docks, seawalls, breakwaters, piers, or marinas with less than ten slips authorized by any valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(4) *Discharge or deposit of materials or other matter.* (i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter, except:

(A) Fish, fish parts, chumming materials, or bait used or produced incidental to and while conducting a traditional fishing activity in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by a marine sanitation device approved in

accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 *et seq.*;

(C) Water generated by routine vessel operations (e.g., deck wash down and graywater as defined in section 312 of the FWPCA), excluding oily wastes from bilge pumping; or

(D) Cooling water from vessels or engine exhaust;

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraph (a)(4)(i) (A) through (D) of this section and those authorized under Monroe County land use permits or under State permits.

(5) *Operation of vessels.* (i) Operating a vessel in such a manner as to strike or otherwise injure coral, seagrass, or any other immobile organism attached to the seabed, including, but not limited to, operating a vessel in such a manner as to cause prop-scarring.

(ii) Having a vessel anchored on living coral other than hardbottom in water depths less than 40 feet when visibility is such that the seabed can be seen.

(iii) Except in officially marked channels, operating a vessel at a speed greater than 4 knots or in manner which creates a wake:

(A) Within an area designated idle speed only/no wake;

(B) Within 100 yards of navigational aids indicating emergent or shallow reefs (international diamond warning symbol);

(C) Within 100 feet of the red and white "divers down" flag (or the blue and white "alpha" flag in Federal waters);

(D) Within 100 yards of residential shorelines; or

(E) Within 100 yards of stationary vessels.

(iv) Operating a vessel in such a manner as to injure or take wading, roosting, or nesting birds or marine mammals.

(v) Operating a vessel in a manner which endangers life, limb, marine resources, or property.

(6) *Conduct of diving/snorkeling without flag.* Diving or snorkeling without flying in a conspicuous manner the red and white "divers down" flag (or the blue and white "alpha" flag in Federal waters).

(7) *Release of exotic species.* Introducing or releasing an exotic species of plant, invertebrate, fish, amphibian, or mammals into the Sanctuary.

(8) *Damage or removal of markers.* Marking, defacing, or damaging in any

way or displacing, removing, or tampering with any official signs, notices, or placards, whether temporary or permanent, or with any navigational aids, monuments, stakes, posts, mooring buoys, boundary buoys, trap buoys, or scientific equipment.

(9) *Movement of, removal of, injury to, or possession of Sanctuary historical resources.* Moving, removing, injuring, or possessing, or attempting to move, remove, injure, or possess, a Sanctuary historical resource.

(10) *Take or possession of protected wildlife.* Taking any marine mammal, sea turtle, or seabird in or above the Sanctuary, *except* as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.*, the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.*, and the Migratory Bird Treaty Act, as amended, (MBTA) 16 U.S.C. 703 *et seq.*

(11) *Possession or use of explosives or electrical charges.* Possessing, or using explosives, except powerheads, or releasing electrical charges within the Sanctuary.

(12) *Harvest or possession of marine life species.* Harvesting, possessing, or landing any marine life species, or part thereof, within the Sanctuary, *except* in accordance with rules 46-42.001 through 46-42.003, 46-42.0035, and 46-42.004 through 46-42.007, and 46.42.009 of the Florida Administrative Code, reproduced in Appendix VIII to this subpart, and such rules shall apply *mutatis mutandis* (with necessary editorial changes) to all Federal and State waters within the Sanctuary.

(13) *Interference with law enforcement.* Interfering with, obstructing, delaying or preventing an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Acts or any regulation or permit issued under the Acts.

(b) Notwithstanding the prohibitions in this section and in § 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of, a National Marine Sanctuary permit issued pursuant to § 922.166.

(c) Notwithstanding the prohibitions in this section and in § 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on the effective date of these regulations, or by any valid right of subsistence use or access in existence on the effective date

of these regulations, provided that the holder of such authorization or right complies with § 922.167 and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as he or she deems reasonably necessary to achieve the purposes for which the Sanctuary was designated.

(d) Notwithstanding the prohibitions in this section and in § 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of these regulations, provided that the applicant complies with § 922.168, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of these regulations constitute authorizations issued after the effective date of these regulations.

(e) (1) All military activities shall be carried out in a manner that avoids to the maximum extent practical any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraph (a) of this section and § 922.164 do not apply to existing classes of military activities which were conducted prior to the effective date of these regulations, as identified in the Environmental Impact Statement and Management Plan for the Sanctuary. New military activities in the Sanctuary are allowed and may be exempted from the prohibitions in paragraph (a) of this section and in § 922.164 by the Director after consultation between the Director and the Department of Defense pursuant to section 304(d) of the NMSA. When a military activity is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource or quality in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA, or it is likely to destroy, cause the loss of, or injure a Sanctuary resource or quality not previously considered in a previous consultation under section 304(d) of the NMSA, the activity is considered a new activity for purposes of this paragraph. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practical any

adverse impact on Sanctuary resources and qualities.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to prevent, respond to or mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(f) The prohibitions contained in paragraph (a)(5) of this section do not apply to Federal, State and local officers while performing enforcement duties and/or responding to emergencies that threaten life, property, or the environment in their official capacity.

(g) Notwithstanding paragraph (b) of this section and paragraph (a) of § 922.168, in no event may the Director issue a permit under § 922.166 authorizing, or otherwise approve, the exploration for, leasing, development, or production of minerals or hydrocarbons within the Sanctuary, the disposal of dredged material within the Sanctuary other than in connection with beach renourishment or Sanctuary restoration projects, or the discharge of untreated or primary treated sewage (except by a certification, pursuant to § 922.167, of a valid authorization in existence on the effective date of these regulations), and any purported authorizations issued by other authorities after the effective date of these regulations for any of these activities within the Sanctuary shall be invalid.

(h) Any amendment to these regulations shall not take effect in Florida State waters until approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. Any fishery regulations in the Sanctuary shall not take effect in Florida State waters until established by the Florida Marine Fisheries Commission.

§ 922.164 Additional activity regulations by Sanctuary area.

In addition to the prohibitions set forth in § 922.163, which apply throughout the Sanctuary, the following regulations apply with respect to activities conducted within the Sanctuary areas described in this section and in Appendix (II) through (VII) to this subpart. Activities located within two or more overlapping Sanctuary areas are concurrently subject to the regulations applicable to each overlapping area.

(a) *Areas To Be Avoided.* Operating a tank vessel or a vessel greater than 50 meters in registered length is prohibited

in all areas to be avoided, except if such vessel is a public vessel and its operation is essential for national defense, law enforcement, or responses to emergencies that threaten life, property, or the environment. Appendix VII to this subpart sets forth the geographic coordinates of these areas.

(b) *Existing Management Areas.*—(1) *Key Largo and Looe Key Management Areas.* The following activities are prohibited within the Key Largo and Looe Key Management Areas (also known as the Key Largo and Looe Key National Marine Sanctuaries) described in Appendix II to this subpart:

(i) Removing, taking, damaging, harmfully disturbing, breaking, cutting, spearing or similarly injuring any coral or other marine invertebrate, or any plant, soil, rock, or other material, except commercial taking of spiny lobster and stone crab by trap and recreational taking of spiny lobster by hand or by hand gear which is consistent with these regulations and the applicable regulations implementing the applicable Fishery Management Plan.

(ii) Taking any tropical fish.

(iii) Fishing with wire fish traps, bottom trawls, dredges, fish sleds, or similar vessel-towed or anchored bottom fishing gear or nets.

(iv) Fishing with, carrying or possessing, except while passing through without interruption or for law enforcement purposes: pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring-loaded guns or similar devices known as spearguns.

(2) *Great White Heron and Key West National Wildlife Refuge Management Areas.* Operating a personal watercraft, operating an airboat, or water skiing except within Township 66 South, Range 29 East, Sections 5, 11, 12 and 14; Township 66 South, Range 28 East, Section 2; Township 67 South, Range 26 East, Sections 16 and 20, all Tallahassee Meridian, are prohibited within the marine portions of the Great White Heron and Key West National Wildlife Refuge Management Areas described in Appendix II to this subpart.

(c) *Wildlife Management Areas.* (1) Marine portions of the Wildlife Management Areas listed in Appendix III to this subpart or portions thereof may be designated “idle speed only/no-wake,” “no-motor” or “no-access buffer” zones or “closed”. The Director, in cooperation with other Federal, State, or local resource management authorities, as appropriate, shall post signs conspicuously, using mounting posts, buoys, or other means according

to location and purpose, at appropriate intervals and locations, clearly delineating an area as an “idle speed only/no wake”, a “no-motor”, or a “no-access buffer” zone or as “closed”, and allowing instant, long-range recognition by boaters. Such signs shall display the official logo of the Sanctuary.

(2) The following activities are prohibited within the marine portions of the Wildlife Management Areas listed in Appendix III to this subpart:

(i) In those marine portions of any Wildlife Management Area designated an “idle speed only/no wake” zone in Appendix III to this subpart, operating a vessel at a speed greater than idle speed only/no wake.

(ii) In those marine portions of any Wildlife Management Area designated a “no-motor” zone in Appendix III to this subpart, using internal combustion motors or engines for any purposes. A vessel with an internal combustion motor or engine may access a “no-motor” zone only through the use of a push pole, paddle, sail, electric motor or similar means of propulsion.

(iii) In those marine portions of any Wildlife Management Area designated a “no-access buffer” zone in Appendix III of this subpart, entering the area by vessel.

(iv) In those marine portions of any Wildlife Management Area designated as closed in Appendix III of this subpart, entering or using the area.

(3) The Director shall coordinate with other Federal, State, or local resource management authorities, as appropriate, in the establishment and enforcement of access restrictions described in paragraph (c)(2) (i)–(iv) of this section in the marine portions of Wildlife Management Areas.

(4) The Director may modify the number and location of access restrictions described in paragraph (c)(2) (i)–(iv) of this section within the marine portions of a Wildlife Management Area if the Director finds that such action is reasonably necessary to minimize disturbances to Sanctuary wildlife, or to ensure protection and preservation of Sanctuary wildlife consistent with the purposes of the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. The Director will effect such modification by:

(i) Publishing in the **Federal Register**, after notice and an opportunity for public comments in accordance, an amendment to the list of such areas set forth in Appendix III to this subpart, and a notice regarding the time and place where maps depicting the precise locations of such restrictions will be

made available for public inspection, and

(ii) Posting official signs delineating such restrictions in accordance with paragraph (c)(1) of this section.

(d) *Ecological Reserves and Sanctuary Preservation Areas.* (1) The following activities are prohibited within the Ecological Reserves described in Appendix IV to this subpart, and within the Sanctuary Preservation Areas, described in Appendix V to this subpart:

(i) Discharging or depositing any material or other matter except cooling water or engine exhaust.

(ii) Possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities. However, fish, invertebrates, and marine plants may be possessed aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such resources can be shown not to have been harvested within, removed from, or taken within, the Ecological Reserve or Sanctuary Preservation Area, as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through such reserves or areas, provided further that in an Ecological Reserve or Sanctuary Preservation Area located in Florida State waters, such vessel is in continuous transit through the Ecological Reserve or Sanctuary Preservation Area.

(iii) Except for catch and release fishing by trolling in the Conch Reef, Alligator Reef, Sombrero Reef, and Sand Key SPAs, fishing by any means. However, gear capable of harvesting fish may be aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such gear is not available for immediate use when entering and during transit through such Ecological Reserve or Sanctuary Preservation Area, and no presumption of fishing activity shall be drawn therefrom.

(iv) Touching living or dead coral, including but not limited to, standing on a living or dead coral formation.

(v) Placing any anchor in a way that allows the anchor or any portion of the anchor apparatus (including the anchor, chain or rope) to touch living or dead coral, or any attached organism. When anchoring dive boats, the first diver down must inspect the anchor to ensure that it is not touching living or dead coral, and will not shift in such a way as to touch such coral or other attached organisms. No further diving shall take

place until the anchor is placed in accordance with these requirements.

(vi) Anchoring instead of mooring when a mooring buoy is available or anchoring in other than a designated anchoring area when such areas have been designated and are available.

(vii) Except for passage without interruption through the area, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of this section, violating a temporary access restriction imposed by the Director pursuant to paragraph (d)(2) of this section.

(2) The Director may temporarily restrict access to any portion of any Sanctuary Preservation Area or Ecological Reserve if the Director, on the basis of the best available data, information and studies, determines that a concentration of use appears to be causing or contributing to significant degradation of the living resources of the area and that such action is reasonably necessary to allow for recovery of the living resources of such area. The Director will provide for continuous monitoring of the area during the pendency of the restriction. The Director will provide public notice of the restriction by publishing a notice in the **Federal Register**, and by such other means as the Director may deem appropriate. The Director may only restrict access to an area for a period of 60 days, with one additional 60 day renewal. The Director may restrict access to an area for a longer period pursuant to a notice and opportunity for public comment rulemaking under the Administrative Procedure Act. Such restriction will be kept to the minimum amount of area necessary to achieve the purposes thereof.

(e) *Special-use Areas.* (1) The Director may set aside discrete areas of the Sanctuary as Special-use Areas, and, by designation pursuant to this paragraph, impose the access and use restrictions specified in paragraph (e)(3) of this section. Special-use Areas are described in Appendix VI to this subpart, in accordance with the following designations and corresponding objectives:

(i) "Recovery area" to provide for the recovery of Sanctuary resources from degradation or other injury attributable to human uses;

(ii) "Restoration area" to provide for restoration of degraded or otherwise injured Sanctuary resources;

(iii) "Research-only area" to provide for scientific research or education relating to protection and management, through the issuance of a Sanctuary General permit for research pursuant to § 922.166 of these regulations; and

(iv) "Facilitated-use area" to provide for the prevention of use or user conflicts or the facilitation of access and use, or to promote public use and understanding, of Sanctuary resources through the issuance of special-use permits.

(2) A Special-use Area shall be no larger than the size the Director deems reasonably necessary to accomplish the applicable objective.

(3) Persons conducting activities within any Special-use Area shall comply with the access and use restrictions specified in this paragraph and made applicable to such area by means of its designation as a "recovery area," "restoration area," "research-only area," or "facilitated-use area." Except for passage without interruption through the area or for law enforcement purposes, no person may enter a Special-use Area except to conduct or cause to be conducted the following activities:

(i) in such area designated as a "recovery area" or a "restoration area", habitat manipulation related to restoration of degraded or otherwise injured Sanctuary resources, or activities reasonably necessary to monitor recovery of degraded or otherwise injured Sanctuary resources;

(ii) in such area designated as a "research only area", scientific research or educational use specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a valid National Marine Sanctuary General or Historical Resources permit, or

(iii) in such area designated as a "facilitated-use area", activities specified by the Director or specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a valid Special-use permit.

(4)(i) The Director may modify the number of, location of, or designations applicable to, Special-use Areas by publishing in the **Federal Register**, after notice and an opportunity for public comment in accordance with the Administrative Procedure Act, an amendment to Appendix VI to this subpart, except that, with respect to such areas designated as a "recovery area," "restoration area," or "research only area," the Director may modify the number of, location of, or designation applicable to, such areas by publishing a notice of such action in the **Federal Register** if the Director determines that immediate action is reasonably necessary to:

(A) Prevent significant injury to Sanctuary resources where

circumstances create an imminent risk to such resources;

(B) Initiate restoration activity where a delay in time would significantly impair the ability of such restoration activity to succeed;

(C) Initiate research activity where an unforeseen natural event produces an opportunity for scientific research that may be lost if research is not initiated immediately.

(ii) If the Director determines that a notice of modification must be promulgated immediately in accordance with paragraph (e)(4)(i) of this section, the Director will, as part of the same notice, invite public comment and specify that comments will be received for 15 days after the effective date of the notice. As soon as practicable after the end of the comment period, the Director will either rescind, modify or allow the modification to remain unchanged through notice in the **Federal Register**.

(f) Additional Wildlife Management Areas, Ecological Reserves, Sanctuary Preservation Areas, or Special-use Areas, and additional restrictions in such areas, shall not take effect in Florida State waters unless first approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.

§ 922.165 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Emergency regulations shall not take effect in Florida territorial waters until approved by the Governor of the State of Florida. Any temporary regulation may be in effect for up to 60 days, with one 60-day extension. Additional or extended action will require notice and comment rulemaking under the Administrative Procedure Act, notice in local newspapers, notice to Mariners, and press releases.

§ 922.166 Permits—application procedures and issuance criteria.

(a) National Marine Sanctuary General Permit.—(1) A person may conduct an activity prohibited by §§ 922.163 or 922.164, other than an activity involving the survey/inventory, research/recovery, or deaccession/transfer of Sanctuary historical resources, if such activity is specifically authorized by, and provided such activity is conducted in accordance with the scope, purpose, terms and conditions of, a National

Marine Sanctuary General permit issued under this paragraph (a).

(2) The Director, at his or her discretion, may issue a General permit under this paragraph (a), subject to such terms and conditions as he or she deems appropriate, if the Director finds that the activity will:

(i) Further research or monitoring related to Sanctuary resources and qualities;

(ii) Further the educational value of the Sanctuary;

(iii) Further the natural or historical resource value of the Sanctuary;

(iv) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty;

(v) Assist in managing the Sanctuary; or

(vi) Otherwise further Sanctuary purposes, including facilitating multiple use of the Sanctuary, to the extent compatible with the primary objective of resource protection.

(3) The Director shall not issue a General permit under this paragraph (a), unless the Director also finds that:

(i) The applicant is professionally qualified to conduct and complete the proposed activity;

(ii) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(iii) The duration of the proposed activity is no longer than necessary to achieve its stated purpose;

(iv) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to the activity's impacts on Sanctuary resources and qualities;

(v) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(vi) It is necessary to conduct the proposed activity within the Sanctuary to achieve its purposes; and

(vii) The reasonably expected end value of the activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse impacts on Sanctuary resources and qualities from the conduct of the activity.

(4) For activities proposed to be conducted within any of the areas described in § 922.164 (b)–(e), the Director shall not issue a permit unless he or she further finds that such

activities will further and are consistent with the purposes for which such area was established, as described in §§ 922.162 and 922.164 and in the management plan for the Sanctuary.

(b) *National Marine Sanctuary Survey/Inventory of Historical Resources Permit*. (1) A person may conduct an activity prohibited by §§ 922.163 or 922.164 involving the survey/inventory of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Survey/Inventory of Historical Resources permit issued under this paragraph (b). Such permit is not required if such survey/inventory activity does not involve any activity prohibited by §§ 922.163 or 922.164. Thus, survey/inventory activities that are non-intrusive, do not include any excavation, removal, or recovery of historical resources, and do not result in destruction of, loss of, or injury to Sanctuary resources or qualities do not require a permit.

However, if a survey/inventory activity will involve test excavations or removal of artifacts or materials for evaluative purposes, a Survey/Inventory of Historical Resources permit is required. Regardless of whether a Survey/Inventory permit is required, a person may request such permit. Persons who have demonstrated their professional abilities under a Survey/Inventory permit will be given preference over other persons in consideration of the issuance of a Research/Recovery permit. While a Survey/Inventory permit does not grant any rights with regards to areas subject to pre-existing rights of access which are still valid, once a permit is issued for an area, other survey/inventory permits will not be issued for the same area during the period for which the permit is valid.

(2) The Director, at his or her discretion, may issue a Survey/Inventory permit under this paragraph (b), subject to such terms and conditions as he or she deems appropriate, if the Director finds that such activity:

(i) Satisfies the requirements for a permit issued under paragraph (a)(3) of this section;

(ii) Either will be non-intrusive, not include any excavation, removal, or recovery of historical resources, and not result in destruction of, loss of, or injury to Sanctuary resources or qualities, or if intrusive, will involve no more than the minimum manual alteration of the seabed and/or the removal of artifacts or other material necessary for evaluative purposes and will cause no significant adverse impacts on Sanctuary resources or qualities; and

(iii) That such activity will be conducted in accordance with all requirements of the Programmatic Agreement for the Management of Submerged Cultural Resources in the Florida Keys National Marine Sanctuary among NOAA, the Advisory Council on Historic Preservation, and the State of Florida (hereinafter SCR Agreement), and that such permit issuance is in accordance with such SCR Agreement. Copies of the SCR Agreement may also be examined at, and obtained from, the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 12th floor, Silver Spring, MD 20910; or from the Florida Keys National Marine Sanctuary Office, P.O. Box 500368, Marathon, FL 33050.

(c) *National Marine Sanctuary Research/Recovery of Sanctuary Historical Resources Permit.* (1) A person may conduct any activity prohibited by §§ 922.163 or 922.164 involving the research/recovery of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Research/Recovery of Historical Resources permit issued under this paragraph (c).

(2) The Director, at his or her discretion, may issue a Research/Recovery of Historical Resources permit, under this paragraph (c), and subject to such terms and conditions as he or she deems appropriate, if the Director finds that:

(i) Such activity satisfies the requirements for a permit issued under paragraph (a)(3) of this section;

(ii) The recovery of the resource is in the public interest as described in the SCR Agreement;

(iii) Recovery of the resource is part of research to preserve historic information for public use; and

(iv) Recovery of the resource is necessary or appropriate to protect the resource, preserve historical information, and/or further the policies and purposes of the NMSA and the FKNMSPA, and that such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

(d) *National Marine Sanctuary Special-use Permit.* (1) A person may conduct any commercial or concession-type activity prohibited by §§ 922.163 or 922.164, if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Special-use

permit issued under this paragraph (d). A Special-use permit is required for the deaccession/transfer of Sanctuary historical resources.

(2) The Director, at his or her discretion, may issue a Special-use permit in accordance with this paragraph (d), and subject to such terms and conditions as he or she deems appropriate and the mandatory terms and conditions of section 310 of the NMSA, if the Director finds that issuance of such permit is reasonably necessary to: establish conditions of access to and use of any Sanctuary resource; or promote public use and understanding of any Sanctuary resources. No permit may be issued unless the activity is compatible with the purposes for which the Sanctuary was designated and can be conducted in a manner that does not destroy, cause the loss of, or injure any Sanctuary resource, and if for the deaccession/transfer of Sanctuary Historical Resources, unless such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

(3) The Director may assess and collect fees for the conduct of any activity authorized by a Special-use permit issued pursuant to this paragraph (d). No Special-use permit shall be effective until all assessed fees are paid, unless otherwise provided by the Director by a fee schedule set forth as a permit condition. In assessing a fee, the Director shall include:

(i) All costs incurred, or expected to be incurred, in reviewing and processing the permit application, including, but not limited to, costs for:

- (A) Number of personnel;
- (B) Personnel hours;
- (C) Equipment;
- (D) Biological assessments;
- (E) Copying; and
- (F) Overhead directly related to reviewing and processing the permit application;

(ii) All costs incurred, or expected to be incurred, as a direct result of the conduct of the activity for which the Special-use permit is being issued, including, but not limited to:

- (A) The cost of monitoring the conduct both during the activity and after the activity is completed in order to assess the impacts to Sanctuary resources and qualities;
- (B) The use of an official NOAA observer, including travel and expenses and personnel hours; and
- (C) Overhead costs directly related to the permitted activity; and

(iii) An amount which represents the fair market value of the use of the

Sanctuary resource and a reasonable return to the United States Government.

(4) Nothing in this paragraph (d) shall be considered to require a person to obtain a permit under this paragraph for the conduct of any fishing activities within the Sanctuary.

(e) *Applications.* (1) Applications for permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. All applications must include:

(i) A detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed;

(ii) The qualifications and experience of all personnel;

(iii) The financial resources available to the applicant to conduct and complete the proposed activity;

(iv) A statement as to why it is necessary to conduct the activity within the Sanctuary;

(v) The potential impacts of the activity, if any, on Sanctuary resources and qualities;

(vi) The benefit to be derived from the activity; and

(vii) Such other information as the Director may request depending on the type of activity. Copies of all other required licenses, permits, approvals, or other authorizations must be attached to the application.

(2) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems reasonably necessary to act on the application and may seek the views of any persons. The Director may require a site visit as part of the permit evaluation. Unless otherwise specified, the information requested must be received by the Director within 30 days of the postmark date of the request. Failure to provide such additional information on a timely basis may be deemed by the Director to constitute abandonment or withdrawal of the permit application.

(f) A permit may be issued for a period not exceeding five years. All permits will be reviewed annually to determine the permittee's compliance with permit scope, purpose, terms and conditions and progress toward reaching the stated goals and appropriate action taken under paragraph (g) of this section if warranted. A permittee may request permit renewal pursuant to the same procedures for applying for a new permit. Upon the permittee's request for renewal, the Director shall review all

reports submitted by the permittee as required by the permit conditions. In order to renew the permit, the Director must find that the:

(1) Activity will continue to further the purposes for which the Sanctuary was designated in accordance with the criteria applicable to the initial issuance of the permit;

(2) Permittee has at no time violated the permit, or these regulations; and

(3) The activity has not resulted in any unforeseen adverse impacts to Sanctuary resources or qualities.

(g) The Director may amend, suspend, or revoke a permit for good cause. The Director may deny a permit application, in whole or in part, if it is determined that the permittee or applicant has acted in violation of a previous permit, of these regulations, of the NMSA or FKNMSPA, or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken.

Procedures governing permit sanctions and denials for enforcement reasons are set forth in Subpart D of 15 CFR part 904.

(h) The applicant for or holder of a National Marine Sanctuary permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in § 922.50.

(i) A permit issued pursuant to this section other than a Special-use permit is nontransferable. Special-use permits may be transferred, sold, or assigned with the written approval of the Director. The permittee shall provide the Director with written notice of any proposed transfer, sale, or assignment no less than 30 days prior to its proposed consummation. Transfers, sales, or assignments consummated in violation of this requirement shall be considered a material breach of the Special-use permit, and the permit shall be considered void as of the consummation of any such transfer, sale, or assignment.

(j) The permit or a copy thereof shall be maintained in legible condition on board all vessels or aircraft used in the conduct of the permitted activity and be displayed for inspection upon the request of any authorized officer.

(k) Any permit issued pursuant to this section shall be subject to the following terms and conditions:

(1) All permitted activities shall be conducted in a manner that does not destroy, cause the loss of, or injure Sanctuary resources or qualities, except to the extent that such may be specifically authorized.

(2) The permittee agrees to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

(3) All necessary Federal, State, and local permits from all agencies with jurisdiction over the proposed activities shall be secured before commencing field operations.

(l) In addition to the terms and conditions listed in paragraph (k) of this section, any permit authorizing the research/recovery of historical resources shall be subject to the following terms and conditions:

(1) A professional archaeologist shall be in charge of planning, field recovery operations, and research analysis.

(2) An agreement with a conservation laboratory shall be in place before field recovery operations are begun, and an approved nautical conservator shall be in charge of planning, conducting, and supervising the conservation of any artifacts and other materials recovered.

(3) A curation agreement with a museum or facility for curation, public access and periodic public display, and maintenance of the recovered historical resources shall be in place before commencing field operations (such agreement for the curation and display of recovered historical resources may provide for the release of public artifacts for deaccession/transfer if such deaccession/transfer is consistent with preservation, research, education, or other purposes of the designation and management of the Sanctuary. Deaccession/transfer of historical resources requires a Special-use permit issued pursuant to paragraph (d) and such deaccession/transfer shall be executed in accordance with the requirements of the SCR Agreement).

(4) The site's archaeological information is fully documented, including measured drawings, site maps drawn to professional standards, and photographic records.

(m) In addition to the terms and conditions listed in paragraph (k) and (l) of this section, any permit issued pursuant to this section is subject to such other terms and conditions, including conditions governing access to, or use of, Sanctuary resources, as the Director deems reasonably necessary or appropriate and in furtherance of the purposes for which the Sanctuary is designated. Such terms and conditions may include, but are not limited to:

(1) Any data or information obtained under the permit shall be made available to the public.

(2) A NOAA official shall be allowed to observe any activity conducted under the permit.

(3) The permittee shall submit one or more reports on the status, progress, or results of any activity authorized by the permit.

(4) The permittee shall submit an annual report to the Director not later than December 31 of each year on activities conducted pursuant to the permit. The report shall describe all activities conducted under the permit and all revenues derived from such activities during the year and/or term of the permit.

(5) The permittee shall purchase and maintain general liability insurance or other acceptable security against potential claims for destruction, loss of, or injury to Sanctuary resources arising out of the permitted activities. The amount of insurance or security should be commensurate with an estimated value of the Sanctuary resources in the permitted area. A copy of the insurance policy or security instrument shall be submitted to the Director.

§ 922.167 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by §§ 922.163 or 922.164 if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on July 1, 1997, or by any valid right of subsistence use or access in existence on July 1, 1997, provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of July 1, 1997, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this § 922.167; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(b) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by §§ 922.163 or 922.164 may conduct the activity without being in violation of applicable provisions of §§ 922.163 or 922.164, pending final agency action on his or her certification request, provided the holder is in compliance with this § 922.167.

(c) Any holder of an authorization or right described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited

by §§ 922.163 or 922.164, thus requiring certification under this section.

(d) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(e) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(f) The Director may amend any certification made under this § 922.167 whenever additional information becomes available justifying such an amendment.

(g) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this § 922.167, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(h) Any time limit prescribed in or established under this § 922.167 may be extended by the Director for good cause.

(i) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.50.

(j) Any amendment, renewal, or extension made after July 1, 1997, to a lease, permit, license, approval, other authorization or right is subject to the provisions of § 922.49.

**Appendix I to Subpart P of Part 922—
Florida Keys National Marine
Sanctuary Boundary Coordinates**

(Appendix Based on North American Datum of 1983)

The boundary of the Florida Keys National Marine Sanctuary—

(a) Begins at the northeasternmost point of Biscayne National Park located at approximately 25 degrees 39 minutes north latitude, 80 degrees 5 minutes

west longitude, then runs eastward to the 300-foot isobath located at approximately 25 degrees 39 minutes north latitude, 80 degrees 4 minutes west longitude;

(b) Then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 4 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 5 minutes west longitude, and

(iii) 25 degrees 21 minutes north latitude, 80 degrees 7 minutes west longitude;

(iv) 25 degrees 16 minutes north latitude, 80 degrees 8 minutes west longitude;

(c) Then runs southwesterly approximating the 300-foot isobath and connects in succession the points at the following coordinates:

(i) 25 degrees 7 minutes north latitude, 80 degrees 13 minutes west longitude,

(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,

(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,

(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,

(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,

(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,

(vii) 24 degrees 37 minutes north latitude, 83 degrees 6 minutes west longitude,

(viii) 24 degrees 40 minutes north latitude, 83 degrees 6 minutes west longitude,

(ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,

(x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,

(xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and

(xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(d) then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(e) after Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(f) then follows the southern boundary of Biscayne National Park to the southeasternmost point of Biscayne National Park; and

(g) then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a).

**Appendix II to Subpart P of Part 922—
Existing Management Areas Boundary
Coordinates**

The Existing Management Areas are located within the following geographic boundary coordinates:

National Oceanic and Atmospheric Administration,
Preexisting National Marine Sanctuaries:

Point	Latitude	Longitude
Key Largo Management Area (Key Largo National Marine Sanctuary)		
1	25°19.45' N	80°12.00' W
2	25°16.02' N	80°08.07' W
3	25°07.05' N	80°12.05' W
4	24°58.03' N	80°19.08' W
5	25°02.02' N	80°25.25' W

Point	Latitude	Longitude
Looe Key Management Area (Looe Key National Marine Sanctuary)		
1	24°31.62' N	81°26.00' W
2	24°33.57' N	81°26.00' W
3	24°34.15' N	81°23.00' W
4	24°32.20' N	81°23.00' W

United States Fish and Wildlife Service:
Great White Heron National Wildlife Refuge
(based on the North American Datum of 1983)

1	24°43.8' N	81°48.6' W
2	24°43.8' N	81°37.2' W
3	24°49.2' N	81°37.2' W
4	24°49.2' N	81°19.8' W
5	24°48.0' N	81°19.8' W
6	24°48.0' N	81°14.4' W
7	24°49.2' N	81°14.4' W
8	24°49.2' N	81°08.4' W
9	24°43.8' N	81°08.4' W
10	24°43.8' N	81°14.4' W
11	24°43.2' N	81°14.4' W
12	24°43.2' N	81°16.2' W
13	24°42.6' N	81°16.2' W
14	24°42.6' N	81°21.0' W
15	24°41.4' N	81°21.0' W
16	24°41.4' N	81°22.2' W
17	24°43.2' N	81°22.2' W
18	24°43.2' N	81°22.8' W
19	24°43.8' N	81°22.8' W
20	24°43.8' N	81°24.0' W
21	24°43.2' N	81°24.0' W
22	24°43.2' N	81°26.4' W
23	24°43.8' N	81°26.4' W
24	24°43.8' N	81°27.0' W
25	24°43.2' N	81°27.0' W
26	24°43.2' N	81°29.4' W
27	24°42.6' N	81°29.4' W
28	24°42.6' N	81°30.6' W
29	24°41.4' N	81°30.6' W

Point	Latitude	Longitude	Point	Latitude	Longitude	Point	Latitude	Longitude
30	24°41.4' N	81°31.2' W	42	24°37.8' N	81°37.8' W	Key West National Wildlife Refuge		
31	24°40.8' N	81°31.2' W	43	24°37.2' N	81°37.8' W			
32	24°40.8' N	81°32.4' W	44	24°37.2' N	81°40.2' W			
33	24°41.4' N	81°32.4' W	45	24°36.0' N	81°40.2' W			
34	24°41.4' N	81°34.2' W	46	24°36.0' N	81°40.8' W			
35	24°40.8' N	81°34.2' W	47	24°35.4' N	81°40.8' W	1	24°40' N	81°49' W
36	24°48.0' N	81°35.4' W	48	24°35.4' N	81°42.0' W	2	24°40' N	82°10' W
37	24°39.6' N	81°35.4' W	49	24°36.0' N	81°42.0' W	3	24°27' N	82°10' W
38	24°39.6' N	81°36.0' W	50	24°36.0' N	81°48.6' W	4	24°27' N	81°49' W
39	24°39.0' N	81°36.0' W				When differential Global Positioning Systems data becomes available, these coordinates may be revised by Federal Register notice to reflect the increased accuracy of such data.		
40	24°39.0' N	81°37.2' W						
41	24°37.8' N	81°37.2' W						

Appendix III to Subpart P of Part 922—Wildlife Management Areas Access Restrictions

Area	Access restrictions
Bay Keys	No-motor zone (300 feet) around one key; idle speed only/no-wake zones in tidal creeks.
Boca Grande Key	South one-half of beach closed (beach above mean high water closed by Department of the Interior).
Woman Key	One-half of beach and sand spit on southeast side closed (beach and sand spit above mean high water closed by Department of the Interior).
Cayo Agua Keys	Idle speed only/no-wake zones in all navigable tidal creeks.
Cotton Key	No-motor zone on tidal flat.
Snake Creek	No-motor zone on tidal flat.
Cottrell Key	No-motor zone (300 feet) around entire key.
Little Mullet Key	No-access buffer zone (300 feet) around entire key.
Big Mullet Key	No-motor zone (300 feet) around entire key.
Crocodile Lake	No-access buffer zone (100 feet) along shoreline between March 1 and October 1.
East Harbor Key	No-access buffer zone (300 feet) around northernmost island.
Lower Harbor Keys	Idle speed only/no-wake zones in selected tidal creeks.
Eastern Lake Surprise	Idle speed only/no-wake zone east of highway U.S. 1.
Horseshoe Key	No-access buffer zone (300 feet) around main island (main island closed by Department of the Interior).
Marquesas Keys	(i) No-motor zones (300 feet) around three smallest keys on western side of chain; (ii) no-access buffer zone (300 feet) around one island at western side of chain; (iii) idle speed only/no-wake zone in southwest tidal creek.
Tidal flat south of Marvin Key	No-access buffer zone on tidal flat.
Mud Keys	(i) Idle speed only/no-wake zones in the two main tidal creeks; (ii) two smaller creeks on west side closed.
Pelican Shoal	No-access buffer zone out to 50 meters from shore between April 1 and August 31 (shoal closed by the Florida Game and Freshwater Fish Commission).
Rodriguez Key	No-motor zone on tidal flats.
Dove Key	No-motor zone on tidal flats; area around the two small islands closed.
Tavernier Key	No-motor zone on tidal flats.
Sawyer Keys	Tidal creeks on south side closed.
Snipe Keys	(i) Idle speed only/no-wake zone in main tidal creek; (ii) no-motor zone in all other tidal creeks.
Upper Harbor Key	No-access buffer zone (300 feet) around entire key.
East Content Keys	Idle speed only/no-wake zones in tidal creeks between southwesternmost keys.
West Content Keys	Idle speed only/no-wake zones in selected tidal creeks; no-access buffer zone in one cove.
Little Crane Key	No-access buffer zone (300 feet) around entire key.

Appendix IV to Subpart P of Part 922—Ecological Reserves Boundary Coordinates

One Ecological Reserve—the Western Sambos Ecological Reserve—is designated in the area of Western Sambos reef. NOAA has committed to designating a second Ecological Reserve within two years from issuance of this plan in the area of the Dry Tortugas. The establishment of a Dry Tortugas Ecological Reserve will be proposed by a notice of proposed rulemaking with a proposed boundary determined through a joint effort among the Sanctuary, and the National Park Service, pursuant to a

public process involving a team consisting of managers, scientists, conservationists, and affected user groups.

The Western Sambos Ecological Reserve (based on differential Global Positioning Systems data) is located within the following geographic boundary coordinates:

*** WESTERN SAMBOS**

Point	Latitude	Longitude
1	24°33.70' N	81°40.80' W
2	24°28.85' N	81°41.90' W
3	24°28.50' N	81°43.70' W

*** WESTERN SAMBOS—Continued**

Point	Latitude	Longitude
4	24°33.50' N	81°43.10' W

(* Denotes located in State waters)

Appendix V to Subpart P of Part 922—Sanctuary Preservation Areas Boundary Coordinates

The Sanctuary Preservation Areas (SPAs) (based on differential Global Positioning Systems data) are located within the following geographic boundary coordinates:

Point	Latitude	Longitude
Alligator Reef		
1	24°50.98'N	80°36.84'W
2	24°50.51'N	80°37.35'W
3	24°50.81'N	80°37.63'W
4	24°51.23'N	80°37.17'W

Catch and release fishing by trolling only is allowed in this SPA.

Carysfort/South Carysfort Reef		
1	25°13.78'N	80°12.00'W
2	25°12.03'N	80°12.98'W
3	25°12.24'N	80°13.77'W
4	25°14.13'N	80°12.78'W

* Cheeca Rocks		
1	24°54.42'N	80°36.91'W
2	24°54.25'N	80°36.77'W
3	24°54.10'N	80°37.00'W
4	24°54.22'N	80°37.15'W

Coffins Patch		
1	24°41.47'N	80°57.68'W
2	24°41.12'N	80°57.53'W
3	24°40.75'N	80°58.33'W
4	24°41.06'N	80°58.48'W

Conch Reef		
1	24°57.48'N	80°27.47'W
2	24°57.34'N	80°27.26'W
3	24°56.78'N	80°27.52'W
4	24°56.96'N	80°27.73'W

Catch and release fishing by trolling only is allowed in this SPA.

Davis Reef		
1	24°55.61'N	80°30.27'W
2	24°55.41'N	80°30.05'W
3	24°55.11'N	80°30.35'W
4	24°55.34'N	80°30.52'W

Dry Rocks		
1	25°07.59'N	80°17.91'W
2	25°07.41'N	80°17.70'W
3	25°07.25'N	80°17.82'W
4	25°07.41'N	80°18.09'W

Grecian Rocks		
1	25°06.91'N	80°18.20'W
2	25°06.67'N	80°18.06'W
3	25°06.39'N	80°18.32'W
4	25°06.42'N	80°18.48'W
5	25°06.81'N	80°18.44'W

* Eastern Dry Rocks		
1	24°27.92'N	81°50.55'W
2	24°27.73'N	81°50.33'W
3	24°27.47'N	81°50.80'W
4	24°27.72'N	81°50.86'W

The Elbow		
1	25°08.97'N	80°15.63'W
2	25°08.95'N	80°15.22'W
3	25°08.18'N	80°15.64'W

Point	Latitude	Longitude
4	25°08.50'N	80°16.07'W

French Reef		
1	25°02.20'N	80°20.63'W
2	25°01.81'N	80°21.02'W
3	25°02.36'N	80°21.27'W

* Hen and Chickens		
1	24°56.38'N	80°32.86'W
2	24°56.21'N	80°32.63'W
3	24°55.86'N	80°32.95'W
4	24°56.04'N	80°33.19'W

Looe Key		
1	24°33.24'N	81°24.03'W
2	24°32.70'N	81°23.85'W
3	24°32.52'N	81°24.70'W
4	24°33.12'N	81°24.81'W

Molasses Reef		
1	25°01.00'N	80°22.53'W
2	25°01.06'N	80°21.84'W
3	25°00.29'N	80°22.70'W
4	25°00.72'N	80°22.83'W

* Newfound Harbor Key		
1	24°37.10'N	81°23.34'W
2	24°36.85'N	81°23.28'W
3	24°36.74'N	81°23.80'W
4	24°37.00'N	81°23.86'W

* Rock Key		
1	24°27.48'N	81°51.35'W
2	24°27.30'N	81°51.15'W
3	24°27.21'N	81°51.60'W
4	24°27.45'N	81°51.65'W

* Sand Key		
1	24°27.58'N	81°52.29'W
2	24°27.01'N	81°52.32'W
3	24°27.02'N	81°52.95'W
4	24°27.61'N	81°52.94'W

Catch and release fishing by trolling only is allowed in this SPA.

Sombrero Key		
1	24°37.91'N	81°06.78'W
2	24°37.50'N	81°06.19'W
3	24°37.25'N	81°06.89'W

Catch and release fishing by trolling only is allowed in this SPA.

(* denotes located in State waters)

Appendix VI to Subpart P of Part 922—Special-Use Areas Boundary Coordinates and Use Designations

The Special-use Areas (based on differential Global Positioning Systems data) are located within the following geographic boundary coordinates:

Point	Latitude	Longitude
Conch Reef (Research Only)		

1	24°56.83'N	80°27.26'W
2	24°57.10'N	80°26.93'W
3	24°56.99'N	80°27.42'W
4	24°57.34'N	80°27.26'W

Eastern Sambos (Research Only)		
1	24°29.84'N	81°39.59'W
2	24°29.55'N	81°39.35'W
3	24°29.37'N	81°39.96'W
4	24°29.77'N	81°40.03'W

Looe Key (Research Only)		
1	24°34.17'N	81°23.01'W
2	24°33.98'N	81°22.96'W
3	24°33.84'N	81°23.60'W
4	24°34.23'N	81°23.68'W

Tennessee Reef (Research Only)		
1	24°44.77'N	80°47.12'W
2	24°44.57'N	80°46.98'W
3	24°44.68'N	80°46.59'W
4	24°44.95'N	80°46.74'W

Appendix VII to Subpart P of Part 922—Areas To Be Avoided Boundary Coordinates

Point	Latitude	Longitude
In The Vicinity of the Florida Keys (Reference Charts: United States 11466, 27th Edition—September 1, 1990 and United States 11450, 4th Edition—August 11, 1990)		

1	25°45.00'N	80°06.10'W
2	25°38.70'N	80°02.70'W
3	25°22.00'N	80°03.00'W
4	25°00.20'N	80°13.40'W
5	24°37.90'N	80°47.30'W
6	24°29.20'N	81°17.30'W
7	24°22.30'N	81°43.17'W
8	24°28.00'N	81°43.17'W
9	24°28.70'N	81°43.50'W
10	24°29.80'N	81°43.17'W
11	24°33.10'N	81°35.15'W
12	24°33.60'N	81°26.00'W
13	24°38.20'N	81°07.00'W
14	24°43.20'N	80°53.20'W
15	24°46.10'N	80°46.15'W
16	24°51.10'N	80°37.10'W
17	24°57.50'N	80°27.50'W
18	25°09.90'N	80°16.20'W
19	25°24.00'N	80°09.10'W
20	25°31.50'N	80°07.00'W
21	25°39.70'N	80°06.85'W
22	25°45.00'N	80°06.10'W

In the Vicinity of Key West Harbor
(Reference Chart: United States 11434, 21st Edition—August 11, 1990)

23	24°27.95'N	81°48.65'W
24	24°23.00'N	81°53.50'W
25	24°26.60'N	81°58.50'W
26	24°27.75'N	81°55.70'W
27	24°29.35'N	81°53.40'W
28	24°29.35'N	81°50.00'W

Point	Latitude	Longitude
29	24°27.95'N	81°48.65'W

Area Surrounding the Marquesas Keys
(Reference Chart: United States 11434, 21st Edition—August 11, 1990)

30	24°26.60'N	81°59.55'W
31	24°23.00'N	82°03.50'W
32	24°23.60'N	82°27.80'W
33	24°34.50'N	82°37.50'W
34	24°43.00'N	82°26.50'W
35	24°38.31'N	81°54.06'W
36	24°37.91'N	81°53.40'W
37	24°36.15'N	81°51.78'W
38	24°34.40'N	81°50.60'W
39	24°33.44'N	81°49.73'W
40	24°31.20'N	81°52.10'W
41	24°28.70'N	81°56.80'W
42	24°26.60'N	81°59.55'W

Area Surrounding the Dry Tortugas Islands
(Reference Chart: United States 11434, 21st Edition—August 11, 1990)

43	24°32.00'N	82°53.50'W
44	24°32.00'N	83°00.05'W
45	24°39.70'N	83°00.05'W
46	24°45.60'N	82°54.40'W
47	24°45.60'N	82°47.20'W
48	24°42.80'N	82°43.90'W
49	24°39.50'N	82°43.90'W
50	24°35.60'N	82°46.40'W
51	24°32.00'N	82°53.50'W

Appendix VIII to Subpart P of Part 922—Marine Life Rule [As Excerpted From Chapter 46—42 of the Florida Administrative Code]

- 46—42.001 Purpose and Intent; Designation of Restricted Species; Definition of “Marine Life Species.”
- 46—42.002 Definitions.
- 46—42.003 Prohibition of Harvest: Longspine Urchin, Bahama Starfish.
- 46—42.0035 Live Landing and Live Well Requirements.
- 46—42.0036 Harvest in Biscayne National Park.*
- 46—42.004 Size Limits.
- 46—42.005 Bag Limits.
- 46—42.006 Commercial Season, Harvest Limits.
- 46—42.007 Gear Specifications and Prohibited Gear.
- 46—42.008 Live Rock.*
- 46—42.009 Prohibition on the Taking, Destruction, or Sale of Marine Corals and Sea Fans.
- *—Part 42.0036 was not reproduced because it does not apply to the Sanctuary.
- *—Part 42.008 was not reproduced because it is regulated pursuant to this Part 922.163(2)(ii).
- 46—42.001 Purpose and Intent; Designation of Restricted Species; Definition of “Marine Life Species”.—
- (1) (a) The purpose and intent of this chapter are to protect and conserve

Florida’s tropical marine life resources and assure the continuing health and abundance of these species. The further intent of this chapter is to assure that harvesters in this fishery use nonlethal methods of harvest and that the fish, invertebrates, and plants so harvested be maintained alive for the maximum possible conservation and economic benefits.

(b) It is the express intent of the Marine Fisheries Commission that landing of live rock propagated through aquaculture will be allowed pursuant to the provisions of this chapter.

(2) The following fish species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

- (a) Moray eels—Any species of the Family Muraenidae.
- (b) Snake eels—Any species of the Genera *Myrichthys* and *Myrophis* of the Family Ophichthidae.
- (c) Toadfish—Any species of the Family Batrachoididae.
- (d) Frogfish—Any species of the Family Antennariidae.
- (e) Batfish—Any species of the Family Ogcocephalidae.
- (f) Clingfish—Any species of the Family Gobiessocidae.
- (g) Trumpetfish—Any species of the Family Aulostomidae.
- (h) Cornetfish—Any species of the Family Fistulariidae.
- (i) Pipefish/seahorses—Any species of the Family Syngnathidae.
- (j) Hamlet/seabass—Any species of the Family Serranidae, except groupers of the genera *Epinephalus* and *Mycteroperca*, and seabass of the genus *Centropristis*.
- (k) Basslets—Any species of the Family Grammistidae.
- (l) Cardinalfish—Any species of the Family Apogonidae.
- (m) High-hat, Jackknife-fish, Spotted drum, Cubbyu—Any species of the genus *Equetus* of the Family Sciaenidae.
- (n) Reef Croakers—Any of the species *Odontocion dentex*.
- (o) Sweepers—Any species of the Family Pempheridae.
- (p) Butterflyfish—Any species of the Family Chaetodontidae.
- (q) Angelfish—Any species of the Family Pomacanthidae.
- (r) Damsel fish—Any species of the Family Pomacentridae.
- (s) Hawkfish—Any species of the Family Cirrhitidae.
- (t) Wrasse/hogfish/razorfish—Any species of the Family Labridae, except hogfish, *Lachnolaimus maximus*.
- (u) Parrotfish—Any species of the Family Scaridae.

(v) Jawfish—Any species of the Family Opistognathidae.

(w) Blennies—Any species of the Families Clinidae or Blenniidae.

(x) Sleepers—Any species of the Family Eleotrididae.

(y) Gobies—Any species of the Family Gobiidae.

(z) Tangs and surgeonfish—Any species of the Family Acanthuridae.

(aa) Filefish/triggerfish—Any species of the Family Balistes, except gray triggerfish, *Balistidae capriscus*.

(bb) Trunkfish/cowfish—Any species of the Family Ostraciidae.

(cc) Pufferfish/burrfish/balloonfish—Any of the following species:

1. Balloonfish—*Diodon holocanthus*.
2. Sharpnose puffer—*Canthigaster rostrata*.
3. Striped burrfish—*Chilomycterus schoepfi*.

(3) The following invertebrate species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

(a) Sponges—Any species of the Class Demospongia, except sheepswool, yellow, grass, glove, finger, wire, reef, and velvet sponges, Order Dictyoceratida.

(b) Upside-down jellyfish—Any species of the Genus *Cassiopeia*.

(c) Siphonophores/hydroids—Any species of the Class Hydrozoa, except fire corals, Order Milleporina.

(d) Soft corals—Any species of the Subclass Octocorallia, except sea fans *Gorgonia flabellum* and *Gorgonia ventalina*.

(e) Sea anemones—Any species of the Orders Actinaria, Zoanthidea, Corallimorpharia, and Ceriantharia.

(f) Featherduster worms/calcareous tubeworms—Any species of the Families Sabellidae and Serpulidae.

(g) Star-shells—Any of the species *Astraea americana* or *Astraea phoebia*.

(h) Nudibranchs/sea slugs—Any species of the Subclass Opisthobranchia.

(i) Fileclams—Any species of the Genus *Lima*.

(j) Octopods—Any species of the Order Octopoda, except the common octopus, *Octopus vulgaris*.

(k) Shrimp—Any of the following species:

1. Cleaner shrimp and peppermint shrimp—Any species of the Genera *Periclimenes* or *Lysmata*.
2. Coral shrimp—Any species of the Genus *Stenopus*.
3. Snapping shrimp—Any species of the Genus *Alpheus*.
- (l) Crabs—Any of the following species:

1. Yellowline arrow crab—*Stenorhynchus seticornis*.
2. Furcate spider or decorator crab—*Stenocionops furcata*.
3. Thinstripe hermit crab—*Clibanarius vittatus*.
4. Polkadotted hermit crab—*Phimochirus operculatus*.
5. Spotted porcelain crab—*Porcellana sayana*.
6. Nimble spray or urchin crab—*Percnon gibbesi*.
7. False arrow crab—*Metoporphaphis calcarata*.

(m) Starfish—Any species of the Class Asteroidea, except the Bahama starfish, *Oreaster reticulatus*.

(n) Brittlestars—Any species of the Class Ophiuroidea.

(o) Sea urchins—Any species of the Class Echinoidea, except longspine urchin, *Diadema antillarum*, and sand dollars and sea biscuits, Order Clypeasteroidea.

(p) Sea cucumbers—Any species of the Class Holothuroidea.

(q) Sea lillies—Any species of the Class Crinoidea.

(4) The following species of plants, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

(a) Caulerpa—Any species of the Family Caulerpaceae.

(b) Halimeda/mermaid's fan/mermaid's shaving brush—Any species of the Family Halimedaceae.

(c) Coralline red algae—Any species of the Family Corallinaceae.

(5) For the purposes of Section 370.06(2)(d), Florida Statutes, the term "marine life species" is defined to mean those species designated as restricted species in subsections (2), (3), and (4) of this rule.

Specific Authority 370.01(20), 370.027(2), 370.06(2)(d), F.S. Law Implemented 370.01(20), 370.025, 370.027, 370.06(2)(d), F.S. History—New 1-1-91, Amended 7-1-92, 1-1-95.

46-42.002 Definitions.—As used in this rule chapter:

(1) "Barrier net," also known as a "fence net," means a seine used beneath the surface of the water by a diver to enclose and concentrate tropical fish and which may be made of either nylon or monofilament.

(2) "Drop net" means a small, usually circular, net with weights attached along the outer edge and a single float in the center, used by a diver to enclose and concentrate tropical fish.

(3) "Hand held net" means a landing or dip net as defined in Rule 46-4.002(4), except that a portion of the bag

may be constructed of clear plastic material, rather than mesh.

(4) "Harvest" means the catching or taking of a marine organism by any means whatsoever, followed by a reduction of such organism to possession. Marine organisms that are caught but immediately returned to the water free, alive, and unharmed are not harvested. In addition, temporary possession of a marine animal for the purpose of measuring it to determine compliance with the minimum or maximum size requirements of this chapter shall not constitute harvesting such animal, provided that it is measured immediately after taking, and immediately returned to the water free, alive, and unharmed if undersize or oversize.

(5) "Harvest for commercial purposes" means the taking or harvesting of any tropical ornamental marine life species or tropical ornamental marine plant for purposes of sale or with intent to sell. The harvest of tropical ornamental marine life species or tropical ornamental marine plants in excess of the bag limit shall constitute prima facie evidence of intent to sell.

(6) "Land," when used in connection with the harvest of marine organisms, means the physical act of bringing the harvested organism ashore.

(7) "Live rock" means rock with living marine organisms attached to it.

(8) "Octocoral" means any erect, nonencrusting species of the Subclass Octocorallia, except the species *Gorgonia flabellum* and *Gorgonia ventalina*.

(9) "Slurp gun" means a self-contained, handheld device that captures tropical fish by rapidly drawing seawater containing such fish into a closed chamber.

(10) "Total length" means the length of a fish as measured from the tip of the snout to the tip of the tail.

(11) "Trawl" means a net in the form of an elongated bag with the mouth kept open by various means and fished by being towed or dragged on the bottom. "Roller frame trawl" means a trawl with all of the following features and specifications:

(a) A rectangular rigid frame to keep the mouth of the trawl open while being towed.

(b) The lower horizontal beam of the frame has rollers to allow the trawl to roll over the bottom and any obstructions while being towed.

(c) The trawl opening is shielded by a grid of vertical bars spaced no more than 3 inches apart.

(d) The trawl is towed by attaching a line or towing cable to a tongue located

above and at the center of the upper horizontal beam of the frame.

(e) The trawl has no doors attached to keep the mouth of the trawl open.

(12) "Tropical fish" means any species included in subsection (2) of Rule 46-42.001, or any part thereof.

(13) "Tropical ornamental marine life species" means any species included in subsections (2) or (3) of Rule 46-42.001, or any part thereof.

(14) "Tropical ornamental marine plant" means any species included in subsection (4) of Rule 46-42.001.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1-1-91, Amended 7-1-92, 1-1-95.

46-42.003 Prohibition of Harvest: Longspine Urchin, Bahama Starfish.—No person shall harvest, possess while in or on the waters of the state, or land any of the following species:

(1) Longspine urchin, *Diadema antillarum*.

(2) Bahama starfish, *Oreaster reticulatus*.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1-1-91, Amended 7-1-92.

46-42.0035 Live Landing and Live Well Requirements.—

(1) Each person harvesting any tropical ornamental marine life species or any tropical ornamental marine plant shall land such marine organism alive.

(2) Each person harvesting any tropical ornamental marine life species or any tropical ornamental marine plant shall have aboard the vessel being used for such harvest a continuously circulating live well or aeration or oxygenation system of adequate size and capacity to maintain such harvested marine organisms in a healthy condition.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 7-1-92.

46-42.004 Size Limits.—

(1) Angelfishes.—

(a) No person harvesting for commercial purposes shall harvest, possess while in or on the waters of the state, or land any of the following species of angelfish, of total length less than that set forth below:

1. One-and-one-half (1 1/2) inches for:

- a. Gray angelfish (*Pomacanthus arcuatus*).
- b. French angelfish (*Pomacanthus paru*).

2. One-and-three-quarters (1 3/4) inches for:

- a. Blue angelfish (*Holacanthus bermudensis*).
- b. Queen angelfish (*Holacanthus ciliaris*).

3. Two (2) inches for rock beauty (*Holacanthus tricolor*).

(b) No person shall harvest, possess while in or on the waters of the state, or land any angelfish (Family Pomacanthidae), of total length greater than that specified below:

1. Eight (8) inches for angelfish, except rock beauty (*Holacanthus tricolor*).

2. Five (5) inches for rock beauty.

(c) Except as provided herein, no person shall purchase, sell, or exchange any angelfish smaller than the limits specified in paragraph (a) or larger than the limits specified in paragraph (b). This prohibition shall not apply to angelfish legally harvested outside of state waters or federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, which angelfish are entering Florida in interstate or international commerce. The burden shall be upon any person possessing such angelfish for sale or exchange to establish the chain of possession from the initial transaction after harvest, by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, and any customs receipts, and to show that such angelfish originated from a point outside the waters of the State of Florida or federal Exclusive Economic Zone (EEZ) waters adjacent to Florida waters and entered the state in interstate or international commerce. Failure to maintain such documentation or to promptly produce same at the request of any duly authorized law enforcement officer shall constitute prima facie evidence that such angelfish were harvested from Florida waters or adjacent EEZ waters for purposes of this paragraph.

(2) Butterflyfishes.—

(a) No person harvesting for commercial purposes shall harvest, possess while in or on the waters of the state, or land any butterflyfish (Family Chaetodontidae) of total length less than one (1) inch.

(b) No person shall harvest, possess while in or on the waters of the state, or land any butterflyfish of total length greater than 4 inches.

(3) Gobies—No person shall harvest, possess while in or on the waters of the state, or land any gobie (Family Gobiidae) of total length greater than 2 inches.

(4) Jawfishes—No person shall harvest, possess while in or on the waters of the state, or land any jawfish (Family Opistognathidae) of total length greater than 4 inches.

(5) Spotfin and Spanish hogfish—

(a) No person shall harvest, possess while in or on the waters of this state,

or land any Spanish hogfish (*Bodianus rufus*) of total length less than 2 inches.

(b) No person shall harvest, possess while in or on the waters of this state, or land any Spanish hogfish (*Bodianus rufus*) or spotfin hogfish (*Bodianus pulchellus*) of total length greater than 8 inches.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1-1-91, Amended 7-1-92, 1-1-95.

46-42.005 Bag limit.—

(1) Except as provided in Rule 46-42.006 or subsections (3) or (4) of this rule, no person shall harvest, possess while in or on the waters of the state, or land more than 20 individuals per day of tropical ornamental marine life species, in any combination.

(2) Except as provided in Rule 46-42.006, no person shall harvest, possess while in or on the waters of the state, or land more than one (1) gallon per day of tropical ornamental marine plants, in any combination of species.

(3) Except as provided in Rule 46-42.006, no person shall harvest, possess while in or on the waters of the state, or land more than 5 angelfishes (Family Pomacanthidae) per day. Each angelfish shall be counted for purposes of the 20 individual bag limit specified in subsection (1) of this rule.

(4)(a) Unless the season is closed pursuant to paragraph (b), no person shall harvest, possess while in or on the waters of the state, or land more than 6 colonies per day of octocorals. Each colony of octocoral or part thereof shall be considered an individual of the species for purposes of subsection (1) of this rule and shall be counted for purposes of the 20 individual bag limit specified therein. Each person harvesting any octocoral as authorized by this rule may also harvest substrate within 1 inch of the perimeter of the holdfast at the base of the octocoral, provided that such substrate remains attached to the octocoral.

(b) If the harvest of octocorals in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters is closed to all harvesters prior to September 30 of any year, the season for harvest of octocorals in state waters shall also close until the following October 1, upon notice given by the Secretary of the Department of Environmental Protection, in the manner provided in s.120.52(16)(d), Florida Statutes.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1-1-91, Amended 1-1-95.

46-42.006 Commercial Season, Harvest Limits.—

(1) Except as provided in Rule 46-42.008(7), no person shall harvest, possess while in or on the waters of the state, or land quantities of tropical ornamental marine life species or tropical ornamental marine plants in excess of the bag limits established in Rule 46-42.005 unless such person possesses a valid saltwater products license with both a marine life fishery endorsement and a restricted species endorsement issued by the Department of Environmental Protection.

(2) Persons harvesting tropical ornamental marine life species or tropical ornamental marine plants for commercial purposes shall have a season that begins on October 1 of each year and continues through September 30 of the following year. These persons shall not harvest, possess while in or on the waters of the state, or land tropical ornamental marine life species in excess of the following limits:

(a) A limit of 75 angelfish (Family Pomacanthidae) per person per day or 150 angelfish per vessel per day, whichever is less.

(b) A limit of 75 butterflyfishes (Family Chaetodontidae) per vessel per day.

(c) There shall be no limits on the harvest for commercial purposes of octocorals unless and until the season for all harvest of octocorals in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters is closed. At such time, the season for harvest of octocorals in state waters shall also close until the following October 1, upon notice given by the Secretary of the Department of Environmental Protection, in the manner provided in Section 120.52(16)(d), Florida Statutes. Each person harvesting any octocoral as authorized by this rule may also harvest substrate within 1 inch of the perimeter of the holdfast at the base of the octocoral, provided that such substrate remains attached to the octocoral.

(d) A limit of 400 giant Caribbean or "pink-tipped" anemones (Genus *Condylactus*) per vessel per day.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1-1-91, Amended 7-1-92, 1-1-95.

46-42.007 Gear Specifications and Prohibited Gear.—

(1) The following types of gear shall be the only types allowed for the harvest of any tropical fish, whether from state waters or from federal Exclusive Economic Zone (EEZ) waters adjacent to state waters:

(a) Hand held net.

(b) Barrier net, with a mesh size not exceeding 3/4 inch stretched mesh.

(c) Drop net, with a mesh size not exceeding $\frac{3}{4}$ inch stretched mesh.

(d) Slurp gun.

(e) Quinaldine may be used for the harvest of tropical fish if the person using the chemical or possessing the chemical in or on the waters of the state meets each of the following conditions:

1. The person also possesses and maintains aboard any vessel used in the harvest of tropical fish with quinaldine a special activity license authorizing the use of quinaldine, issued by the Division of Marine Resources of the Department of Environmental Protection pursuant to Section 370.08(8), Florida Statutes.

2. The quinaldine possessed or applied while in or on the waters of the state is in a diluted form of no more than 2% concentration in solution with seawater. Prior to dilution in seawater, quinaldine shall only be mixed with isopropyl alcohol or ethanol.

(f) A roller frame trawl operated by a person possessing a valid live bait shrimping license issued by the Department of Environmental Protection pursuant to Section 370.15, Florida Statutes, if such tropical fish are taken as an incidental bycatch of shrimp lawfully harvested with such trawl.

(g) A trawl meeting the following specifications used to collect live specimens of the dwarf seahorse, *Hippocampus zosterae*, if towed by a vessel no greater than 15 feet in length at no greater than idle speed:

1. The trawl opening shall be no larger than 12 inches by 48 inches.

2. The trawl shall weigh no more than 5 pounds wet when weighed out of the water.

(2) This rule shall not be construed to prohibit the use of any bag or container used solely for storing collected specimens or the use of a single blunt rod in conjunction with any allowable gear, which rod meets each of the following specifications:

(a) The rod shall be made of nonferrous metal, fiberglass, or wood.

(b) The rod shall be no longer than 36 inches and have a diameter no greater than $\frac{3}{4}$ inch at any point.

(3) No person shall harvest in or from state waters any tropical fish by or with the use of any gear other than those

types specified in subsection (1); provided, however, that tropical fish harvested as an incidental bycatch of other species lawfully harvested for commercial purposes with other types of gear shall not be deemed to be harvested in violation of this rule, if the quantity of tropical fish so harvested does not exceed the bag limits established in Rule 46-42.005.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History—New 1-1-91, Amended 7-1-92, 1-1-95.

46-42.009 Prohibition on the Taking, Destruction, or Sale of Marine Corals and Sea Fans; Exception; Repeal of Section 370.114, Florida Statutes.—

(1) Except as provided in subsection (2), no person shall take, attempt to take, or otherwise destroy, or sell, or attempt to sell, any sea fan of the species *Gorgonia flabellum* or of the species *Gorgonia ventalina*, or any hard or stony coral (Order Scleractinia) or any fire coral (Genus *Millepora*). No person shall possess any such fresh, uncleaned, or uncured sea fan, hard or stony coral, or fire coral.

(2) Subsection (1) shall not apply to:

(a) Any sea fan, hard or stony coral, or fire coral legally harvested outside of state waters or federal Exclusive Economic Zone (EEZ) waters adjacent to state waters and entering Florida in interstate or international commerce. The burden shall be upon any person possessing such species to establish the chain of possession from the initial transaction after harvest, by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, and any customs receipts, and to show that such species originated from a point outside the waters of the State of Florida or federal Exclusive Economic Zone (EEZ) adjacent to state waters and entered the state in interstate or international commerce. Failure to maintain such documentation or to promptly produce same at the request of any duly authorized law enforcement officer shall constitute prima facie evidence that such species were harvested from Florida waters in violation of this rule.

(b) Any sea fan, hard or stony coral, or fire coral harvested and possessed pursuant to permit issued by the

Department of Environmental Protection for scientific or educational purposes as authorized in Section 370.10(2), Florida Statutes.

(c) Any sea fan, hard or stony coral, or fire coral harvested and possessed pursuant to the aquacultured live rock provisions of Rule 46-42.008(3)(a) or pursuant to a Live Rock Aquaculture Permit issued by the National Marine Fisheries Service under 50 CFR Part 638 and meeting the following requirements:

1. Persons possessing these species in or on the waters of the state shall also possess a state submerged lands lease for live rock aquaculture and a Department of Environmental Protection permit for live rock culture deposition and removal or a federal Live Rock Aquaculture Permit. If the person possessing these species is not the person named in the documents required herein, then the person in such possession shall also possess written permission from the person so named to transport aquacultured live rock pursuant to this exception.

2. The nearest office of the Florida Marine Patrol shall be notified at least 24 hours in advance of any transport in or on state waters of aquacultured live rock pursuant to this exception.

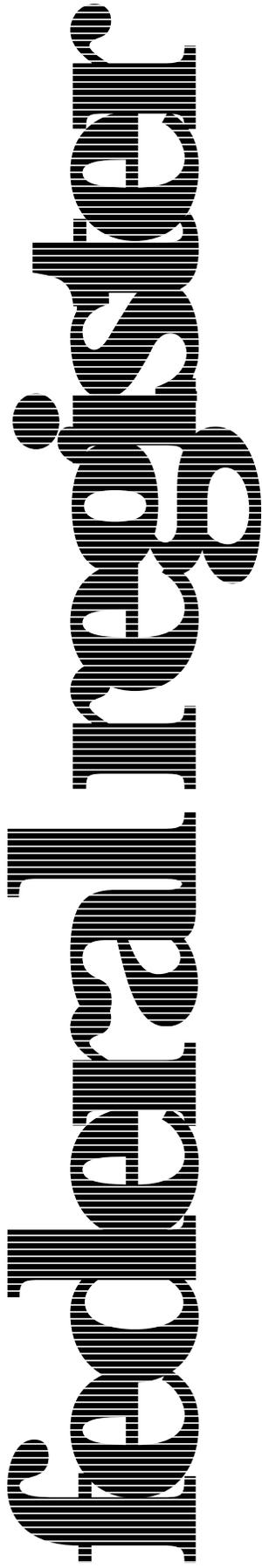
3. Persons possessing these species off the water shall maintain and produce upon the request of any duly authorized law enforcement officer sufficient documentation to establish the chain of possession from harvest on a state submerged land lease for live rock aquaculture or in adjacent Exclusive Economic Zone (EEZ) waters pursuant to a federal Live Rock Aquaculture Permit.

4. Any sea fan, hard or stony coral, or fire coral harvested pursuant to Rule 46-42.008(3)(a) shall remain attached to the cultured rock.

Specific Authority 370.027(2), F.S.; Section 6, Chapter 83-134, Laws of Florida, as amended by Chapter 84-121, Laws of Florida. Law Implemented 370.025, 370.027, F.S.; Section 6, Chapter 83-134, Laws of Florida, as amended by Chapter 84-121, Laws of Florida. History—New 1-1-95.2222

[FR Doc. 97-15252 Filed 6-11-97; 8:45 am]

BILLING CODE 3510-12-P



Thursday
June 12, 1997

Part III

**Department of the
Interior**

Fish and Wildlife Service

**Department of
Commerce**

National Oceanic and Atmospheric
Administration

50 CFR Parts 13 and 17

**Announcements: Draft Safe Harbor Policy
and Candidate Conservation Agreements
Draft Policy, Notices; and Safe Harbor
and Candidate Conservation Agreements;
Proposed Rule**

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****Announcement of Draft Safe Harbor Policy**

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Announcement of draft policy; request for public comments.

SUMMARY: The Fish and Wildlife Service and the National Marine Fisheries Service (Services) announce a joint Draft Safe Harbor Policy under the Endangered Species Act of 1973, as amended (Act). Many endangered and threatened species occur exclusively or to a large extent upon privately owned property; the involvement of the private sector in the conservation and recovery of species is critical to the eventual success of these efforts. This policy would provide incentives for private and other non-Federal property owners to restore, enhance or maintain habitats for listed species. Either Service, or the Services jointly, will closely coordinate with the appropriate State agencies and any affected Native American Tribal governments before entering into Safe Harbor Agreements (Agreements). Under the policy, either Service, or the Services, jointly, would provide participating property owners with technical assistance in the development of Agreements and would provide assurances that additional land-use or resource-use restrictions as a result of their voluntary conservation actions to benefit covered species would not be imposed. If the Agreement provides a net conservation benefit to the covered species and the property owner meets all the terms of the Agreement, the Services would authorize the incidental taking of the covered species to enable the property owner to ultimately return the enrolled property back to agreed upon baseline conditions. The Services seek public comment on the draft policy. Additionally, the Fish and Wildlife Service (FWS) has published in today's **Federal Register** a proposed rule that contains the necessary regulatory changes to implement this policy. The Services also seek public comment on the appropriateness of allowing a property owner to enter into a Safe Harbor Agreement in conjunction with a Habitat Conservation Plan (HCP) under section 10(a)(1)(B) of the Act.

DATES: Comments on the draft policy must be received by August 11, 1997.

ADDRESSES: Send any comments or materials concerning the Draft Safe Harbor Policy to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 452 ARLSQ, Washington, D.C. 20240 (Telephone 703/358-2171, Facsimile 703/358-1735) You may examine comments and materials received during normal business hours in room 452, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia. You must make an appointment to examine these materials.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Fish and Wildlife Service, Division of Endangered Species (Telephone (703)358-2171) or Nancy Chu, National Marine Fisheries Service, Chief, Endangered Species Division (Telephone (301) 713-1401).

SUPPLEMENTARY INFORMATION:**Background**

Much of the nation's current and potential fish and wildlife habitat is on non-Federal property, owned by private citizens, States, municipalities, Native American Tribal governments, and other non-Federal entities. Conservation efforts on non-Federal property are critical to the survival and recovery of many endangered and threatened species. The Services strongly believe that a collaborative stewardship approach to the proactive management of listed species involving government agencies (Federal, State, and local) and the private sector is critical to achieving the ultimate goal of the Endangered Species Act (Act). The long-term recovery of certain species can benefit from short-term and mid-term enhancement, restoration, or maintenance of terrestrial and aquatic habitats on non-Federal property.

Many property owners are willing to voluntarily manage their property to benefit listed fish and wildlife, provided that such actions do not result in new restrictions being placed on the future use of their property. Beneficial management could include actions to enhance, restore, or maintain habitat (e.g., restoring fire by prescribed burning, restoring hydrological conditions), so that it is suitable for listed species. Such proactive management actions cannot be mandated or required by the Act. Thus, failure to conduct habitat enhancement or restoration activities would not violate any of the Act's provisions. Although property owners recognize the benefits of proactive habitat conservation activities to help listed

species, some are still concerned about additional land-use or resource-use restrictions that may result if listed species colonize their property or increase in numbers or distribution because of their conservation efforts. Concern centers on the applicability of the Act's section 9 "take" prohibitions if listed species occupy their property and on future property-use restrictions that may result from their conservation-oriented property management actions. The potential for future land- or resource-use restrictions has led property owners to avoid or limit property management practices that could enhance or maintain habitat and benefit or attract fish and wildlife that are currently Federally listed as endangered or threatened.

A fundamental purpose of section 2 of the Act, is to conserve the ecosystems upon which endangered and threatened species depend and to conserve listed species. Section 9 of the Act prohibits the "take" of listed fish and wildlife species, which is defined in section 3(18) to include, among other things, killing, harming or harassing. The Act's implementing regulations (50 CFR 17.3), as promulgated by the FWS, define "harm" to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding and sheltering." Regulations in 50 CFR 17.31 extend the prohibition against take to threatened fish and wildlife species. Consequently, property owners whose properties support endangered or threatened species could violate section 9 of the Act if the property owners significantly develop, modify, or manage those properties in a way that causes harm to listed species.

The Services' draft Safe Harbor Policy encourages property owners to voluntarily conserve threatened and endangered species without the risk of further restrictions pursuant to section 9. Previously the FWS has provided safe harbor type assurances to non-Federal property owners based on various authorities under the Act, including incidental take statements under section 7(a)(2) and incidental take permits under section 10(a)(1)(B). After further consideration of such alternatives and other provisions of the Act, the Services have determined that the section 10(a)(1)(A) "enhancement of survival" permit provisions of the Act provide the best mechanism to carry out the Safe Harbor Policy and provide the necessary assurances for participating property owners while also providing conservation benefits to the covered species. Assurances already provided by

the FWS under sections 7 or 10(a)(1)(B) would still be valid, and revision of those proactive Agreements is unnecessary. The Services are developing this policy to provide national consistency in the development of Safe Harbor Agreements and link the policy to an expanded enhancement of survival permit program through section 10(a)(1)(A) of the Act.

The FWS's proposed regulatory changes necessary to implement this draft policy were published in today's **Federal Register**. The proposed rule provides the FWS's procedures to implement the Safe Harbor Policy as well as other changes to Parts 13 and 17. The National Marine Fisheries Service will develop and propose regulatory changes to implement this policy at a later date.

Draft Safe Harbor Policy

Part 1. Purpose

Because many endangered and threatened species occur exclusively, or to a large extent, upon privately owned property, the involvement of the private sector in the conservation and recovery of species is critical to the eventual success of these efforts. Private property owners are willing to be partners in the conservation and recovery of fish, wildlife, and plant species and their habitats. However, property owners often are reluctant to undertake proactive activities that increase the likelihood or extent of use of their properties by endangered and threatened species, due to fear of future additional property-use restrictions. Safe Harbor Agreements are a means of providing an incentive to property owners to restore, enhance, or maintain habitats resulting in a net conservation benefit to endangered and threatened species. Although such Agreements may not permanently conserve such habitats, they nevertheless offer important short-term and mid-term conservation benefits. These net conservation benefits may result from reduction of fragmentation and increasing the connectivity of habitats, maintaining or increasing populations, insuring against catastrophic events, enhancing and restoring habitats, buffering protected areas, and creating areas for testing and implementing new conservation strategies.

The purpose of the Safe Harbor Policy is to ensure consistency in the development of Safe Harbor Agreements. Safe Harbor Agreements encourage proactive species conservation efforts by private and other non-Federal property owners while providing certainty relative to future

property-use restrictions, if these efforts attract listed species onto their properties, or areas affected by actions undertaken on their property, or increase the numbers or distribution of listed species already present on their properties. These voluntary Agreements will be developed between, either Service, or the Services jointly, and private and other non-Federal property owners. The Services will closely coordinate development of these Agreements with the appropriate State fish and wildlife or other agencies and any affected Native American Tribal governments. Collaborative stewardship with State fish and wildlife agencies is particularly important given the partnerships that exist between the States and the Services in recovering listed species. Under a Safe Harbor Agreement, participating property owners would voluntarily undertake management activities on their property to enhance, restore, or maintain habitat to benefit Federally-listed species.

Safe Harbor Agreements may be initiated by property owners, or, either Service or the Services jointly, may take the initiative on their own or in concert with other Federal or State agencies to encourage property owners to voluntarily enter Safe Harbor Agreements for a given area, particularly when many non-Federal parcels of property are involved. Either Service or the Services jointly, will work with the participating landowner in the development of their permit application and the Safe Harbor Agreement. The Services will provide the necessary technical assistance to the landowner in developing mutually agreeable management actions that the landowner is willing to voluntarily undertake or forgo that will provide a net conservation benefit and help the landowner describe how these activities will benefit covered species. Development of an acceptable permit application and an adequate Safe Harbor agreement is intricately linked. Either Service or the Services jointly will process the participating landowner's permit application following the Safe Harbor permitting process as described in Title 50 of the Code of Federal Regulations Part 17. During this process all parties to the Agreement will work in close coordination in the development of the Agreement to ensure that measures included in the agreement are consistent with the terms and conditions of the permit. Once the permit is issued the parties to the Agreement can finalize and sign the Agreement.

The Services recognize that Safe Harbor Agreements are not appropriate

under all circumstances. In particular, in situations when property owners are seeking immediate take authorization, development of a Habitat Conservation Plan (HCP) and issuance of an incidental take permit under section 10(a)(1)(B) would be more appropriate. Safe Harbor Agreements are also not appropriate in situations that do not meet the net conservation benefit standards of this policy. For example, where either Service or the Services jointly, reasonably anticipate that a proposed Agreement would only redistribute the existing population of a listed species or attract a species away from a habitat that enjoys long-term protection to a habitat without such protection, the Services would not enter into the Agreement. As another example, where a species is so depleted or its habitat so degraded that some improvement over baseline conditions is necessary to result in a net conservation benefit, a Safe Harbor Agreement may not be appropriate. For instance, certain aquatic, riverine, and/or riparian species may present a challenge in reaching a net conservation benefit since returning to the baseline conditions could have serious negative effects and would negate or outweigh the benefits achieved through the Agreement. In these cases, if a net conservation benefit cannot be achieved after taking into consideration the return to the baseline conditions, the Services will not enter into a Safe Harbor Agreement unless the Services and the property owner agree to appropriate conditions that provide such a benefit.

Availability of resources will also be a governing factor for the Services. The Services expect the interest in Safe Harbor Agreements to rise and the demand for technical assistance to property owners to increase. Safe Harbor Agreements are developed using limited funds appropriated for recovery activities. Priority will, therefore, be given to Agreements that provide the greatest contribution to the recovery of multiple listed species. Another governing factor will be whether there is sufficient information to develop sound conservation measures. The Services will work with State, Tribal, and other interested parties to fill information gaps for species requirements that have not been adequately documented in the scientific literature.

Part 2. Definitions

The following definitions apply for the purposes of this policy.

"*Baseline conditions*" for covered species means population estimates and distribution (if available or determinable) and/or habitat

characteristics of enrolled property that sustain seasonal or permanent use, at the time the Safe Harbor Agreement is executed between either Service or the Services jointly and the property owner.

"Covered species" means a species that is the intended subject of a Safe Harbor Agreement. Covered species are limited to species that are Federally listed as endangered or threatened.

"Enhancement of Survival Permit" means a permit issued under the authority of section 10(a)(1)(A) of the Act.

"Enrolled property" means all private or non-Federal property or waters covered by a Safe Harbor Agreement to which safe harbor assurances apply and on which incidental taking is authorized under the enhancement of survival permit.

"Management activities" are voluntary conservation actions to be undertaken by a property owner that either Service or the Services jointly believe will benefit the status of the covered species.

"Net conservation benefit" means the cumulative results of the management activities identified in an Agreement that provide for an increase in a species' population and/or the enhancement, restoration or maintenance of covered species' suitable habitat within the enrolled property, taking into account the length of the Agreement and the incidental taking allowed by the permit. Net conservation benefits must be sufficient to contribute to the recovery of the covered species if undertaken by other property owners similarly situated within the range of the covered species.

"Property owner" includes, but is not limited to, private individuals, organizations, businesses, Native American Tribal governments, State and local governments, and other non-Federal entities.

"Safe Harbor Agreement" means an Agreement signed by either Service, or both Services jointly and a property owner and any other cooperator, if appropriate, that: (a) Sets forth specific management activities that the private or non-Federal property owner will voluntarily undertake or forgo that will provide a net conservation benefit to covered species; and (b) provides the property owner with the Safe Harbor assurances described within the Agreement and authorized in the enhancement of survival permit.

"Safe Harbor Assurances" are assurances provided in the Agreement and authorized in the enhancement of survival permit for covered species, by either Service, or both jointly, to a non-Federal property owner. These assurances would allow the property

owner to alter or modify enrolled property, even if such alteration or modification will result in the incidental take of a listed species that would return the species back to the originally agreed upon baseline conditions. Such assurances may apply to whole parcels, or portions thereof, of the property owner's property as designated in the Agreement. These assurances are dependent upon compliance with the property owners' obligations in the Agreement and in the enhancement of survival permit.

Part 3. Cooperation and Coordination With the States and Tribes

Coordination with the appropriate State agencies and any affected Tribal governments is critical for the success of the Services' collaborative stewardship approach to recovery through these Safe Harbor Agreements, which is the underlying principle of the Safe Harbor Policy. Coordination among the State fish and wildlife agencies, Tribal governments, the Services, and the property owners are key to effectively implementing a successful Safe Harbor Agreement. This coordination allows the special local knowledge of all appropriately affected entities to be considered in the Agreements. The Services will work in close partnership with State agencies on matters involving the distribution of materials describing the Safe Harbor Agreement policies and programs, the determination of acceptable baseline conditions and development of appropriate monitoring efforts. Because of the Services' trust responsibilities, the Services will also closely coordinate and consult with any affected Tribal government which has a treaty right to any fish or wildlife resources covered by a Safe Harbor Agreement.

Part 4. Species Net Benefit From Safe Harbor Agreements

Before entering into any Safe Harbor Agreement, either Service, or the Services jointly, must make a written finding that all covered species would receive a net conservation benefit from management actions undertaken pursuant to the Agreement. Net conservation benefits must contribute to the recovery of the covered species. Although a Safe Harbor Agreement does not have to provide permanent conservation for enrolled property, Agreements must nevertheless be of sufficient design and duration to provide a net conservation benefit to all covered listed species.

Conservation benefits from Safe Harbor Agreements may include reduction of habitat fragmentation rates;

the maintenance, restoration or enhancement of habitats; increase in habitat connectivity; maintenance or increase of population numbers or distribution; reduction of the effects of catastrophic events; establishment of buffers for protected areas; and establishment of areas to test and develop new and innovative conservation strategies. The Services believe a "net conservation benefit" test is necessary to justify the issuance of an enhancement of survival permit under section 10(a)(1)(A) of the Act. The contribution to the recovery of listed species by Safe Harbor Agreements must be evaluated carefully, since realized benefits from these agreements will be affected by the duration of the Agreement.

The Services believe that there are many listed species that will benefit from management actions carried out for the duration of Safe Harbor Agreements even if there is a return to baseline conditions. Returning the habitat or population numbers to the baseline conditions must be possible without negating the net conservation benefit provided by the Agreement. If this net conservation benefit standard cannot be met, then the Services will not enter into the Agreement. For example, where the Services reasonably anticipate that a proposed Agreement would only redistribute the existing population of a listed species or attract a species away from a habitat that enjoys long-term protection to a habitat without such protection, the Services would not enter into the Agreement. Aquatic, riverine, and/or riparian species may present an additional challenge in reaching a net conservation benefit since returning to the baseline conditions could have a serious negative effect and would negate or outweigh the benefits achieved through the Agreement. In these cases, if a net conservation benefit cannot be achieved, and still allow for the return to the baseline conditions, the Services will not enter into a Safe Harbor Agreement.

Part 5. Standards for and Development of a Safe Harbor Agreement and Permit Issuance Under Section 10(a)(1)(A) of the Act

A property owner may obtain a permit to incidentally take a listed species of fish and wildlife above the agreed upon baseline conditions of the Safe Harbor Agreement, if the Agreement satisfies the following requirements:

The Agreement must—

(1) Specify the species and/or habitats and identify the enrolled property covered by the Agreement;

(2) Describe the agreed upon baseline conditions for each of the covered species within the enrolled property;

(3) Identify management actions that would accomplish the expected net conservation benefits to the species and the agreed upon timeframes for these management actions to remain in effect in order to achieve the anticipated net conservation benefits;

(4) Describe the anticipated results of the management actions and any incidental take associated with the management actions;

(5) Incorporate a notification requirement, where appropriate and feasible, to provide either Service, or Services jointly, or appropriate State agencies with a reasonable opportunity to rescue individual specimens of a covered species before any authorized incidental taking occurs;

(6) Describe the nature of the expected incidental take upon termination of the Agreement (i.e., back to baseline conditions);

(7) Satisfy other requirements of section 10 of the Act; and

(8) Identify the responsible parties that will monitor maintenance of baseline conditions, implementation of terms and conditions of the Agreement, and any incidental take as authorized in the permit.

Issuance of a Safe Harbor permit by the Services is subject to consultation under the intra-Service consultation provisions of section 7 of the Act.

Part 6. Baseline Conditions

Either Service, or the Services jointly, the property owner, and any other cooperator(s) must accurately describe the baseline conditions for the property and species covered by the Safe Harbor Agreement to ensure that the Agreement will not reduce current protection for covered species that presently may use the enrolled property, or result in additional restrictions for such species beyond the baseline conditions. The baseline conditions must reflect the known biological and habitat characteristics that are necessary to support existing levels of use of the property by species covered in the Agreement. However, in light of circumstances beyond the control of the property owner (e.g., loss of nest trees due to storm damage), the parties to the Agreement may revise the baseline conditions to reflect the new circumstances and may develop a new baseline upon which all parties agree.

(A) Determining the Baseline Conditions

This Policy requires a full description of baseline conditions for any species covered in an Agreement (see Part 5

above). Either Service or the Services jointly, or appropriate State or Tribal agencies, with the concurrence of the participating property owner, will describe the baseline conditions for the enrolled property in terms appropriate for the covered species such as: number and location of individual animals, if available or determinable; necessary habitat characteristics that support the species covered by the Agreement; and other appropriate attributes. On-site inspections, maps, aerial photographs, remote sensing, or other similar means can help determine baseline conditions. To the extent determinable, the parties to the Agreement must identify and agree on the level of occupation (permanent or seasonal) by covered species on the enrolled property. For species that are extremely difficult to survey and quantify, an estimate or an indirect measure (e.g., number of suitable acres of habitat needed to sustain a member of the species) is acceptable. Either Service or the Services jointly, will develop the estimate following a protocol agreed upon by all parties to the Agreement. Baseline conditions are then set, based upon the agreed upon measurements or estimates. Either Service or the Services jointly, the property owner or the property owner and any other appropriate agency or government acting in cooperation with either Service or the Services jointly, may determine the baseline conditions. When either Service does not directly determine the baseline conditions, they must review and concur with the determination before entering into an Agreement. Formulation of baseline conditions can incorporate information provided by the property owner, any other appropriate agency, or species experts, as appropriate.

(B) Plants

The Act's "take" prohibitions generally do not apply to listed plant species on private property. Therefore, the incidental take assurances provided in this policy are usually not necessary for listed plant species. However, the Services strongly encourage and often enter into Agreements with non-Federal property owners to restore and enhance habitats for listed plants.

Either Service or the Services jointly, must review the effects of their own actions (e.g., issuance of a permit) on listed plants, even when those plants are found on private property under section 7 of the Act. In approving an enhancement of survival permit and entering into a Safe Harbor Agreement, either Service or the Services jointly, must also confirm under section 7 that

the Agreement will not "jeopardize the continued existence" of listed plants. In the interest of conserving listed plants and complying with their responsibilities under section 7, either Service or the Services jointly, may negotiate with the property owner to voluntarily assist the Services in restoring or enhancing listed plant habitats present within the enrolled property.

(C) Future Section 7 Considerations and Assurances

Before entering into a Safe Harbor Agreement, the either Service or the Services jointly, must conduct an intra-Service section 7 review. During that process, either Service or the Services jointly, must determine that future property use changes within the enrolled property and incidental take consistent with the established baseline conditions will neither jeopardize listed species of fish and wildlife or plants, nor destroy or adversely modify critical habitat at the time of signing the Agreement. If a future Federal nexus to the enrolled property prompts the need for a section 7 review and take of the listed species above the baseline conditions is likely, either Service or the Services jointly, will issue a non-jeopardy biological opinion and incidental take statement to the Federal action agency. As required by section 7 and its implementing regulations, either Service or the Services jointly, will also provide the Federal agency with reasonable and prudent measures that are necessary or appropriate to minimize the effects of the action. Those measures will only require implementation of the same terms and conditions provided to the participating landowner in his/her Safe Harbor Agreement and associated 10(a)(1)(a) permit. This approach is warranted and consistent with section 7 consultation procedures because the effects of any incidental take consistent with the established baseline conditions would have been previously considered during the Services' intra-agency section 7 review for the proposed Agreement.

Part 7. Assurances to Property Owners

A property owner who enters an Agreement and wishes to return enrolled property to the baseline conditions would need to show that the agreed upon baseline conditions were maintained and that activities identified in the Agreement as necessary to achieve the net conservation benefit were carried out for the duration of the agreement. If the property owner carried out the management actions and complied with the permit and the

Agreement conditions, the property owner would be authorized to utilize his/her property in a manner which returns the enrolled property to baseline conditions.

Part 8. Occupation by Non-Covered or Newly Listed Species

After an Agreement is signed and an enhancement of survival permit is issued, a species not addressed in the Agreement may occupy enrolled property. If either Service or the Services jointly, conclude that the species is present as a direct result of the property owner's conservation actions taken under the Agreement, either Service or the Services, will:

(1) At the request of the property owner, amend the Agreement to reflect the changed circumstances and revise the baseline condition description, as appropriate; and

(2) Review and revise the permit, as applicable, to address the presence of additional listed species on enrolled property.

Assurances in the permit may not necessarily be extended to a non-covered species if the species was specifically excluded from the original Agreement as a result of the participating property owner's request, or its presence is a result of activities not directly attributable to the property owner. In these cases, enhancement or maintenance actions that are specific to the non-covered species under consideration must be developed, and baseline conditions determined that will provide a net conservation benefit to that species.

Any substantial change to a Safe Harbor Agreement or a revision to an enhancement of survival permit because of non-covered species would be subject to the same review process (i.e., section 7 of the Act or public review) as the original Safe Harbor agreement and enhancement of survival permit.

Part 9. National Environmental Policy Act Compliance

The National Environmental Policy Act of 1969 (NEPA), as amended, and the regulations of the Council on Environmental Quality (CEQ) require all Federal agencies to examine the environmental impact of their actions, to analyze a full range of alternatives, and to utilize public participation in the planning and implementation of their actions. The purpose of the NEPA process is to help Federal agencies make better decisions and to ensure that those decisions are based on an understanding of environmental consequences. Federal agencies can satisfy NEPA requirements by either a Categorical Exclusion,

Environmental Assessment (EA), or Environmental Impact Statement (EIS), depending on the effects of their proposed action.

Either Service or the Services jointly, will review each permit action for other significant environmental, economic, social, historical or cultural impact, or for significant controversy (516 DM 2, Appendix 2 for FWS and NOAA's Environmental Review Procedures and NOAA Administrative Order Series 216-6). If either Service or the Services jointly, expect that significant impact could occur, the issuance of a permit would require preparation of an EA or EIS. General guidance on when the Services exclude an action categorically and when and how to prepare an EA or EIS is found in the FWS's Administrative Manual (30 AM 3) and NOAA Administrative Order Series 216-6. If a Safe Harbor Agreement/permit is not expected to individually or cumulatively have a significant impact on the quality of the human environment, then the Agreement/permit may be categorically excluded.

Part 10. Transfer of Ownership

If a property owner who is party to a Safe Harbor Agreement transfers ownership of the enrolled property, either Service or the Services, will regard the new owner as having the same rights and obligations with respect to the enrolled property as the original property owner if the new property owner agrees to become a party to the original Agreement. Actions taken by the new participating property owner that result in the incidental take of species covered by the Agreement would be authorized if the new property owner maintains the baseline conditions. The new property owner, however, would neither incur responsibilities under the Agreement nor receive any assurances relative to section 9 restrictions from the Agreement unless the new property owner becomes a party to the Agreement.

A Safe Harbor Agreement must commit the participating property owner to notify the Services of any transfer of ownership at the time of the transfer of any property subject to the Agreement. This will allow the Services to contact the new property owner to explain the prior Safe Harbor Agreement and to determine whether the new property owner would like to continue the original Agreement or enter a new Agreement. When a new property owner continues an existing Safe Harbor Agreement, either Service or the Services jointly, will honor the baseline

conditions for the enrolled property under consideration.

Part 11. Property Owner Discretion

Nothing in this policy prevents a participating property owner from implementing management actions not described in the Agreement, so long as such actions maintain the baseline conditions. Either Service or the Services jointly, will provide technical advice, to the maximum extent practicable, to the property owner when requested.

Part 12. Discretion of All Parties

Nothing in this policy compels any party to enter a Safe Harbor Agreement at any time. Entering a Safe Harbor Agreement is voluntary and presumes that the Agreement will serve the interests of all affected parties. Unless specifically noted, an Agreement does not otherwise create or waive any legal rights of any party to the Agreement.

Part 13. Scope of Policy

This policy applies to all federally-listed species of fish and wildlife administered by either Service or the Services jointly, as provided in the Act and its implementing regulations.

Required Determinations

A major purpose of this proposed policy is the facilitation of voluntary cooperative programs for the proactive management of non-Federal lands and waters for the benefit of listed species. From the Federal Government's perspective, implementation of this policy would result in minor expenditures (e.g., providing technical assistance in the development of site-specific management plans). The benefits derived from such management actions on non-Federal lands and waters would significantly advance the recovery of listed species. Non-Federal program participants would be provided regulatory certainty as a result of their voluntary management actions. In some cases, such participants may incur minor expenditures to carry out some management actions on their lands or involving their water. The Services have determined that the proposed policy would not result in significant costs of implementation to the Federal Government or to non-Federal program participants.

The Director of the Fish and Wildlife Service certified to the Chief Counsel for Advocacy of the Small Business Administration that a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that this policy would not have a significant effect on a substantial number of small

entities, which includes businesses, organizations, or governmental jurisdictions. Because of the completely voluntary nature of the Safe Harbor program, no significant effects are expected on non-Federal cooperators exercising their option to enter into a Safe Harbor Agreement. Therefore, this policy would have minimal effect on such entities.

This policy has been determined to be not significant for purposes of Executive Order 12866. Therefore, it was not subject to review by the Office of Management and Budget.

The Services have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this proposed policy will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The Departments have determined that these proposed policy meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

The Services have examined this proposed policy under the Paperwork Reduction Act of 1995 and found it to contain no requests for additional information or increase in the collection requirement other than those already approved under the Paperwork Reduction Act of 1995 for incidental take permits with OMB approval #1018-0022 which expires July 31, 1997. The Service requested renewal of the OMB approval and in accordance with 5 CFR 1320 will not continue to collect the information, if the approval has expired, until OMB approval has been obtained.

The Department has determined that the issuance of the proposed policy is categorically excluded under the Department of Interior's NEPA procedures in 516 DM 2, Appendix 1.10. NMFS concurs with the Department of Interior's determination that the issuance of the proposed policy qualifies for a categorical exclusion and falls within the categorical exclusion criteria in NOAA 216-3 Administrative Order, Environmental Review Procedure.

Public Comments Solicited

The Services request comments on their Draft Safe Harbor Policy. Particularly sought are comments on the procedures or methods for enhancing the utility of the Safe Harbor Policy in carrying out the purposes of the Act.

The Services also are interested in the views of interested parties on the appropriateness of linking "Safe Harbor" Agreements to incidental take permits issued under section 10(a)(1)(B) of the Act. In certain situations, HCP permittees might be willing to conduct

activities that would enhance listed species populations above their mitigation obligations under an incidental take permit or HCP. The Services are interested in ideas, comments, and suggestions on this concept. The Services also are requesting ideas, comments or suggestions on how to delineate the baseline conditions for a Safe Harbor Agreement that is linked to an HCP incidental take permit. After consideration of all comments received on this question, the Services will decide whether it is appropriate to utilize Safe Harbor Agreements in connection with HCPs.

If the Services decide that it is appropriate to provide these assurances to incidental take permittees, the Services will publish a proposed policy on how best to provide such assurances.

In addition, situations may arise where a property owner may want to recover or conserve numerous species, both listed and unlisted on their property, and may want to enter into both a Safe Harbor Agreement and a Candidate Conservation Agreement. The Services are also seeking comments, and are interested in ideas and suggestions on the ways to streamline and combine these processes when developing these two types of agreements with the same property owner.

The Services will take into consideration the comments and any additional information received by the Services by August 11, 1997. To ease review and consideration of submitted comments, the Services prefer that reviewers organize their comments by part (e.g., Part 1. Purpose, Part 2. Definitions, and linking Safe Harbor Agreements with HCP permits).

Dated: May 27, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

Dated: June 2, 1997.

Rolland A. Schmitt,

*Assistant Administrator for Fisheries,
National Oceanic and Atmospheric
Administration.*

[FR Doc. 97-15250 Filed 6-9-97; 1:26 pm]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Draft Policy for Candidate Conservation Agreements

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Announcement of draft policy; request for public comments.

SUMMARY: The Fish and Wildlife Service and the National Marine Fisheries Service (Services) announce a joint Draft Policy for Candidate Conservation Agreements (Agreements) under the Endangered Species Act of 1973, as amended (Act). This policy would provide incentives for private and other non-Federal property owners, and State and local land managing agencies, to restore, enhance, or maintain habitats for proposed, candidate and certain other unlisted species. Candidate Conservation Agreements would be developed by participating property owners or State or local land managing agencies to remove the need to list the covered species as threatened or endangered under the Act. The Services will coordinate closely with the appropriate State agencies and any affected Native American Tribal governments before entering into Candidate Conservation Agreements with property owners to conserve covered species.

Under this policy, either Service, or the Services jointly, would provide participating property owners and State and local land managing agencies with technical assistance in the development of Candidate Conservation Agreements and would provide assurances that, if covered species are eventually listed, the property owners or agencies would not be required to do more than those actions agreed to in the Candidate Conservation Agreement. If a species is listed, incidental take authorization would be provided to allow the property owner or agency to implement management activities that may result in take of individuals or modification of habitat consistent with those levels agreed upon and specified in the Agreement.

Published concurrently in this **Federal Register** are the Fish and Wildlife Service's (FWS) proposed regulations necessary to implement this policy. The Services seek public comment on this proposed draft policy.

If adopted in final form, this policy will be incorporated into the FWS's Candidate Conservation Handbook.

DATES: Comments on the draft policies must be received by August 11, 1997.

ADDRESSES: Send any comments or materials concerning the Draft Policy for Candidate Conservation Agreement to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 452 ARLSQ, Washington, D.C. 20240 (Telephone 703/358-2171, Facsimile 703/358-1735). You may examine comments and materials received during normal business hours in room 452, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia. You must make an appointment to examine these materials.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Fish and Wildlife Service, Division of Endangered Species (Telephone (703) 358-2171) or Nancy Chu, National Marine Fisheries Service, Chief, Endangered Species Division (Telephone (301) 713-1401).

SUPPLEMENTARY INFORMATION:

Background

Much of the nation's current and potential fish and wildlife habitat is on non-Federal property, owned or regulated by private citizens, States, municipalities, Native American Tribal governments, and other non-Federal entities, or managed by State and local agencies. Conservation efforts on non-Federal lands and waters are critical to the long-term conservation of many declining species. More importantly, a collaborative stewardship approach is critical for the success of such an initiative.

Emphasis on early conservation efforts for proposed and candidate species, and species likely to become either proposed or candidate species in the near future, allows the Services to seek opportunities for both Federal and non-Federal entities to stabilize and recover these species and their ecosystems through Candidate Conservation Agreements before listing becomes necessary. By addressing the conservation of proposed and candidate species, and species likely to become candidates in the near future, the Services and other Federal and non-Federal entities retain management flexibility, while ensuring measurable conservation actions are implemented for these species before their long-term existence is compromised. Implementation of effective conservation actions allows the Services to focus their limited listing resources on those species facing the greatest

threats and likely to be in the greatest need of the full range of the Act's protective measures. The Services recognize the critical importance of seeking opportunities to implement conservation actions for these species in full cooperation with other Federal agencies, State and Tribal governments, local governments, conservation organizations, private landowners, and other stakeholders before listing becomes necessary.

In the past, conservation actions instituted for a candidate species may have reduced or entirely removed the threats to the species' survival and, in a few instances, completely removed the need to list the species. Most of these actions have been accomplished through conservation agreements between the Services and other Federal agencies. However, given the fact that many proposed and candidate species occur on non-Federal lands, it is of critical importance to establish voluntary programs that encourage non-Federal landowners to implement proactive conservation measures for these declining species. By deferring implementation of conservation activities for these species until they are listed, the ecological integrity of their habitats is compromised, thus in some cases severely limiting recovery options available. As a result, costs to achieve species recovery are often high. Greater efforts in addressing the conservation needs of candidate species before their status becomes critical provide an ecologically sound and cost-effective means to conserve species.

Many property owners are willing to voluntarily manage their lands and waters to benefit fish, wildlife, and plants, especially those species that are declining. Beneficial management could include actions to maintain habitat or improve habitat (e.g., restoring fire by prescribed burning, restoring properly functioning hydrological conditions). Property owners are particularly concerned about possible future uncertainty relative to land-use or resource-use restrictions that may result if species colonize their lands or waters or increase in numbers or distribution because of the property owners' conservation efforts and subsequently become listed as a threatened or endangered species. Concern centers primarily on the applicability of the section 9 "take" prohibitions if species occupy their lands or waters and on future land-use or resource-use restrictions that may result from their conservation-oriented management actions if those species are listed. The potential for future restrictions has led property owners to avoid or limit land

and water management practices that could enhance or maintain habitat and benefit or attract fish and wildlife and plants that may be listed in the future.

In 1994, the Service prepared Draft Candidate Species Guidance (Guidance), which underwent public review and comment (see 59 FR 65780, December 21, 1994). However, it did not address the development of Candidate Conservation Agreements with assurances for non-Federal property owners. This aspect of Candidate Conservation Agreements is addressed in the policy described here.

Through the implementation of this policy, the Services intend to facilitate a collaborative approach for the conservation of proposed and candidate species, or species likely to become candidate or proposed species in the near future. Such an approach places emphasis on the involvement and cooperation among critical stakeholders in the conservation of these species, including, but not limited to, private property owners, State and local agencies, Native American Tribal governments, and non-governmental organizations. Collaborative stewardship with State fish and wildlife agencies is particularly important given their statutory role under the Act and their traditional conservation responsibilities and authorities for resident species. In exchange for proactive conservation management activities benefitting candidate and proposed species, the Services would provide regulatory certainty and assurances to the participating property owner in case the covered species is subsequently listed. Once finalized, this policy will be incorporated into the final handbook on candidate species conservation; the final handbook will be based on the 1994 Draft Candidate Species Guidance with revisions based on the comments received upon the 1994 draft and including the final version of the policy proposed here.

The Services have a long history of working with Federal agencies to develop Candidate Conservation Agreements, and such collaborative efforts with other Federal agencies will continue to be a high priority. Because of the proactive obligations for Federal agencies in the Act, providing assurances through Candidate Conservation Agreements is not appropriate for Federal agencies.

Providing assurances to non-Federal property owners is an incentive-based approach to encourage these landowners to enter into voluntary conservation programs while providing them certainty relative to future obligations under the Act. The Services

can also enter into Candidate Conservation Agreements with State and local land management agencies and provide the same assurances under this new policy. In addition, the Services could also enter into comprehensive "umbrella" agreements with State fish and wildlife agencies and through such agreements provide assurances to any non-Federal property owners. These assurances will only be provided to the participating landowners or State or local land managing agencies but not to State regulatory agencies. Therefore, after the finalization of this policy and its incorporation into the Services' Candidate Species Guidance, two basic types of Candidate Conservation Agreements would be available: (1) Candidate Conservation Agreements without assurances and (2) Candidate Conservation Agreements with assurances (exclusive for non-Federal landowners).

The Services will focus the implementation of this policy on proposed and candidate species with the goal of removing threats facing these species and therefore preclude the need to list these species in the future. The benefits derived from these proactive collaborative conservation agreements can have significance in the Services' listing decisions. This is especially true for Candidate Conservation Agreements that provide assurances, since for the Services to provide such assurances, the provisions to be carried out under these agreements must be expected to remove the need to list the covered species covered or be expected to remove the need to list if undertaken by similarly situated landowners within the range of the covered species. For species occurring primarily on Federal lands, a Candidate Conservation Agreement without assurances would also, in some cases, eliminate enough of the threats to the species and remove the need to list. However, the determination whether these agreements will in fact remove the need to list a species will be determined on a case-by-case basis and with adequate public participation.

The Fish and Wildlife Service's proposed regulatory changes necessary to implement this draft policy are published elsewhere in this issue of the **Federal Register**. The proposed rule provides the Fish and Wildlife Service's procedures to implement both the Safe Harbor policy (also published elsewhere in this issue of the **Federal Register**) and the Candidate Conservation Agreement policy. The National Marine Fisheries Service will develop proposed regulatory changes implementing these policies, to be published subsequently.

Candidate Conservation Agreement Policy

Part 1. Purpose

The ultimate goal of Candidate Conservation Agreements developed under this policy is to encourage, to the extent feasible and controllable by a participating property owner or State or local land management agency, the removal of threats to the covered species so as to nullify the need to list them as threatened or endangered under the Act. Unlike Safe Harbor Agreements, which are developed only for listed species, the targets of Candidate Conservation Agreements are proposed and candidate species of fish, wildlife, and plants; species likely to become candidate species in the near future may also be included. The management and conservation benefits of activities carried out under Candidate Conservation Agreements, if undertaken on a broad enough scale by other property owners similarly situated within the range of the species, should be expected to preclude the need for listing species covered by the Agreement as threatened or endangered under the Act. Safe Harbor Agreements, on the other hand, focus on the restoration, enhancement, or maintenance of terrestrial and aquatic habitats of listed species thereby contributing to their recovery.

While some property owners and State and local land management agencies are willing to manage their lands and waters to benefit proposed and candidate species, or species likely to become candidates in the near future, most desire some degree of assurances relative to future land- or resource-use restrictions. By providing regulatory certainty in these Candidate Conservation Agreements, property owners and agencies help define and know in advance what level of land- or resource-use restrictions they may incur in the event the Services list a species covered by an Agreement. If the Services list a covered species in the future, incidental take authorization would be provided to allow the property owner or State or local land management agency to implement management activities that may result in take of individuals or modification of habitat above those levels agreed upon and specified in the Agreement. Without such assurances, most property owners and agencies will not have as much incentive to undertake candidate conservation initiatives on their property.

Candidate Conservation Agreements and associated activities will be developed in close coordination and

cooperation with the appropriate State fish and wildlife agencies and other affected State agencies and Native American Tribal governments, as appropriate. The need for close coordination with State fish and wildlife agencies is particularly important given their primary responsibilities for unlisted resident species. These Agreements are to be consistent with applicable State laws and regulations governing the management of these species and must be voluntary for the property owners or State or local land management agency.

The Services must reasonably expect that the management actions agreed to and included in any Agreement, if performed by all landowners in similar situations, will be adequate to remove the threat(s) to proposed, candidate, and species likely to become a candidate or proposed species in the near future and are covered by the Agreement, thereby eliminating the need to list the covered species. Pursuant to section 7 of the Act, the Services must also ensure that those management actions do not jeopardize listed or proposed species and do not destroy or adversely modify proposed or designated critical habitats that may occur in the area.

The Services recognize that some property owners or State or local land managing agencies may not have the necessary resources or expertise to develop Candidate Conservation Agreements. In such cases where the willing property owner or agency lacks the resources or expertise, the Services are committed to providing the necessary technical assistance, to the maximum extent practicable and given available resources, to develop effective Candidate Conservation Agreements that will be sufficient to remove the need to list the covered species. Further, the Services may also help carry out some management actions (e.g., prescribed burning) or train property owners in the implementation of management techniques.

Either Service or the Services jointly will work with the participating landowner in the development of their permit application and the Candidate Conservation Agreement. The Services will provide the necessary technical assistance to the landowner in developing mutually agreeable management actions that the landowner is willing to voluntarily undertake or forgo that will provide a net conservation benefit and help the landowner describe how these activities will benefit covered species. Development of an acceptable permit application and an adequate Candidate Conservation agreement is intricately

linked. Either Service or the Services jointly will process the participating landowner's permit application following the Candidate Conservation permitting process as described in 50 CFR part 17. During this permit process all parties to the Agreement will work in close coordination in the development of the Agreement to ensure that measures included in the agreement are consistent with the terms and conditions of the permit. Once the permit is issued the parties to the Agreement can finalize and sign the Agreement.

Availability of resources will also be a governing factor for the Services. The Services expect the interest in Candidate Conservation Agreements to be high and the demand for technical assistance to property owners to be great. Candidate Conservation Agreements are developed using candidate conservation funding which is extremely limited; thus the Services may have to prioritize their participation in Candidate Conservation Agreements based upon the conservation benefits provided to the covered species. In addition, priority will be given to Agreements where sufficient information exists to develop sound conservation measures. The Services will work with State, Tribal, and other interested parties to fill information gaps for species requirements that have not been adequately documented in the scientific literature.

Part 2. Definitions

The following definitions apply for the purposes of this policy.

"Candidate Conservation Agreement" means an Agreement signed by either Service, or both Services jointly, and a property owner, and any other cooperator, if appropriate, or with a State or local land management agency, that: (a) Sets forth specific management activities that the private or non-Federal property owner, or State or local land management agency, will voluntarily undertake to conserve the covered species; (b) specifies management activities that are adequate to remove the need to list the covered species, if such actions were undertaken by other property owners similarly situated within the range of the species; and (c) for agreements with assurances, provides the property owner or State or local land management agency with the Candidate Conservation assurances described within the Agreement and authorized in the enhancement of survival permit.

"Candidate Conservation Assurances" are assurances provided in

the Agreement and authorized in an enhancement of survival permit for covered species, by either Service, or both jointly, to a non-Federal property owner or State or local land management agency that would allow the property owner or agency to take individuals of the covered species or alter or modify habitat consistent with the levels agreed upon and specified in the Agreement, even if the covered species are eventually listed. Such assurances may apply to whole parcels, or portions thereof, of the property owner's or land management agency's property as designated in the Agreement. These assurances are dependent upon the Agreement being adequate to remove the need to list the covered species, if such actions were undertaken by other property owners similarly situated within the range of the species. The assurances are also dependent on the property owner's or land management agency's compliance with the obligations in the Agreement and in the enhancement of survival permit.

"Candidate species" are defined differently by the Services based on their different programs. The FWS defines a candidate species as a species for which the FWS has sufficient information on file relative to status and threats to support issuance of a proposed listing rule. The National Marine Fisheries Service defines a candidate species as a species for which concerns remain regarding their status, but for which more information is needed before they can be proposed for listing. The term *"candidate species"* used in this policy refers to those species designated as candidates by either of the Services.

"Covered species" means a species that is the subject of a Candidate Conservation Agreement. Covered species are limited to species that are candidates or proposed for listing and species that may become candidates or proposed in the near future. Those species covered in the Agreement must be treated as if they were listed.

"Enhancement of survival permit" means a permit issued under the authority of section 10(a)(1)(A) of the Act.

"Management activities" are voluntary conservation actions to be undertaken by a property owner or State or local land management agency that the Services believe will eliminate the need to list the species.

"Property owner" includes, but is not limited to, private individuals, organizations, businesses, Native American Tribal governments, and other non-Federal entities.

"Proposed species" is a species for which the Services, based on the best available scientific and commercial information, have published a proposed rule to list it as an endangered or threatened species under provision of section 4 of the Act.

Part 3. Candidate Conservation Agreements

The Agreement will identify:

A. At the time the parties negotiate the Agreement, the existing population levels (if available or determinable) of the covered species, or the existing habitat characteristics that sustain any current, permanent, or seasonal use by the covered species on lands or waters under the property owner's or State or local land management agency's control, or habitat characteristics that support populations of covered species in waterways that may not be under the property owner's or agency's control must be determined;

B. The management actions the property owner or State or local land management agency is willing to undertake to conserve the covered species included in the Agreement. The Services, or either Service, must have determined that these management actions are of sufficient design to remove the threat(s) to those species adequately to avoid listing, or be sufficient enough, if undertaken by other property owners or agencies similarly situated, to remove the threat(s) to avoid listing;

C. An estimate of the expected conservation benefits as a result of management actions described in B above (e.g., increase in population numbers; enhancement, restoration, or preservation of suitable habitat) and the conditions that the property owner or State or local land management agency agrees to maintain that will remove the threats to the species and eliminate the need to list the covered species. The conservation benefits must remove the threats to the species adequately to eliminate the need to list the species. In many cases, a single property owner's or agency's activities alone will not be sufficient to eliminate the need to list. In such cases, the Services will enter into an Agreement when the activities to be carried out by the property owner or agency, if conducted by other property owners or agencies throughout the range of the affected species, would be expected to adequately remove threat(s) to the species to eliminate the need to list;

D. Assurances provided by the Services that no additional management actions would be required of the property owner or State or local land

management agency above those agreed to in B above should the covered species be listed in the future. In addition, the Services would authorize actions that may result in incidental take consistent with those levels agreed to in A and C above through a section 10(a)(1)(A) Enhancement of Survival permit;

E. The level of monitoring necessary to determine how the species is responding to the prescribed management activities should be built into the Agreement or permission for the Services to conduct such monitoring should be included in the Agreement; and,

F. A notification requirement, where appropriate and feasible, to provide the Service, or Services, or appropriate State agencies with a reasonable opportunity to rescue individual specimens of a covered species before any authorized incidental taking occurs.

Part 4. Benefit to the Species

Before entering into an Agreement, the Services or either Service must make a written finding that species included in such an Agreement will receive a sufficient conservation benefit from the activities conducted under the Agreement. This benefit must be expected to be of a level that, if undertaken on a broad enough scale by other property owners or State or local land management agencies similarly situated, would be cumulatively significant enough to remove the need to list the covered species. Expected benefits could include, but are not limited to: reduction in habitat fragmentation rates; restoration and enhancement of habitats; maintenance or increase of population numbers; and reduction of the effects of catastrophic events. If the Service and the property owner or land management agency cannot agree to a set of management actions adequate to remove the need to list a species covered in the Agreement if such actions were undertaken by other property owners or agencies similarly situated within the range of the species, the Service will not enter into the Agreement.

Part 5. Assurances to Property Owners

The Services, in the Candidate Conservation Agreement, will provide that if any species covered by the Agreement is listed, and the Agreement has been implemented in good faith by the participating property owner or State or local land management agencies, the Services will not assert additional restrictions or require additional actions above those the property owner or State or local land management agencies voluntarily

committed to conduct, incur, or maintain under the terms of the original Agreement. Such assurances will be provided to the participating property owner or non-Federal land management agency through a section 10(a)(1)(A) enhancement of survival permit, which will allow the property owner or agency to implement management activities that may result in take of individuals or modification of habitat consistent with levels agreed upon and specified in the Agreement. Under this process, the Services or either Service would issue an enhancement of survival permit at the time of entering into the Agreement. Such a permit would have a delayed effective date tied to the date of any future listing for a covered species. The Services believe that an enhancement of survival permit is particularly well suited for the Candidate Conservation Agreement program because the central purpose of such Agreements is to enhance the survival of declining species. It is equally appropriate to issue such a permit to a participating property or resource owner as a way of rewarding their proactive voluntary conservation efforts and shielding such persons from any additional restrictions which might otherwise affect them if a species is subsequently listed.

Part 6. Public Review of Candidate Conservation Agreements

When a draft Candidate Conservation Agreement is developed for a proposed species, the draft Agreement will be available for public review. Whenever possible, the Services will invite public review and comment on these Agreements for at least 30 days. In making final listing determinations the Services will consider the conservation benefits provided by these agreements and all comments received regarding those conservation benefits. When providing assurances to a non-Federal landowner or State or local land management agency through a Candidate Conservation Agreement, the Services will invite public review and comment on the Agreement prior to issuing any enhancement of survival permit needed to provide the assurances.

Required Determinations

A major purpose of this proposed Candidate Conservation Agreements Policy is the facilitation of voluntary cooperative programs for the proactive management of non-Federal lands and waters for the benefit of proposed and candidate species and species likely to become candidates in the near future. From the Federal government's perspective, implementation of this

policy would result in minor expenditures (e.g., providing technical assistance in the development of site-specific management plans). The benefits derived from such management actions on non-Federal lands and waters would remove threats to proposed, candidate, or other soon to become candidate species. Non-Federal program participants would be provided regulatory certainty as a result of their voluntary management actions. In some cases, such participants may incur minor expenditures to carry out some management actions on their lands or involving their water. The Services have determined that the proposed rule would not result in significant costs of implementation to the Federal government or to non-Federal program participants.

The Director of the Fish and Wildlife Service certified to the Chief Counsel for Advocacy of the Small Business Administration that a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that this policy would not have a significant effect on a substantial number of small entities, which includes businesses, organizations, or governmental jurisdictions. Because of the completely voluntary nature of the Candidate Conservation program, no significant effects are expected on non-Federal cooperators exercising their option to enter into a Candidate Conservation Agreement. Therefore, this policy would have minimal effect on such entities. NMFS concurs with this certification. This policy was not subject to review by the Office of Management and Budget under Executive Order 12866.

The Services have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this policy will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The Departments have determined that this proposed policy meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

The Department has determined that the issuance of the proposed policy is categorically excluded under the Department of Interior's NEPA procedures in 516 DM 2, Appendix 1.10. NMFS concurs with the Department of Interior's determination that the issuance of the proposed policy qualifies for a categorical exclusion and falls within the categorical exclusion criteria in NOAA 216-3 Administrative Order, Environmental Review Procedure.

Public Comments Solicited

The Services request comments on their Draft Policy for Candidate Conservation Agreements. Particularly sought are comments on the procedures or methods for enhancing the utility of the Candidate Conservation Agreements Policy in carrying out the purposes of the Act.

In addition, situations may arise where a property owner may want to recover or conserve numerous species, both listed and unlisted on their

property, and may want to enter into both a Candidate Conservation Agreement and a Safe Harbor Agreement. The Services are also seeking comments and are interested in ideas and suggestions on the ways to streamline and combine these processes when developing these two types of agreements with the same property owner. The Services will take into consideration the comments and any additional information received by the Services by August 11, 1997.

Dated: May 27, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

Dated: June 2, 1997.

Rolland A. Schmitten,

*Assistant Administrator for Fisheries,
National Oceanic and Atmospheric
Administration.*

[FR Doc. 97-15249 Filed 6-9-97; 1:26 pm]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Parts 13 and 17**

RIN 1018-AD95

Safe Harbor Agreements and Candidate Conservation Agreements

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule contains the U.S. Fish and Wildlife Service's (Service) proposed regulatory changes to 50 CFR part 17 necessary to implement two draft policies developed by the Service and the National Marine Fisheries Service (NMFS) under the Endangered Species Act (Act)—the Safe Harbor and Candidate Conservation Agreement policies which are published elsewhere in this issue of the **Federal Register**. NMFS will develop separate regulatory changes to implement these policies. In addition, the Service proposes technical amendments to its general regulations (50 CFR part 13) which are applicable to all of its various permitting programs. These proposed revisions would clarify the application of existing general permit conditions to the permitting procedures associated with Habitat Conservation Plans, Safe Harbor Agreements and Candidate Conservation Agreements issued under section 10 of the Act.

DATES: Comments on the proposed rule must be received by August 11, 1997.

ADDRESSES: Send any comments or materials concerning the proposed rule to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 452 ARLSQ, Washington, D.C. 20240 (Telephone 703/358-2171, Facsimile 703/358-1735). You may examine comments and materials received during normal business hours in room 452, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia. You must make an appointment to examine these materials.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species (Telephone (703/358-2171).

SUPPLEMENTARY INFORMATION:**Background**

These proposed regulations only apply to the U.S. Fish and Wildlife Service and in no way apply to the National Marine Fisheries Service. Therefore, the use of the term Service within these proposed regulatory changes refers to the U.S. Fish and Wildlife Service exclusively.

The Service administers a variety of conservation laws that authorize the issuance of certain permits for otherwise prohibited activities. In 1974, the Service published Part 13 of Title 50 of the Code of Federal Regulations to consolidate the administration of its various permitting programs. Part 13 established a uniform framework of general administrative conditions and procedures that would govern the application, processing, and issuance of all Service permits. The Service intended the general part 13 permitting provisions to be in addition to, and not in lieu of, other more specific permitting requirements of Federal wildlife laws.

Subsequent to the 1974 publication of part 13, the Service added many wildlife regulatory programs to Title 50 of the Code of Federal Regulations. For example, the Service added part 18 in 1974 to implement the Marine Mammal Protection Act, modified and expanded part 17 in 1975 to implement the Act, and added Part 23 in 1977 to implement the Convention on International Trade in Endangered Species of Fauna and Flora (CITES). These parts contained their own specific permitting requirements in addition to the general permitting provisions of part 13.

In most instances, the combination of Part 13's general permitting provisions and Part 17's specific Act permitting provisions have worked well since 1975. However, in three areas of emerging permitting policy under the Act, the "one size fits all" approach of part 13 is inappropriately constraining and narrow. These three areas involve Habitat Conservation Planning, "Safe Harbor" Agreements, and Candidate Conservation Agreements.

Congress amended section 10(a)(1) of the Act in 1982 to authorize incidental take permits associated with habitat conservation planning (HCP). Many HCP permits involve long-term conservation commitments that run with the affected land for the life of the permit. The Service negotiates such long-term permits recognizing that a succession of owners may purchase or resell the affected property during the term of the permit. The Service does not view this as a problem, where the requirements of such permits run with the land and successive owners agree to the terms of the HCP. Property owners similarly do not view this as a problem so long as the Service can easily transfer incidental take authorization from one purchaser to another.

In other HCP situations, the HCP permittee may be a State or local agency that intends to sub-permit or blanket the incidental take authorization to hundreds if not thousands of its

citizens. The Service again does not view this as a problem so long as the original agency permittee abides by, and ensures compliance with, the terms of the HCP.

While the above HCP scenarios are proper and consistent with the requirements of section 10(a) of the Act and part 17, they are not as easily reconcilable with certain sections of part 13. For example, sections 13.24 and 13.25 of Title 50 impose significant restrictions on permit right of succession or transferability. While these restrictions are well justified for most wildlife permitting situations, they impose inappropriate and unnecessary limitations for HCP permits where the term of the permit may be lengthy and the parties to the HCP foresee the desirability of simplifying sub-permitting and permit transference from one property owner to the next, or from a State or local agency to citizens under their jurisdiction.

Similar problems also could arise under Part 13 under so-called "Safe Harbor" or Candidate Conservation Agreements (see draft Safe Harbor and Candidate Conservation Agreement policies also published in today's **Federal Register**). A major incentive for property owner participation in the Safe Harbor or Candidate Conservation programs is the long-term certainty the programs provide, including the certainty that the incidental take authorization will run with the land when it changes hands and the new owner agrees to be bound by the terms of the original Agreement. Property owners could view the present limitations in several sections (e.g., section 13.24 and 13.25) as impediments to the development of these agreements. In light of potential problems such as these, the Service is proposing to modify Part 13 to redefine its relationship with HCP permits and Safe Harbor and Candidate Conservation "enhancement of survival" permits under Part 17.

To address these issues, the Service proposes several changes in Part 13. First, the Service proposes to modify section 13.3 by identifying and clarifying that, in case of a conflict between general permit provisions in part 13 and more specific terms or conditions in a HCP permit and its accompanying habitat conservation plan or implementation agreement, the more specific provisions in the HCP permit and accompanying documents would control. Similarly, in the case of a conflict between general provisions in part 13 and terms or conditions under a Safe Harbor or Candidate Conservation Agreement and its accompanying part

17 "enhancement of survival" permit, the provisions of the part 17 "enhancement of survival" permit and the Agreement would control. Thus, while part 13 would generally apply to HCP and enhancement of survival permits, the more detailed and specific terms and conditions of a permit issued under part 17 would apply when there is a conflict.

Reviewers should note that the Service proposed amendments to section 13.3 (Scope of Regulations) on September 5, 1995 (60 FR 46087). Those changes, among other things, provided an explanation of the term "permit" (needed to reference the requirements applicable to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) correctly), to state the scope of its requirements clearly, and to ensure that the titles of several parts of Title 50 of the Code of Federal Regulations are up-to-date. However, the September 5, 1995, proposal did not deal with the potential conflicts between the general provisions included in part 13 with specific provisions for incidental take and enhancement of survival permits under part 17. The present proposal in no way amends the language included in the September 5, 1995, proposal.

The Service also proposes to add four new sub-sections to part 17. These sub-sections would provide specific guidance for the issuance of endangered or threatened species enhancement of survival permits under section 10(a)(1)(A) of the Act for activities conducted under Safe Harbor or Candidate Conservation Agreements. This would avoid confusion with any other type of permits issued under part 17 and provides clear guidance on the specific applicable criteria for Safe Harbor and Candidate Conservation Agreements through the enhancement of survival provisions of the Act. The Act requires the Secretary of Interior to establish and implement programs to conserve declining species of fish, wildlife, and plants so as to prevent their extinction. The proposed regulations for Safe Harbor and Candidate Conservation Agreements are aimed at implementing such programs. The proactive nature of these programs, the regulatory certainty they provide participating property owners, and their conservation benefits truly reflect the overall purposes of the Act and fall within the Service's responsibilities for utilizing its authorities and responsibilities to further the conservation mandate of the Act. Section 10(a)(1)(A) enhancement of survival permits provide the best mechanism for implementing the Safe

Harbor and Candidate Conservation Agreement programs.

Overview of Safe Harbor and Candidate Conservation Programs

The information below briefly describes these two programs. For more details on these two programs see the two draft policies also published elsewhere in this issue of the **Federal Register**.

Much of the nation's current and potential habitat for listed, proposed, and candidate species exists on non-Federal lands, owned by private citizens, States, municipalities, Native American Tribal governments, and other non-Federal entities. Conservation efforts on non-Federal lands are critical to the long-term conservation of many declining species. More importantly, a collaborative stewardship approach is critical for the success of such an initiative. Many property owners are willing to voluntarily manage their lands to benefit fish, wildlife, and plants, especially those that are declining. Such voluntary management actions are not required by the Act. Thus, failure to conduct such management would not violate any of the Act's provisions. Beneficial management could include actions to maintain habitat or improve habitat (e.g., restoring fire by prescribed burning, restoring properly functioning hydrological conditions). Property owners are particularly concerned about possible future uncertainty relative to land-use restrictions that may result if listed species colonize their lands or increase in numbers or distribution because of the property owners' conservation efforts or if species subsequently become listed as a threatened or endangered species. Concern centers primarily on the applicability of the section 9 "take" prohibitions if listed species occupy their lands and on future land-use restrictions that may result from their conservation-oriented land management actions if other species are listed. The potential for future restrictions has led property owners to avoid or limit land or water management practices that could enhance or maintain habitat and benefit or attract fish and wildlife that are listed or may be listed in the future.

The purpose of the Safe Harbor Policy is to ensure consistency in the development of Safe Harbor Agreements. Safe Harbor Agreements encourage proactive conservation efforts for listed species by private and other non-Federal property owners while providing property owners certainty relative to future property-use restrictions if their efforts attract listed

species onto their properties or areas affected by actions undertaken on their property or increase the numbers or distribution of listed species already present on their properties. These voluntary Safe Harbor Agreements will be developed between the Services and private and other non-Federal property owners. The Services will closely coordinate development of Safe Harbor Agreements with the appropriate State fish and wildlife or other agencies and any affected Native American Tribal governments. Collaborative stewardship with State fish and wildlife agencies is particularly important given the critical partnership between the Service and the States in recovering listed species. Under a Safe Harbor Agreement, participating property owners would voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting federally listed species.

The ultimate goal of Candidate Conservation Agreements is, to the extent feasible and controllable by the property owner, to remove enough threats to the covered species so as to nullify the need to list them as threatened or endangered under the Act. Proposed and candidate species may be the subject of a Candidate Conservation Agreement. Certain other unlisted species that may become a candidate or proposed species in the near future may also be the subject of a Candidate Conservation Agreement. These Agreements are different from Safe Harbor Agreements (which require the presence of at least one listed species) in that they provide conservation benefits exclusively to candidate and proposed species of fish, wildlife, and plants. The substantive requirements of activities carried out under Candidate Conservation Agreements, if undertaken on a broad enough scale by other property owners similarly situated, should be expected to preclude the need for listing species covered by the Agreement as threatened or endangered under the Act.

Required Determinations

A major purpose of this proposed rule is the facilitation of voluntary cooperative programs for the proactive management of non-Federal lands and waters for the benefit of candidate, proposed, and listed species. From the Federal government's perspective, implementation of this rule would result in minor expenditures (e.g., providing technical assistance in the development of site-specific management plans). The benefits derived from such management actions on non-Federal lands and waters would

significantly advance the recovery of listed species or remove threats to candidate, proposed, or other unlisted species. Non-Federal program participants would be provided regulatory certainty as a result of their voluntary management actions. In some cases, such participants may incur minor expenditures to carry out some management actions on their lands or involving their water. The Service has determined that the proposed rule would not result in significant costs of implementation to the Federal government or to non-Federal program participants.

The Assistant Secretary for the Department of Interior certified to the Chief Counsel for Advocacy of the Small Business Administration that a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that this rulemaking would not have a significant effect on a substantial number of small entities, which includes businesses, organizations, or governmental jurisdictions. Because of the completely voluntary nature of the Safe Harbor or Candidate Conservation program, no significant effects are expected on non-Federal cooperators exercising their option to enter into a Safe Harbor or Candidate Conservation Agreement. Therefore, this rule would have minimal effect on such entities. This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

The Service has determined and certifies pursuant to the Unfunded Mandates 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 or State governments or private entities. The Department has determined that these proposed regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Information Collection

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Service is submitting the necessary paperwork to OMB for renewal of approval number 1018-0022, which expires July 31, 1997 to collect this information. The Service will not continue to collect the information until approved by OMB and a final regulation is published. The proposed information collection requirement will be used to administer these programs and, particularly in the issuance of permits. The Service intends to collect the information through the use of the Federal Fish and Wildlife Permit Application, Service form number 3-200.54, which the Service modified

pursuant to 50 CFR 13.21(b) to address the specific requirements of the proposed rule, and at the request of OMB. The information requested in the application form will be required to obtain a benefit, and to determine if the applicant meets all the permit issuance criteria.

The applicants will be non-Federal property owners, working with Federal officials, wishing to manage their lands or waters to provide a conservation benefit to endangered and threatened species, but who also do not want to incur future additional regulatory requirements as a result of their conservation-oriented activities. The annual number of applicants is estimated to be 50. The public reporting burden for this collection of information is estimated to average two and one-half hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information, yielding an annual burden of 125 hours.

Comments are invited from the public on: (1) Whether the collection of information is necessary for the proper performance of the function of the Service, including whether the information will have practical utility; (2) the accuracy of the Service's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Public Comments Solicited

The Service submits for public comment this proposed rule. Particularly, comments are sought on:

- (1) The proposed procedures or methods for implementing the Service's Safe Harbor and Candidate Conservation policies to further the purposes of the Act;
- (2) Alternative means for providing regulatory assurances to property owners who enter Safe Harbor or Candidate Conservation Agreements; and
- (3) The proposed regulatory changes to 50 CFR parts 13 and 17.

The Service is also requesting comments on the revised Federal Fish and Wildlife Permit Application, Service form number 3-200.54. Copies of the proposed information collection requirements, related forms, and

explanatory material may be obtained from, and comments should be submitted to the Service's Information Collection Clearance Officer at the U.S. Fish and Wildlife Service, MS 224-ARLSQ, 1849 C Street, NW., Washington, D.C., 20240; or by calling and requesting information at 703/358-1943.

The Service will take into consideration the comments and any additional information received by the Service by August 11, 1997, and such will be considered in the development of a final rule.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, Transportation.

For the reasons set out in the preamble, the Service proposes to amend Title 50, Chapter I, subchapter B of the Federal Code of Regulations, as set forth below:

PART 13—[AMENDED]

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

Authority: 16 U.S.C. 668a; 704, 712; 742 j-1; 1382; 1538(d); 1539, 1540(f); 3374; 4901-4916; 18 U.S.C. 42; 19 U.S.C. 1202; E.O. 11911, 41 FR 15683; 31 U.S.C. 9701.

2. Section 13.3 is revised to read as follows:

§ 13.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter and apply to all permits issued thereunder, including "Importation, Exportation and Transportation of Wildlife" (part 14), "Wild Bird Conservation Act" (part 15), "Injurious Wildlife" (part 16), "Endangered Wildlife and Plants" (part 17), "Marine Mammals" (part 18), "Migratory Bird Permits" (part 21), "Eagle Permits" (part 22), and "Endangered Species Convention" (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) (part 23) except as provided in § 13.22(c). However, in the case of a conflict between general provisions of this part and specific provisions, conditions, or procedures contained in either an incidental take permit and its accompanying habitat conservation plan

or agreement under § 17.22(b) or 17.32(b) of this title, or in a safe harbor agreement through an enhancement of survival permit under § 17.22(c) or 17.32(c) or candidate conservation agreement through an enhancement of survival permit under § 17.22(d) or 17.32(d) of this title, the specific provisions, conditions, or procedures of the incidental take permit and its accompanying habitat conservation plan or agreement, or the safe harbor or candidate conservation agreements through an enhancement of survival permit and accompanying document, will control. As used in this part 13 the term "permit" will refer to a license, permit, or certificate as the context may require and to all such documents issued by the Service or other authorized United States or foreign government agencies.

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. § 17.22 is amended by redesignating paragraph (c) as paragraph (e) and adding new paragraphs (c) and (d) to read as follows:

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

* * * * *

(c)(1) *Application requirements for permits for the enhancement of survival through safe harbor agreements.* You must submit an application for a permit under this paragraph (c) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where you reside or where the proposed activity is to occur (for appropriate addresses see 50 CFR 10.22) if you wish to engage in any activity prohibited by § 17.21. You must submit an official application form (3–200.54) provided by the Service and must include as an attachment all of the following information:

(i) The common and scientific names of the listed species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization and the agreed upon baseline conditions;

(iii) A description of management activities that the applicant will voluntarily undertake or forgo that will provide a net conservation benefit to covered species and a description of

how such activities will provide a net conservation benefit to the affected species by contributing to the recovery of listed species covered by the permit; and,

(iv) A description of regulatory assurances requested by the applicant.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director must consider the general issuance criteria in § 13.21(b) of this subchapter and may issue the permit if he or she expects or finds:

(i) The take to be incidental to an otherwise lawful activity and be in accordance with the terms of the safe harbor agreement;

(ii) The implementation of the terms of the safe harbor agreement will provide a net conservation benefit to the affected listed species by contributing to the recovery of listed species included in the permit;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

(iv) Implementation of the terms of the safe harbor agreement is consistent with applicable State laws and regulations;

(v) Implementation of the terms of the safe harbor agreement will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit; and

(vi) The applicant has shown capability and commitment to implementing all of the terms of the safe harbor agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph (c) is subject to the following special conditions:

(i) A requirement for the participating property owner to notify the Service of any transfer of lands subject to a safe harbor agreement;

(ii) A requirement for the property owner to notify the Service, as far in advance as possible, of when he or she expects to incidentally take any listed species covered under the permit. Such notification will provide the Service with an opportunity to translocate affected individuals of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the safe harbor agreement.

(4) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to species covered in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the safe harbor agreement will enhance the survival and contribute to the recovery of listed species included in the permit.

(5) *Permit effective date.* Permits issued under this paragraph (c) become effective the day of issuance for species covered by the safe harbor agreement.

(d)(1) *Application requirements for permits for the enhancement of survival through candidate conservation agreements.* You must submit an application for a permit under this paragraph (d) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where you reside or where the proposed activity is to occur (for appropriate addresses see 50 CFR 10.22). You must apply for an enhancement of survival permit application when the agreement is finalized, not at the time of species' listing, if you wish to engage in any activity prohibited by § 17.21 after a candidate, proposed, or other unlisted species likely to become a candidate or proposed species in the near future and are covered in a candidate conservation agreement is listed as an endangered species. You must submit an official application form (3–200.54) provided by the Service and must include as an attachment all of the following information:

(i) The common and scientific names of the species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization;

(iii) A description of the conservation and enhancement activities to be voluntarily undertaken by the permit applicant and how those activities are expected to be sufficient to remove the threat(s) to proposed, candidate, or other unlisted species that may become a candidate or proposed species in the near future and are covered by the candidate conservation agreement if such actions were undertaken by other property owners similarly situated within the range of the species; and

(iv) A description of regulatory assurances requested by the applicant.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director must consider the general issuance criteria in § 13.21(b) of this subchapter and may issue the permit if he or she expects or finds:

(i) The take to be incidental to an otherwise lawful activity and to be in accordance with the terms of the candidate conservation agreement;

(ii) The implementation of the terms of the candidate conservation agreement are expected to be sufficient to remove the threat(s) to proposed, candidate, or other unlisted species that may become a candidate or proposed species in the near future and are covered by the agreement if such actions were undertaken by other property owners similarly situated within the range of the species. This does not mean that an individual permittee is responsible for bearing the entire conservation needs of covered species included in an enhancement of survival permit; rather, if similarly situated property owners undertook the same sort of conservation activities within the range of the species, the need to list would be obviated.

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species;

(iv) Implementation of the terms of the candidate conservation agreement will not be in conflict with any ongoing conservation programs for species covered by the permit;

(v) Implementation of the terms of the candidate conservation agreement is consistent with applicable State laws and regulations; and

(vi) The applicant has shown capability and commitment to implementing all of the terms of the candidate conservation agreement.

(3) *Permit conditions.* In addition to any applicable general permit conditions set forth in Part 13 of this subchapter, every permit issued under this paragraph (d) is subject to the following special conditions:

(i) A requirement for the property owner to notify the Service of any transfer of lands subject to a candidate conservation agreement;

(ii) A requirement for the property owner to notify the Service, as far in advance as possible, of when he or she expects to incidentally take any species covered under the permit. Such notification will provide the Service with an opportunity to translocate

affected individual of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the candidate conservation agreement.

(4) *Duration of the Candidate Conservation Agreement.* The duration of a candidate conservation agreement covered by a permit issued under this paragraph (d) must be sufficient to remove threat(s) to proposed, candidate, or other unlisted species that may become a candidate or proposed species in the near future and are covered by a candidate conservation agreement. The duration of the candidate conservation agreement can vary, however, assurances are only provided when the agreement is in effect.

(5) *Permit effective date.* Permits issued under this paragraph (d) become effective for a species covered by a candidate conservation agreement on the effective date of a final rule that lists a covered species as endangered.

* * * * *

Subpart D—Threatened Wildlife [Amended]

3. In section 17.32 paragraphs (c) and (d) are added to read as follows:

§ 17.32 Permits—general.

* * * * *

(c)(1) *Application requirements for permits for the enhancement of survival through safe harbor agreements.* You must submit an application for a permit under this paragraph (c) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where you reside or where the proposed action is to occur (for appropriate addresses see 50 CFR 10.22) if you wish to engage in any activity prohibited by § 17.31. You must submit an official application form (3–200.54) provided by the Service and must include as an attachment all of the following information:

(i) The common and scientific names of the listed species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization and the agreed upon baseline conditions;

(iii) A description of management activities that the applicant will voluntarily undertake or forgo that will provide a net conservation benefit to covered species; and,

(iv) A description of regulatory assurances requested by the applicant.

(2) *Public review.* The Director must publish notice in the **Federal Register** of each application for a permit that is made under this paragraph (c). Each notice must invite the submission from interested parties within 30 days after the date of the notice of written data, views, or arguments with respect to the application. The procedures included in § 17.22(e) for permit objection apply to any notice published by the Director under this paragraph (c).

(3) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (c)(1) of this section, the Director will decide whether or not to issue a permit. The Director must consider the general issuance criteria in § 13.21(b) of this subchapter and may issue the permit if he or she expects or finds:

(i) The take to be incidental to an otherwise lawful activity and to be in accordance with the terms of the safe harbor agreement;

(ii) The implementation of the terms of the safe harbor agreement will provide a net conservation benefit to the affected species by contributing to the recovery included in the permit;

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

(iv) Implementation of the terms of the safe harbor agreement is consistent with applicable State laws and regulations;

(v) Implementation of the terms of the safe harbor agreement will not be in conflict with any ongoing conservation programs for species covered by the permit; and

(vi) The applicant has shown capability and commitment to implementing all of the terms of the safe harbor agreement.

(4) *Permit conditions.* In addition to any applicable general permit conditions set forth in Part 13 of this subchapter, every permit issued under this paragraph is subject to the following special conditions:

(i) A requirement for the participating property owner to notify the Service of any transfer of lands subject to a safe harbor agreement;

(ii) A requirement for the property owner to notify the Service, as far in advance as possible, of when he or she expects to take any listed species covered under the permit. Such notification will provide the Service with an opportunity to translocate affected individual of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary

or appropriate to carry out the purposes of the permit and the safe harbor agreement.

(5) *Duration of permits.* The duration of permits issued under this paragraph (c) must be sufficient to provide a net conservation benefit to listed species covered in the enhancement of survival permit. In determining the duration of a permit, the Director will consider the duration of the planned activities, as well as the positive and negative effects associated with permits of the proposed duration on covered species, including the extent to which the conservation activities included in the safe harbor agreement will enhance the survival and contribute to the recovery of listed species included in the enhancement of survival permit.

(6) *Permit effective date.* Permits issued under this paragraph (c) become effective the day of issuance for a species covered by the safe harbor agreement.

(d)(1) *Application requirements for permits for the enhancement of survival through candidate conservation agreements.* You must submit an application for a permit under this paragraph (d) to the appropriate Regional Director, U.S. Fish and Wildlife Service, for the Region where you reside or where the proposed activity is to occur (for appropriate addresses see 50 CFR 10.22). You must apply for an enhancement of survival permit application when the agreement is finalized, not at the time of species' listing, if you wish to engage in any activity prohibited by § 17.31 after a candidate, proposed, or other unlisted species that may become listed in the near future and are covered in a candidate conservation agreement is listed as a threatened species. The permit will become valid if and when covered proposed, candidate or other unlisted species is listed as a threatened species. You must submit an official application form (3-200.54) provided by the Service and must include as an attachment all of the following information:

(i) The common and scientific names of the species for which the applicant requests incidental take authorization;

(ii) A description of the land use or water management activity for which the applicant requests incidental take authorization;

(iii) A description of the conservation and enhancement activities to be

voluntarily undertaken by the permit applicant and how those activities are expected to be sufficient to remove the threat(s) to proposed, candidate, or other unlisted species that may become a candidate or proposed species and are covered by the candidate conservation agreement, if such action were undertaken by other property owners similarly situated within the range of the species; and,

(iv) A description of the regulatory assurances requested by the applicant.

(2) *Public review.* The Director must publish notice in the **Federal Register** of each application for a permit that is made under this paragraph (d). Each notice must invite the submission from interested parties within 30 days after the date of the notice of written data, views, or arguments with respect to the application. The procedures included in § 17.22(e) for permit objection apply to any notice published by the Director under this paragraph (d).

(3) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d)(1) of this section, the Director will decide whether or not to issue a permit. The Director must consider the general issuance criteria in § 13.21(b) of this subchapter and may issue the permit if he or she expects or finds:

(i) The take to be incidental to an otherwise lawful activity and to be in accordance with the terms of the candidate conservation agreement;

(ii) The implementation of the terms of the candidate conservation agreement are expected to be sufficient to remove the threat(s) to proposed, candidate, or other unlisted species that may become a candidate or proposed species and are covered by the agreement if such actions were undertaken by other property owners similarly situated within the range of the species. This does not mean that an individual permittee is responsible for bearing the entire conservation needs of a proposed, candidate, or other covered unlisted species included in an enhancement of survival permit; rather, if similarly situated property owners undertook the same sort of conservation actions within the range of the species, the need to list would be obviated.

(iii) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species;

(iv) Implementation of the terms of the candidate conservation agreement will not be in conflict with any ongoing conservation programs for species covered by the permit;

(v) Implementation of the terms of the candidate conservation agreement is consistent with applicable State laws and regulations; and

(vi) The applicant has shown capability and commitment to implementing all of the terms of the candidate conservation agreement.

(4) *Permit conditions.* In addition to any applicable general permit conditions set forth in part 13 of this subchapter, every permit issued under this paragraph is subject to the following special conditions:

(i) A requirement for the property owner to notify the Service of any transfer of lands subject to a candidate conservation agreement;

(ii) A requirement for the property owner to notify the Service, as far in advance as possible, of when he or she expects to incidentally take any species covered under the permit. Such notification will provide the Service with an opportunity to translocate affected individual of the species, if possible and appropriate; and

(iii) Any additional requirements or conditions the Director deems necessary or appropriate to carry out the purposes of the permit and the candidate conservation agreement.

(5) *Duration of the Candidate Conservation Agreement.* The duration of a candidate conservation agreement covered by a permit issued under this paragraph (d) must be sufficient to remove threat(s) to proposed, candidate, or other unlisted species covered by a candidate conservation agreement. The duration of the candidate conservation agreement can vary, however, assurances are only provided when the agreement is in effect.

(6) *Permit effective date.* Permits issued under this paragraph (d) become effective on the effective date of a final rule that lists a species covered by a candidate conservation agreement and included in a permit as threatened.

Dated: May 23, 1997.

Donald J. Barry,

Acting Assistant Secretary, Fish, Wildlife, and Parks, Department of Interior.

[FR Doc. 97-15251 Filed 6-9-97; 1:26 pm]

BILLING CODE 4310-55-P

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