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Presidential Documents

Title 3—

The President

Proclamation 7022 of September 16, 1997

Citizenship Day and Constitution Week, 1997

By the President of the United States of America

A Proclamation

Of all the dates in American history, one of the most important is perhaps the least well-known—September 17, 1787. On that day, our Nation's Founders signed the Constitution of the United States, a document that has steadily grown in stature throughout the world as a model for democratic government under the rule of law.

As with most human enterprises, the Constitution was the product of compromise. The delegates to the Constitutional Convention brought with them to Philadelphia conflicting local and regional concerns, differing viewpoints, fears of creating a government that was either too powerful or too weak. When the convention seemed close to dissolving with nothing accomplished, Benjamin Franklin reminded his fellow delegates that history would judge them harshly if they failed in this great experiment of self-government: ''. . . [M]ankind may hereafter, from this unfortunate instance, despair of establishing governments by human wisdom, and leave it to chance, war and conquest.''

But human wisdom did prevail. The delegates devised a framework for democracy with an ingenious design of checks and balances, broad protection of individual rights, and a mechanism for amendment to ensure that it would be able to respond to the ever-changing needs of our people. This remarkable document has rightly earned the world's admiration for its success in combining structural solidity with practical adaptability—a combination that has served our Nation through times of rapid change as well as times of stability.

We can measure that success by the thousands of men, women, and children who travel to our shores each year, seeking a chance to live out their dreams. Many of them know what life can be like without the blessings of our Constitution, and their experience is a powerful reminder to us of the importance of protecting the Constitution if we are to preserve freedom for ourselves and for the generations of Americans to follow. We can also learn much from their deep desire for American citizenship and their enthusiasm to embrace not only its privileges, but also its responsibilities—knowledge of and respect for our laws, a willingness to exercise their vote, and reverence for the fundamental American values of freedom, tolerance, and equality.

But today American citizenship requires more. At the Presidents' Summit for America's Future in Philadelphia this past April, I joined with Vice President Gore; former Presidents Ford, Carter, and Bush; General Colin Powell; and other national and community leaders in calling for a redefinition of American citizenship—a definition that includes a profound commitment to community service. Each of us must look into our own neighborhoods and communities and reach out to help our fellow Americans succeed. We can only fulfill America's bright promise of freedom and opportunity by ensuring that every citizen shares in that promise.

In commemorating the signing of the Constitution and in recognition of the importance of active, responsible citizenship to preserve its blessings for our Nation, the Congress, by joint resolution of February 29, 1952 (36

U.S.C. 153), designated September 17 as ''Citizenship Day,'' and by joint resolution of August 2, 1956 (36 U.S.C. 159), requested the President to proclaim the week beginning September 17 and ending September 23 of each year as ''Constitution Week.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 17, 1997, as Citizenship Day and September 17 through September 23, 1997, as Constitution Week. I call upon Federal, State, and local officials, as well as leaders of civic, educational, and religious organizations, to conduct meaningful ceremonies and programs in our schools, churches, and other community centers to foster a greater understanding and appreciation of the Constitution and the rights and duties of citizenship.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

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Presidential Documents

Proclamation 7023 of September 16, 1997

National POW/MIA Recognition Day, 1997

By the President of the United States of America

A Proclamation

Throughout our Nation's history, the men and women of America's Armed Forces have preserved our freedom, protected our security, and upheld our democratic values. From the battles of the American Revolution through the crucible of two world wars to the challenging peacekeeping and humanitarian missions of today's post-Cold War era, our men and women in uniform have stood proudly in defense of the United States and in the cause of liberty. In the two centuries since our Nation's birth, more than a million have paid the price of that liberty with their lives.

Joining the ranks of these heroes are the thousands who have been held as prisoners of war or whose fate has never been resolved. Many have been lost in the chaos of battle, the grief of their loss made more acute for their families and their fellow Americans because of the inability to determine whether they perished or survived. Captive Americans, cruelly stripped of their freedom, treated with contempt and brutality, or used as pawns by their captors in a larger political struggle, have fought long, lonely battles against despair, physical and psychological torture, and the ultimate fear of being forgotten.

But Americans will never forget those who have borne the indignities and sufferings of captivity in service to our country, those missing in action, or those who died as prisoners of war, far from home and family. On National POW/MIA Recognition Day, we reaffirm our commitment to those still missing and renew our pledge to make every effort to obtain the answers to their fate. We can do no less for these American heroes and for their families, who have endured such profound loss and whose suffering continues as long as their loved ones' fate remains unknown.

On September 19, 1997, the flag of the National League of Families of American Prisoners of War and Missing in Southeast Asia will be flown over the White House, the U.S. Capitol, the Departments of State, Defense, and Veterans Affairs, the Selective Service System Headquarters, the Vietnam Veterans Memorial, the Korean War Veterans Memorial, and national cemeteries across our country. This black and white banner, symbolizing America's missing, is a stark and powerful reminder to people around the world that our Nation will keep faith with those who have served and sacrificed; that we will not rest until we receive the fullest possible accounting of every American missing in service to our country.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 19, 1997, as National POW/MIA Recognition Day. I ask all Americans to join me in honoring former American prisoners of war and those whose fate is still undetermined. I also encourage the American people to remember with special sympathy and concern the courageous families who maintain their steadfast vigil and who persevere in their search for answers and for the peace that comes only with certainty. Finally, I call upon State and local officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 97–25117
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AF89

Pay Administration (General); Severance Pay for Panama Canal Commission Employees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to exclude certain categories of employees of the Panama Canal Commission (PCC) from entitlement to severance pay. On December 31, 1999, the Republic of Panama will take over operation of the Panama Canal under the terms of the Panama Canal Treaty of 1977. The proposed changes apply to PCC employees who receive an offer of reasonably comparable employment with the successor Panamanian public entity before separation, accept such employment within 30 days after separation, or are hired by PCC 90 days or more after publication of these regulations.

EFFECTIVE DATE: October 20, 1997.

FOR FURTHER INFORMATION CONTACT: D. Bryce Baker, (202) 606–2858, FAX (202) 606–0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION: On July 7, 1995, the Office of Personnel Management published proposed regulations (60 FR 35342) barring severance pay for certain PCC employees who continue in their positions when the Panama Canal is transferred to Panamanian control as a result of the Panama Canal Treaty of 1977. The changes will affect PCC employees who are offered reasonably comparable employment with the successor Panamanian public entity before separation from PCC employment or who accept such employment within 30 days after separation. Individuals hired by the Panama Canal Commission on or after the 90th day following publication of these regulations will also be excluded from severance pay eligibility.

Severance pay was intended as a transition benefit for Federal employees who lost their jobs involuntarily. Severance pay was intended to ''help tide Federal employees over difficult transition periods'' and to ''help cushion the readjustment'' associated with the loss of employment. (See H.R. Rep. No. 792, 89th Cong., 1st Sess., at 11, 30 (1965).)

The severance pay law lists certain categories of employees who are excluded from coverage and provides that additional categories of employees may be excluded by regulation (5 U.S.C. 5595(a)(2)). OPM's regulations exclude certain groups and individual employees because of the nature of their appointment, type of work schedule, circumstances of separation, etc. For example, the regulations bar entitlement to severance pay for any employee who declines a ''reasonable offer'' of another Federal position before separation. (See 5 CFR 550.701–704.) Severance payments are discontinued if the recipient is reemployed by the United States Government (5 U.S.C. 5595(d)).

Prior to 1990, OPM's severance pay regulations provided that an employee involuntarily separated due to transfer of a Federal function to a non-Federal (private or public) successor organization could be denied severance pay based on the offer of ''comparable employment'' with the successor organization, or on acceptance of any employment with such successor organization within 90 days of transfer. (These provisions were formerly located at 5 CFR 550.701(b) (5) and (6) and were in effect when the Panama Canal Treaty of 1977 was signed and entered into force.) OPM deleted those regulatory provisions in 1990 (54 FR 23215 and 55 FR 6591). This change was made to make contracting out (i.e., privatization) of Federal functions more attractive to Federal employees. It also was intended to address the problem of some employees not being offered comparable jobs by private contractors before transfer and then delaying acceptance of jobs until after the expiration of the 90-day restriction period. We note that the driving purpose of encouraging contracting out, which was behind the deletion of the above severance pay restrictions, is not relevant to the Panama Canal situation. We also note that the rule OPM is adopting in these regulations differs in several respects from the above former rules—e.g., a 30-day period instead of a 90-day period—as explained in the notice of proposed rulemaking (60 FR 35342) and in this notice.

OPM believes it is appropriate, and consistent with the original purpose of the severance pay law, to deny severance pay eligibility for PCC employees who have the opportunity to maintain the same job, or a reasonably comparable one, with the successor Panamanian public entity and who furthermore have legally guaranteed protections with respect to benefits and working conditions while employed by that entity. We also believe that it is reasonable to deny severance pay eligibility for employees hired by PCC during the final years of United States control of the Canal, since the long-scheduled transfer is now imminent and these employees will know when they are hired that their tenure with PCC will be of short duration. We believe the Panama Canal transfer presents a unique situation that requires special treatment.

PCC estimates that, without these changes in OPM's severance pay regulations, $68 million in severance pay costs would be incurred, of which only $7 million is currently funded. PCC states that the remaining $61 million would need to be prefunded by a reduction in operating expenses and the capital program, and possibly a modest toll increase in fiscal years 1998, 1999, and the first quarter of fiscal year 2000. PCC believes that these measures would have a negative impact on the Canal's competitive and fiscal position. Since, under the Panama Canal Treaty of 1977, the Canal operation must be transferred to the Republic of Panama in December 1999 free of any debt or encumbrances, preventing severance payments to the employees in question would help PCC meet its treaty obligations.

Comments on the proposed regulations were received from 6 labor organizations (14 letters), 5 groups of employees (648 individuals), 10

individual employees, 2 agencies, and 1 Member of Congress.

Comments from one labor organization included a letter transmitting certain resolutions adopted at a February 1996 conference of trade union representatives dealing with the transfer of the Panama Canal. One of the resolutions requested that OPM withdraw the proposed regulations. Although OPM declines to withdraw the proposed regulations, we are making certain changes in response to the comments we received, as described below.

Some commenters questioned whether the proposed limitations on severance pay for Panama Canal Commission employees were in keeping with the United States Government's treaty obligations under the Panama Canal Treaty of 1977. OPM conferred with the Department of State, which confirmed that our proposed regulatory changes do not violate the provisions of the Panama Canal Treaty and also expressed the view that the proposed regulations do not conflict with foreign policy concerns.

By the terms of the Panama Canal Treaty, ''pre-Treaty hires'' —i.e., employees who were employed by the Panama Canal Company or the Canal Zone Government *before* the Treaty took effect in October 1979 and who were transferred to the newly established PCC—were entitled to the protection of certain pre-Treaty employment conditions and benefits, including severance pay (as applicable), during their PCC employment. (See Article X of the Panama Canal Treaty of 1977 and section 1231(a) of Public Law 96-70.) There are no similar treaty provisions for post-Treaty hires—employees who knew when they were first hired that the United States Government would cease to be their employer no later than December 31, 1999.

We quote from the letter to OPM from the Acting Assistant Secretary of State for Inter-American Affairs regarding this matter:

''The Department of State concurs with the view that the Panama Canal Treaty of 1977 and related agreements do not prohibit the United States from adopting the proposed regulation on severance pay * * *. We understand that pre-Treaty employees who are the subject of Article X will not be affected at all by the proposed regulations. Because these employees will all be eligible for an immediate annuity under U.S. law on or before December 31, 1999, they are and will be ineligible for any severance pay benefits, whether or not the proposed regulations go into effect. Thus, pre-Treaty employees will not be adversely affected by the proposed new regulations. The United States, therefore, will be in full compliance with its obligations under Article X of the Panama Canal Treaty.

''In addition, Article X of the Treaty does not require the United States to guarantee severance pay to post-Treaty employees under all circumstances. Thus, as a legal matter, the Treaty and related agreements do not prohibit the United States from adopting the proposed regulations which realign the severance pay benefit with its intended purpose of protecting federal employees who lose their jobs.''

As indicated in the Department of State letter, since all pre-Treaty hires are or will be eligible for immediate retirement benefits prior to the December 1999 Canal transfer and are excluded from severance pay on that basis (5 U.S.C. 5595(a)(2)(iv)), these regulations affect only post-Treaty hires. Thus, there is no issue with regard to compliance with the Panama Canal Treaty terms applicable to pre-Treaty employees.

Some commenters pointed out that severance pay was paid to certain PCC employees whose functions were transferred some years ago. OPM has authority to revise the regulations regarding severance pay coverage (5 U.S.C. 5595(a)(viii)). We believe it is appropriate for OPM to change the regulations regarding severance pay coverage based on periodic reassessments of personnel policies or in response to new information or circumstances. We also note that most of the employees involved in these earlier severance pay cases were pre-Treaty hires.

A number of commenters addressed the estimated costs that would be incurred by PCC for severance pay if the proposed regulations were not adopted. Several commenters argued that any such costs could be covered by increases in future tolls and that the failure to prefund these costs at an earlier time should not serve as the basis for denying severance pay in the future. While PCC's cost concerns are a relevant factor, OPM's decision to adopt restrictions on severance pay for PCC employees is based primarily on our judgment that payment of severance pay in these circumstances would be inappropriate and contrary to the purpose of the severance pay benefit.

Several commenters stated that the proposed limitation on severance pay would have an adverse impact on Canal operations before and after the transfer. Concerns were expressed that the proposed severance pay changes would interfere with the goal of a smooth and seamless transition of the operation of the Panama Canal or that they would in some way undermine the efficient operation of the Panama Canal. Specifically, possible staffing-up problems at the time of transfer were cited—e.g., the possibility that individual employees may wait 30 days after separation to accept employment with the successor agency in order to qualify for severance pay. However, any employee who has already received an offer of reasonably comparable employment before separation from PCC employment would already be ineligible for severance pay and would have no incentive to postpone accepting a job. Furthermore, an employee who does not receive an offer until after separation would be at risk of being passed over and not securing a position at all should he or she delay accepting the offer. Accordingly, we do not believe the regulations will cause problems in staffing up the successor entity.

We believe that not providing severance pay to employees who retain their positions after transfer is consistent with the goal of a seamless transition. These employees will be treated as if there were no interruption in their public employment, which is in fact the reality of the situation.

Some commenters referred to the adverse effect the proposed severance pay limitation would have on the Panamanian economy. We do not believe this regulation will have a significant impact on the general economy of the Republic of Panama. Any individual who would be denied severance pay because of an offer of reasonably comparable employment will continue to receive a paycheck in his or her new position unless he or she chooses to reject that offer. Thus, the income received by affected employees should remain at about the same level when Panama Canal operations are transferred to the Republic of Panama.

Some commenters characterized the proposed changes as an unfair labor practice (ULP) because conditions of employment were changed without consultation. The labor organizations have brought that issue before the Federal Labor Relations Authority for adjudication. We do not believe the Office of Personnel Management's legal authority to regulate severance pay entitlement is in any way affected by the dispute between PCC and the labor organizations.

One labor organization commented that employees already employed by the PCC should be grandfathered into severance pay entitlement. Such a grandfathering approach would defeat the primary purposes of the regulatory

changes—namely, to prevent severance payments to employees who maintain the same or comparable jobs with the successor Panamanian authority and to ensure that the Canal operation can be transferred in a healthy fiscal condition, free of debts and encumbrances.

Several commenters expressed their belief that the successor entity will be unable to make a ''reasonably comparable offer'' of continued employment. The commenters cited the Panamanian economy, wage structure, past treatment of transferred employees, and inequality of benefits (including severance pay). Two commenters also listed a number of fringe benefits and employment protections which they maintain are not available under Panamanian law. In addition, two commenters cited the treatment of PCC Ports and Railroad employees whose wages were frozen after their transfer in 1979. For these reasons, they contend that there can be no comparability of employment.

A number of commenters also pointed out that the United States can offer no guarantees to former PCC employees after December 31, 1999. Therefore, they contend that ''reasonably comparable'' employment cannot be offered beyond the date of transfer. However, on November 25, 1994, the Panamanian Constitutional Assembly approved a new Panamanian Constitutional Title, which, among other things, subjects the ''Panama Canal Authority'' to a special merit-based employment regime under which permanent employees are to maintain, at a minimum, the same benefits and working conditions they enjoy up to December 31, 1999. (See Article 316 of Title XIV, ''The Panama Canal,'' of the Political Constitution of Panama.) The PCC, in its comments, characterized this new constitutional provision as a ''substantial commitment on the part of Panama, made expressly to assure PCC employees continuity of the terms of their employment across the transition.''

In addition, on June 11, 1997, the government of the Republic of Panama enacted an organic law creating the basic legal framework under which the Panama Canal Authority will operate. (This organic law, Law 19, was passed by the Republic of Panama Legislative Assembly on May 14, 1997, by unanimous vote and signed by Panama President Ernesto Perez Balladares on June 11, 1997.) The law implements the constitutional title approved in 1994 and specifically reaffirms the protection of current PCC employees' working conditions and benefits. (See Chapter V of Law 19.) The Panama Canal Authority will promulgate detailed regulations to ensure that specific employment provisions and protections applicable to PCC employees on December 31, 1999, will be carried over into the new system.

Several commenters brought up a perception that non-U.S. citizen employees of PCC would be treated differently from U.S. citizen employees under the proposed regulations. PCC informs us that, in conformance with the terms of the Canal treaty, almost all employees hired after October 1, 1979, are Panamanian citizens and that the workforce is now over approximately 90 percent Panamanian. Therefore, it is unavoidable that the regulatory change will affect primarily Panamanian citizens.

We are making changes in the proposed definition of the term ''reasonably comparable employment'' in section 550.714(b) of the regulations. PCC recommended that the requirement that the offered position be within 20 percent of the employee's PCC basic pay be changed to within 10 percent of PCC basic pay. The reasoning is that the change will reduce employee apprehension concerning post-transfer employment, thereby enhancing the orderly transfer of the Canal in 1999. We have adopted that suggestion and revised § 550.714(b)(2) accordingly.

In addition, questions were raised about the reference to a ''private entity'' in the proposed § 550.714(b)(1). After requesting clarification from PCC staff, we learned that, under the new Constitutional Title, responsibility for Panama Canal operations will be assumed by a single public agency of the government of Panama referred to as the ''Panama Canal Authority.'' We believe severance pay should not be payable to those employees who are offered or accept reasonably comparable employment with the Panamanian *public* entity that is replacing the PCC, since the Panamanian Constitutional Title guaranteeing special employment protections applies only to employees of that entity. Therefore, we have revised the proposed regulations to delete any reference to private successor entities and to clarify that the rule applies only to the Panamanian public agency responsible for managing, operating, and maintaining the Panama Canal after its transfer under the Panama Canal Treaty.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

Janice R. Lachance,

Acting Director.

Accordingly, OPM is amending part 550 of title 5, Code of Federal Regulations, as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart G—Severance Pay

1. The authority citation for subpart G continues to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, 3 CFR, 1964–1965 Comp., p. 357.

2. Section 550.714 is added to read as follows:

§ 550.714 Panama Canal Commission employees.

(a) Notwithstanding any other provisions of this subpart, an employee separated from employment with the Panama Canal Commission as a result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements shall not be entitled to severance pay if he or she—

(1) Receives a written offer of reasonably comparable employment when such offer is made before separation from Commission employment;

(2) Accepts reasonably comparable employment within 30 days after separation from Commission employment; or

(3) Was hired by the Commission on or after December 18, 1997.

(b) The term *reasonably comparable employment* means a position that meets all the following conditions:

(1) The position is with the Panamanian public entity that assumes the functions of managing, operating, and maintaining the Panama Canal as a result of the Panama Canal Treaty of 1977;

(2) The rate of basic pay of the position is not more than 10 percent below the employee's rate of basic pay as a Panama Canal Commission employee;

(3) The position is within the employee's commuting area;

(4) The position carries no fixed time limitation as to length of appointment; and

(5) The work schedule (that is, part-time or full-time) of the position is the same as that of the position held by the employee at the Panama Canal Commission.

(c) A Panama Canal Commission employee who resigns prior to receiving an official written notice that he or she will not be offered reasonably comparable employment shall be considered to be voluntarily separated. Section 550.706(a) shall be applied, as appropriate, to any employee who resigns after receiving such notice.

(d) Except as otherwise provided by paragraphs (a) through (c) of this section, the provisions of this subpart remain applicable to Panama Canal Commission employees.

[FR Doc. 97–24885 Filed 9–18–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV97–920–2 FR]

Kiwifruit Grown in California; Relaxation in Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises pack requirements for Size 42 and Size 45 kiwifruit under the Federal marketing order for kiwifruit grown in California. This rule increases the size variation tolerance for Size 42 kiwifruit from 5 percent, by count, to 10 percent, by count, and increases the size variation tolerance for Size 45 kiwifruit from 10 percent, by count, to 25 percent, by count. This relaxation was recommended by the Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the marketing order. The committee expects this rule to reduce handler costs, increase grower returns, and allow the kiwifruit industry to meet the increased demand for lower priced kiwifruit.

EFFECTIVE DATE: This final rule becomes effective September 22, 1997.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey St., suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906 or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 (7 CFR part 920), as amended, regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principle place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises pack requirements for Size 42 and Size 45 kiwifruit under the Federal marketing order for kiwifruit grown in California. This rule will increase the size variation tolerance for Size 42 kiwifruit from 5 percent, by count, to 10 percent, by count, and will increase the size variation tolerance for Size 45 kiwifruit from 10 percent, by count, to 25 percent, by count.

Section 920.52 authorizes the establishment of pack requirements. Section 920.302(a)(4) of the rules and regulations outlines the pack requirements for fresh shipments of California kiwifruit. Under § 920.302(a)(4)(i) of the rules and regulations, kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays shall be of proper size and fairly uniform in size. Section 920.302(a)(4)(ii) outlines pack requirements for kiwifruit packed in cell compartments, cardboard fillers or molded trays and includes a table that specifies numerical size designations and the size variation tolerances. It also outlines pack requirements for kiwifruit packed in bags, volume fill or bulk containers, and includes a separate table that specifies numerical size designations and size variation tolerances. This section provides that not more than 10 percent, by count of the containers in any lot may fail to meet pack requirements. It also provides that not more than 5 percent, by count, of kiwifruit in any container, (except that for Size 45 kiwifruit, the tolerance, by count, in any one container, may not be more than 10 percent) may fail to meet pack requirements. This size variation tolerance does not apply to other pack requirements such as how the fruit fills the cell compartments, cardboard fillers, or molded trays, or any weight requirements.

Prior to the 1995–1996 season, handlers were experiencing difficulty meeting the size variation tolerance for Size 45 kiwifruit. Size 45 is the minimum size. The committee determined that the best solution was to increase the size variation tolerance, by count, in any one container, for Size 45 kiwifruit. Section 920.302 (a)(4) was revised by a final rule issued June 21, 1995 (60 FR 32257) to include a provision that increased the size variation tolerance, by count, in any one container, from 5 percent to 10 percent for Size 45 kiwifruit.

This increased size variation tolerance for Size 45 kiwifruit has been utilized for two seasons. Handlers are still experiencing difficulty discerning if size variation tolerances for smaller fruit are being met during the packing process.

As the size of the kiwifruit increases, so does the size of the variation allowed. In the larger kiwifruit sizes, failure to meet the required size variation standards results in packs that are visibly irregular in size. In Size 42 and

Size 45 packs, however, when the respective 5 and 10 percent tolerances are exceeded, the variation is difficult to detect visually. A size variation of ¼-inch (6.4 mm) difference is allowed between the widest and narrowest kiwifruit in any Size 42 container utilizing cell compartments, cardboard fillers or molded trays and a ⅜-inch (9.5 mm) size variation difference is allowed between the widest and narrowest kiwifruit in a Size 42 bag, volume fill or bulk container. A ¼-inch (6.4 mm) size variation difference is allowed between the widest and narrowest kiwifruit in any Size 45 container.

Packers must separate the round and flat shaped kiwifruit into two different containers in order to meet the size variation requirements. During the packing operation, a mechanical sizer routinely sorts the kiwifruit by shape and size. The kiwifruit which is missed by the mechanical sizer must be manually sorted by the handler. If size variation tolerances are not being met, packers must slow down the pack line and increase efforts to separate the round and flat kiwifruit to ensure that current size variation requirements are met. Since it is not economically feasible for each handler to be equipped with a caliper to measure size variation, they rely on their visual judgement. During inspection, calipers are utilized by the inspectors to determine if the size variation is met for Size 42 and Size 45 containers. The industry views this separation of Size 42 and 45 round and flat shaped kiwifruit into two different containers by shape as an added cost, that is particularly detrimental because this fruit returns little if any money back to the grower. The higher costs of sizing the fruit during the packing operation may have cost the industry sales as well.

Further, this sizing of kiwifruit may not be apparent to consumers. Usually a pallet of Size 42 kiwifruit includes containers of round fruit and containers of flat fruit. When a pallet of Size 42 kiwifruit reaches the retailer, a container of round fruit may be displayed. As the kiwifruit is sold, a container of the Size 42 flat fruit may be commingled with the remaining round fruit. The consumer will then see this commingled fruit with slightly different shapes on display. The size variation standards that the packer strived so hard to stay within during the packing process are erased.

The committee met on April 16, 1997, and recommended by a vote of eight in favor and one opposed to relax the pack requirements in effect under the order pertaining to size variation tolerances for Size 42 and Size 45 kiwifruit. The committee recommended increasing size variation tolerances for kiwifruit, in any one container, from 5 percent, by count, to 10 percent, by count, for Size 42 kiwifruit and from 10 percent, by count, to 25 percent, by count, for Size 45 kiwifruit and further recommended that this rule be effective in September for the 1997–1998 season. The season normally begins the end of September or the first week of October. The increased size variation tolerances will apply to any container of kiwifruit.

This final rule will reduce costs for handlers by allowing them to operate in a more efficient and cost-effective manner and will enable the industry to meet the increased demand in the marketplace for lower priced, uniform containers of kiwifruit. Through these cost savings, growers will be expected to receive higher returns.

There is support in the industry to increase these size variation tolerances. The one committee member who opposed the recommendation believes it will lower the quality of California kiwifruit.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 60 handlers of California kiwifruit subject to regulation under the order and approximately 450 kiwifruit producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. One of the 60 handlers subject to regulation has annual kiwifruit sales of at least $5,000,000, and the remaining 59 handlers have sales less than $5,000,000, excluding receipts from any other sources. Ten of the 450 producers subject to regulation have annual sales of at least $500,000, and the remaining 440 producers have sales less than $500,000, excluding receipts from any other sources. Therefore, a majority of handlers and producers of California kiwifruit may be classified as small entities.

Section 920.52 authorizes the establishment of pack requirements. Section 920.302(a)(4)(ii) outlines pack requirements for kiwifruit packed in any container and contains tables that specify numerical size designations and size variation tolerances. This rule will increase the size variation tolerance for Size 42 kiwifruit from 5 percent, by count, to 10 percent, by count, and will increase the size variation tolerance for Size 45 kiwifruit from 10 percent, by count, to 25 percent, by count. This relaxation was recommended by the committee, the agency responsible for local administration of the marketing order.

In the larger kiwifruit sizes, failure to meet the required size variation standards results in packs that are visibly irregular in size. In Size 42 and Size 45, however, when the respective 5 and 10 percent tolerances are exceeded, the variation is difficult to detect visually. However, packers must separate the round and flat shaped kiwifruit into two different containers in order to meet the size variation requirements within each container for Size 42 and Size 45 kiwifruit. The industry views this separation of Size 42 and 45 round and flat shaped kiwifruit into two different containers by shape as an added cost, that is particularly detrimental because this fruit returns little if any money back to the grower. The higher costs of sizing the fruit during the packing operation may have cost the industry sales as well.

Further, this sizing of kiwifruit may not be apparent to consumers. Usually a pallet of Size 42 kiwifruit includes containers of round fruit and containers of flat fruit. When a pallet of Size 42 kiwifruit reaches the retailer, a container of round fruit may be displayed. As the kiwifruit is sold, a container of the Size 42 flat fruit may be commingled with the remaining round fruit and the current size variation standards that the packer strived so hard to stay within during the packing process are erased.

This final rule should reduce costs for handlers by allowing them to operate in a more efficient and cost-effective manner and to meet the increased demand in the marketplace for lower priced, uniform containers of kiwifruit.

Approximately 74 percent of all kiwifruit shipped during the 1996–1997 season was shipped in bags, volume fill or bulk containers. The increased tolerance for Size 42 from 5 percent, by count, to 10 percent, by count, will increase the number of kiwifruit that

may exceed the ⅜″ size variation requirement in bags, volume fill, or bulk containers. Since the individual fruit weight of a Size 42 kiwifruit is approximately 0.160 ounces, a 22-pound volume fill container of Size 42 kiwifruit will contain approximately 138 fruit. An increased tolerance of 10 percent per container will allow approximately 14 kiwifruit to exceed the ⅜″ tolerance versus 7 kiwifruit at the 5 percent tolerance rate. As a result, handlers will be able to operate more efficiently with this increased tolerance.

The increased tolerance for Size 45 from 10 percent, by count, to 25 percent, by count, will increase the number of kiwifruit that may exceed the ¼″ size variation requirement. Since the individual fruit weight of a Size 45 kiwifruit is approximately 0.145 ounces, a 22-pound volume fill container of Size 45 kiwifruit contains approximately 151 kiwifruit. An increased tolerance of 25 percent, by count, per container will allow 37 kiwifruit out of 151 kiwifruit to exceed the ¼″ tolerance versus 15 kiwifruit at the 10 percent tolerance rate. With this increased tolerance, handlers expect to be able to pack round and flat shaped kiwifruit into one container, thereby reducing costs.

This action is not expected to reduce the quality of the kiwifruit pack. Consumers will not see any changes to the product at retail, because the produce staff at the stores already commingle round and flat kiwifruit in their display bins. Also, the allowed variation will be at a reasonable level and retailers will still receive a fairly uniform box of fruit.

California kiwifruit packing operations range from very small operations, employing as few as 2 persons, to large operations employing as many as 150 people per shift. The 1997–1998 season crop estimate is projected to be 10 to 12 million tray equivalents. A tray equivalent is 7 pounds of fruit. Handlers pack from several hundred to over 25,000 tray equivalents during the season. Packing costs for volume fill containers range from approximately $0.25 to $0.75 per container. The 60 packing sheds can be divided into 3 size categories of small, medium, and large. Small sheds consist of 25 employees or less, medium sheds 26–75 employees, and large sheds consist of 76 or more employees. The committee anticipates that labor devoted to packout, on average, will be decreased by 1 to 3 employees per packing shed. The committee estimates cost savings of approximately $0.01 per tray equivalent. Based on a projected crop estimate of 10 to 12 million tray equivalents, a savings of $100,000 to $120,000 could be realized for the 1997–1998 season.

The committee discussed numerous alternatives to this change, including eliminating all pack requirements, increasing the size variation tolerance to establish a Size 42–45 container by blending the packing of Size 42 and Size 45 kiwifruit into one container, reducing the minimum size from Size 45 to Size 49, eliminating Size 45 and making Size 42 the minimum size, making Size 45 requirements more restrictive, reducing the maximum to 53 kiwifruit in the 8 pound sample, lowering the minimum maturity to 6.2 percent, and increasing the degree, or size of the variation allowed, from ¼-inch to ⅜-inch for Size 45 kiwifruit. After lengthy discussion, all of these alternatives were deemed unacceptable. The general consensus was that eliminating all pack requirements could adversely affect quality. The committee wishes to continue utilizing separate Size 42 and Size 45 containers at this time because handlers are able to market each size. Reducing the minimum size from Size 45 to Size 49 would not have benefitted the industry because growers and handlers could not make a profit growing, packing and selling Size 49.

It was the general consensus that eliminating Size 45 and making Size 42 the minimum size, or making Size 45 requirements more restrictive, by reducing the maximum to 53 kiwifruit in the 8 pound sample, would have imposed more stringent requirements on California growers and handlers and eliminate salable fruit from markets. Committee members deemed lowering the minimum maturity to 6.2 percent unacceptable as kiwifruit picked below the current minimum maturity of 6.5 percent may shrivel in cold storage. The last alternative considered was to increase the degree, or size of the variation allowed, from ¼-inch to ⅜-inch for Size 45 kiwifruit. It was the consensus of the committee that such an increase would have allowed undesired blending of undersize kiwifruit. The end result would have been a container with visibly different fruit sizes, including undersize fruit. This alternative was deemed not acceptable as the industry desires to pack a uniform container of kiwifruit.

This final rule will relax pack requirements under the kiwifruit marketing order and these requirements will be applied uniformly to all handlers. This action will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

The committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the April 16, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was issued by the Department on July 2, 1997, and published in the **Federal Register** on Wednesday, July 9, 1997 (62 FR 36743). Copies of the rule were mailed to all committee members and kiwifruit handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register.

A 30-day comment period was provided to allow interested persons to respond to the proposal. No comments were received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because these changes in size variation tolerances relieve restrictions on handlers and should apply to all Size 42 and Size 45 kiwifruit shipped during the 1997–98 season. Such shipments are expected to begin at the end of September or early October. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 920.302, paragraph (a)(4)(ii) is amended by revising the last sentence to read as follows:

§ 920.302 Grade, size, pack and container regulations.

(a) * * *

(4) * * *

(ii) * * * Not more than 10 percent, by count of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container, (except that for Size 42 kiwifruit, the tolerance, by count, in any one container, may not be more than 10 percent and except that for Size 45 kiwifruit, the tolerance, by count, in any one container, may not be more than 25 percent) may fail to meet the requirements of this paragraph.

Dated: September 15, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–24957 Filed 9–18–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 316

[INS No. 1861–97]

RIN 1115–AE84

Adding the Missouri Botanical Garden to the Listing of American Institutions of Research

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by adding the Missouri Botanical Garden (research and educational programs only) to the list of American institutions of research recognized by the Attorney General for the purpose of preserving residence in the United States for naturalization. Persons and their dependents who expect to be continuously absent from the United States for a year or more because of work at one of the American institutions of research recognized by the Attorney General may be given permission to be absent without interrupting continuous residence for naturalization purposes. This change is necessary because such recognized institutions are published in the Service's regulations. Based on the findings of the St. Louis Officer-in-Charge, the Regional Director of the Central Region determined and ordered on May 9, 1997, that the Missouri Botanical Garden (research and educational programs only) be recognized as an American institution of research recognized by the Attorney General.

DATES: This final rule is effective October 20, 1997.

FOR FURTHER INFORMATION CONTACT: Jane B. Barker, Senior Adjudications Officer, Benefits Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Pursuant to Service regulations, after an applicant has been admitted for permanent residence, he or she must reside in the United States continuously for at least 5 years before filing an application for naturalization. Under certain circumstances, persons and their dependents who expect to be continuously absent from the United States for a year or more because of work at one of the American institutions of research recognized by the Attorney General may be given permission to be absent without interrupting continuous residence for naturalization purposes. Based on the findings of the St. Louis Officer-in-Charge, the Regional Director of the Central Region determined and ordered on May 9, 1997, that the Missouri botanical Garden (research and education programs only) is an American institution of research for the purpose of preserving residence in the United States for naturalization. Accordingly, § 316.20(a) will be amended by adding that institution to the list of American institutions of research recognized by the Attorney General.

Good Cause Exception

The Service's implementation of its rule as a final rule is based upon the ''good cause'' exceptions found at 5 U.S.C. 553 (b)(B) and (d)(3). The reason for immediate implementation of this final rule is as follows: This rule is editorial in nature and merely updates the existing institutional listings currently contained in Title 8 of the Code of Federal Regulations.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic effect on a substantial number of small entities because of the following factors. This rule is editorial in nature and merely updates the existing institutional listings currently contained in Title 8 of the Code of Federal Regulations.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

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

Executive Order 12612

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

Executive Order 12988

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

List of Subjects in 8 CFR Part 316

Citizenship and Naturalization.

Accordingly, part 3 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 316—GENERAL REQUIREMENTS FOR NATURALIZATION

1. The authority citation for part 316 continues to read as follows:

Authority. 8 U.S.C. 1103, 1181, 1182, 1443, 1447; 8 CFR 2.

§ 316.20 [Amended]

2. In § 316.20, paragraph (a) is amended by adding the American institution of research ''Missouri Botanical Garden (research and educational programs only)'' immediately after ''Michigan State University, East Lansing, MI.''

Dated: September 5, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–24912 Filed 9–18–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–18–AD; Amendment 39–10026; AD 97–19–06]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–61A, D, E, L, N, NM, R, and V Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing priority letter airworthiness directive (AD), applicable to Sikorsky Aircraft Corporation Model S–61A, D, E, L, N, NM, R, and V helicopters, that currently requires inspecting certain main rotor blade assemblies (blades) to determine if a blade has a blade trailing edge pocket assembly (pocket assembly) that was anodized by Poly-Metal Company during a specified time period, and if so, replacing it with an airworthy blade. This amendment requires the same actions as the existing AD, but corrects two serial numbers in the list of the applicable blades. This amendment is prompted by the manufacturer's issuance of a service bulletin with a revised list of blade serial numbers. The actions specified by this AD are intended to prevent disbonding and separation of portions of the blade, subsequent excessive vibrations, and loss of control of the helicopter.

DATES: Effective October 6, 1997. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 6, 1997.

Comments for inclusion in the Rules Docket must be received on or before November 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–SW–18–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Sikorsky Aircraft Corporation, Attn: Mr. Paul Dionne, CAR Office, 6900 Main Street, P.O. Box 9729, Stratford, Connecticut 06497–9129, telephone (203) 386–7860, fax (203) 386–4703. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Mann, Aerospace Engineer, Boston Aircraft Certification Office, ANE–150, 12 New England Executive Park, Burlington, MA 01803, telephone (617) 238–7190, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On April 30, 1997, the FAA issued priority letter AD 97–10–04 to require, before further flight, inspecting certain blades to determine the anodizing date for certain pocket assemblies installed on the blade, and if a blade has a pocket assembly that was anodized by Poly-Metal Company from October 1, 1996 through December 31, 1996, replacing it with an airworthy blade. That action was prompted by the discovery of a manufacturing defect that may cause disbonding and separation of portions of a blade. This defect is the result of an anodizing process, used during the manufacture of the pocket assembly, that did not meet the Type Design specifications. That condition, if not corrected, could result in disbonding and separation of portions of the blade, subsequent excessive vibrations, and loss of control of the helicopter.

Since the issuance of that AD, Sikorsky Aircraft Corporation has issued Sikorsky Alert Service Bulletin (ASB) No. 61B15–29A, Revision A, dated May 9, 1997, which corrects two of the blade serial numbers listed in the ASB that were referenced in the priority letter AD.

Since an unsafe condition has been identified that is likely to exist or develop on other Sikorsky Aircraft Corporation Model S–61A, D, E, L, N, NM, R, and V helicopters of the same type design, this AD supersedes AD 97–10–04 to require, before further flight, inspecting certain blades to determine the anodizing date for certain pocket assemblies installed on the blade, and if a blade has a pocket assembly that was anodized by Poly-Metal Company during the period of October 1, 1996, through December 31, 1996, replacing it with an airworthy blade. The actions are required to be accomplished in accordance with the service bulletin 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 rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–SW–18–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 that it 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 a new airworthiness directive (AD), Amendment 39–10026, to read as follows:

97–19–06 Sikorsky Aircraft Corporation: Amendment 39–10026. Docket No. 97–SW–18–AD. Supersedes priority letter AD 97–10–04.

Applicability: Model S–61A, D, E, L, N, NM, R, and V helicopters, certificated in any category, with a main rotor blade assembly (blade), part number (P/N) S6115–20501 or P/N 61170–20201, installed, having one of the following four-digit or eight-digit serial numbers:

1282–1554	3305–3106
2183	3317–3115
2380–2498	3343–3147
2495	3343–3648
2500	3364–3180
2520	3451–3239
2521	3491–3278
2644	3499–3936
2673	3511–3293
2716–2683	3512–3292
2721	3517–3311
2751	3525–3310
2781–2644	3637–3459
2800–2671	3694–3481
2817	3748–3543
2819	3752–3527
2839	3753–3528
2883	3840–3620
2919–2771	3966–3737
3008	4216–4392
3016–2850	4787–4793
3019	4800–4794
3138	4835–4790
3168–3585	5484–5363
3192–2999	5974–5816
3215–3012	5981–5813
3216–3023	7069–6583
3242–3044	7779–7033
3249–3052	8099–8054
3250–3043	

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required before further flight, unless accomplished previously.

To prevent disbonding and separation of portions of the blade, subsequent excessive vibrations, and loss of control of the helicopter, accomplish the following:

(a) Inspect each blade having one of the affected serial numbers in accordance with Section 2A of the Accomplishment Instructions of Sikorsky Alert Service Bulletin (ASB) No. 61B15–29A, Revision A, dated May 9, 1997, to determine the anodizing date for all blade trailing edge pocket assemblies (pocket assemblies) installed on the blade in locations as specified in the Planning Information Section, paragraph 1D(3) of the ASB, that were anodized by Poly-Metal Company. Remove any blade having a pocket assembly anodized by Poly-Metal Company during the period from October 1, 1996 through December 31, 1996, and replace the blade with an airworthy blade.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

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

(c) A one-time only special flight permit may be issued to operate the helicopter to a location where the requirements of this AD can be accomplished, after inspecting all pocket assemblies for disbonding.

(d) The inspection shall be done in accordance with Sikorsky ASB No. 61B15–29A, Revision A, dated May 9, 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 Sikorsky Aircraft Corporation, Attn: Mr. Paul Dionne, CAR Office, 6900 Main Street, P.O. Box 9729, Stratford, Connecticut 06497–9129, telephone (203) 386–7860, fax (203) 386–4703. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 6, 1997.

Issued in Fort Worth, Texas, on September 3, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–24075 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–32; Amendment 39–10133; AD 97–19–12]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R series turbofan engines, that requires initial and repetitive fluorescent penetrant and eddy current inspections of 4th stage low pressure turbine (LPT) hubs for cracks, and, if necessary, replacement with serviceable parts. This amendment

is prompted by a report of an uncontained 4th stage LPT blade release. The actions specified by this AD are intended to prevent a 4th stage LPT blade release due to hub cracking, which can result in an uncontained engine failure and damage to the aircraft.

DATES: Effective November 18, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 18, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Publication Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (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: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R series turbofan engines was published in the **Federal Register** on January 9, 1997 (62 FR 1299). That action proposed to require initial and repetitive fluorescent penetrant inspections (FPI) and eddy current inspections (ECI) of affected 4th stage low pressure turbine (LPT) hubs for cracks, and, if necessary, replacement with serviceable parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Four commenters support the rule as proposed.

One commenter states that the inspection should be performed in less than 5,900 cycles in service (CIS), as that was the number of CIS between the last FPI and the uncontained event that prompted this AD. The FAA does not concur. The FAA has evaluated the data and risk management plan supplied by PW that includes risk analysis, crack growth analysis, and field experience for the 4th stage LPT hubs. That data supports the FAA conclusion that the unsafe condition is an uncontained release of an LPT blade. The FAA concludes the loads introduced by the cracking of the 4th stage hub are not sufficient to result in an uncontained release of the entire 4th stage hub. Further, the analyses support the risk management plan, which includes a focused, ultra high sensitivity FPI and ECI at the next piece part exposure. The FAA has also concluded that the unsafe condition resulting from an uncontained blade failure can be mitigated by a reduced compliance time for installing LPT containment hardware on engines in which certain 4th stage LPT hubs are installed. The revised compliance requirement is described in AD 97–19–14.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 381 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $137,160.

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

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

97–19–12 Pratt & Whitney: Amendment 39–10133. Docket 96–ANE–32.

Applicability: Pratt & Whitney (PW) Models JT8D–1, –1A, –1B, –7, –7A, –7B, 9, –9A, –11, –15, –17, and –17R turbofan engines, with 4th stage low pressure turbine (LPT) hubs identified by serial number (S/N) in Table A of PW Alert Service Bulletin (ASB) No. A6274, Revision 1, dated December 9, 1996. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent 4th stage LPT blade failure due to hub cracking, which can result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Perform fluorescent penetrant inspection (FPI) and eddy current inspection (ECI) of affected 4th stage LPT hubs for cracks, in accordance with Paragraph 2A of PW ASB No. A6274, Revision 1, dated December 9, 1996, as follows:

(1) Inspect at the next time after the effective date of this AD that the hub is removed from the module and has been debladed.

(2) Thereafter, inspect each time the hub is removed from the module and has been debladed.

(3) Remove from service any cracked 4th stage LPT hub and replace with a serviceable part.

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

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

(d) The actions required by this AD shall be done in accordance with the following PW ASB:

Document No.	Pages	Revision	Date
A6274	1–23	1	December 9, 1996.

Total Pages: 23.

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 Pratt & Whitney, Publication Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. 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.

(e) This amendment becomes effective on November 18, 1997.

Issued in Burlington, Massachusetts, on September 10, 1997.

Mark C. Fulmer,

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

[FR Doc. 97–24796 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–35; Amendment 39–10134; AD 97–19–13]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) 94–23–03, applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines, that currently requires installation and periodic inspection of temperature indicators installed on the No. 4 and 5 bearing compartment scavenge oil tube and performance of any necessary corrective action. This amendment requires the installation and periodic inspection of temperature indicators to all PW JT8D–200 series engines, including those incorporating the containment hardware specified in AD 93–23–10. This amendment is prompted by a report of an uncontained turbine failure due to a high pressure turbine (HPT) shaft fracture on an engine that had the containment hardware installed. The actions specified by this AD are intended to prevent fracture of the HPT shaft, which can result in uncontained release of engine fragments, engine fire, inflight engine shutdown, or possible aircraft damage.

DATES: Effective October 24, 1997.

The incorporation by reference of PW Alert Service Bulletin (ASB) No. 5944, Revision 2, dated June 8, 1992, was previously approved by the Director of the Federal Register as of January 31, 1995 (59 FR 61789, December 2, 1994). The incorporation by reference of PW ASB No. 5944, Revision 3, dated December 16, 1994, is approved by the Director of the Federal Register as of October 24, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Publication Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–23–03, Amendment 39–9065 (59 FR 61789, December 2, 1994), applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines, was published in the **Federal Register** on January 9, 1997 (62 FR 1298). That action proposed to require installation and periodic inspection of temperature indicators to all PW JT8D–200 series engines, including those incorporating the containment hardware modifications required by AD 93–23–10.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that the inspection interval should be increased from 65 hours time in service (TIS) to 75 hours TIS, as this increased interval could be incorporated into the service check of that operator's maintenance program. The FAA disagrees. Previous alternative methods of compliance (AMOCs) have been approved to adjust the inspection interval on a case-by-case basis, and the operator is invited to apply for an AMOC using the usual procedure. Generally, however, the compliance interval remains at 65 hours TIS.

One commenter states that the reporting requirements of the AD should be eliminated, as the original AD terminated reporting requirements six months after the effective date of the AD. The FAA concurs and has eliminated the reporting requirements in the final rule.

One commenter notes that the containment hardware has been ineffective in ensuring containment and that costs associated with installing the containment hardware have been excessive. The commenter, however, offers no objection to the proposed rule. The indirect costs of operating engines

with the containment hardware installed are not directly related to this proposed rule, and, therefore, are not addressed in the economic analysis for this rule. A full cost analysis for each AD, including such indirect costs, is not necessary since the FAA has already performed a cost benefit analysis when adopting the airworthiness requirements to which these engines were originally certificated. A finding that an AD is warranted means that the original design no longer achieves the level of safety specified by those airworthiness requirements, and that other required actions are necessary, such as containment hardware, or as in this case, installation and inspection of temperature indicators. Because the original level of safety was already determined to be cost beneficial, these additional requirements needed to return the engine to that level of safety do not add any additional regulatory burden, and, therefore, a full cost analysis would be redundant and unnecessary.

One commenter supports the AD as proposed on the assumption that the AD requires diagnostic inspections should the required oil temperature indicators show signs that high oil temperatures have occurred within the engine. The AD does require troubleshooting and diagnostic testing and corrective action in accordance with service documents incorporated by reference.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 2,432 series engines of the affected design in the worldwide fleet. The FAA estimates that 1,044 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 1.5 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $93,960.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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 removing amendment 39–9065 (59 FR 61789, December 2, 1994) and by adding a new airworthiness directive, Amendment 39–10134, to read as follows:

97–19–13 Pratt & Whitney: Amendment 39–10134. Docket 96–ANE–35. Supersedes AD 94–23–03, Amendment 39–9065.

Applicability: Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 turbofan engines, installed on but not limited to McDonnell Douglas MD–80 series and Boeing 727 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the high pressure turbine (HPT) shaft, which can result in uncontained release of engine fragments, engine fire, inflight engine shutdown, or possible aircraft damage, accomplish the following:

(a) Install and inspect one or two temperature indicators, part number (P/N) 810486, or a single or double set of P/N 809129 and P/N 809130 temperature indicators, on the No. 4 and 5 bearing compartment scavenge oil tube, as follows:

(1) Install temperature indicators on the No. 4 and 5 bearing compartment scavenge oil tube in accordance with Section 2.A.(1) of the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. 5944, Revision 3, dated December 16, 1994, or Revision 2, dated June 8, 1992, within 90 days after the effective date of this AD.

(2) Visually inspect temperature indicators within 65 hours TIS of installation. Thereafter, inspect at intervals not to exceed 65 hours TIS since last inspection.

(3) If upon inspection, the color of any temperature indicator window(s) has turned completely black, perform troubleshooting and diagnostic testing and corrective action as required, in accordance with Section 2.A.(2) (c) and (d) or (f) and (g), as applicable, of the Accomplishment Instructions of PW ASB No. 5944, Revision 3, dated December 16, 1994, or Revision 2, dated June 8, 1992. Prior to returning the engine to service, replace any temperature indicator that has turned black and inspect in accordance with paragraphs (a)(2) and (a)(3) of this AD.

(b) For aircraft installations utilizing one P/N 810486 indicator or one set of P/N 809129 and 809130 indicators, and inspection reveals a missing indicator, inspect the remaining temperature indicator, if applicable, to determine if the indicator window has turned completely black. If the indicator window has turned completely black, perform troubleshooting and diagnostic testing, and corrective action as required, in accordance with paragraph (a)(3) of this AD. If the indicator window has not turned completely black or if there are no additional indicators installed, then install a new indicator in accordance with Section 2.A.(1) of the Accomplishment Instruction of PW ASB No. 5944, Revision No. 3, dated December 16, 1994, or Revision 2, dated June 8, 1992, prior to return to service, and visually inspect the temperature indicator within 65 hours TIS since installation. Thereafter, inspect at intervals not to exceed 65 hours TIS since last inspection in accordance with paragraphs (a)(2) and (a)(3) of this AD.

(c) For aircraft installations utilizing two P/N 810486 indicators or two sets of P/N 809129 and 809130 indicators, and inspection reveals a missing indicator(s), inspect the remaining temperature indicator(s), if applicable, to determine if the indicator window has turned completely black. If the indicator window has turned completely black, perform troubleshooting and diagnostic testing, and corrective action

as required, in accordance with paragraph (a)(3) of this AD. If the indicator window has not turned completely black, install a new indicator(s) in accordance with Section 2.A.(1) of the Accomplishment Instructions of PW ASB No. 5944, Revision 3, dated December 16, 1994, or Revision 2, dated June 8, 1992, prior to return to service, and visually inspect the temperature indicator within 65 hours TIS since installation. Thereafter, inspect at intervals not to exceed 65 hours TIS since last inspection in accordance with paragraphs (a)(2) and (a)(3) of this AD.

(d) 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 forward 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 method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(e) 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.

(f) The actions required by this AD shall be done in accordance with the following PW ASBs:

Document No.	Pages	Revision	Date
5944 ..... Total pages: 35.	1–35	3	December 16, 1994.
5944 ..... Total pages: 44.	1–44	2	June 8, 1992.

This incorporation by reference of PW ASB No. 5944, Revision 2, dated June 9, 1993, was previously approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of January 31, 1995 (59 FR 61789, December 2, 1994). Copies may be obtained from Pratt & Whitney, Publication Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. 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.

(g) This amendment becomes effective on October 24, 1997.

Issued in Burlington, Massachusetts, on September 10, 1997.

Mark C. Fulmer,

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

[FR Doc. 97–24797 Filed 9–18–97; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–07; Amendment 39–10135; AD 97–19–14]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D series turbofan engines, that currently requires inspections of low pressure turbine (LPT) blade sets for blade shroud crossnotch wear, and removal, if necessary. In addition, the current AD requires, as a terminating action to the inspections, installation of improved LPT containment hardware, and installation of an improved No. 6 bearing scavenge pump bracket bushing. This amendment keeps the compliance actions of the current AD intact but changes the compliance time for LPT containment hardware installation from the current calendar end-date to December 31, 1998, for engines that contain suspect 4th stage hubs identified by serial number. This amendment is prompted by a report of a fourth stage hub manufacturing defect that led to the failure of the hub and subsequent release of LPT blades. The actions specified by this AD are intended to prevent damage to the aircraft resulting from engine debris following an LPT blade, shaft, or hub failure.

DATES: Effective October 24, 1997.

The incorporation by reference of PW Alert Service Bulletin No. A6131, Revision 1, dated May 16, 1995; PW Alert Service Bulletin No. A6131, Revision 2, dated July 28, 1997; PW Alert Service Bulletin No. A6274, Original, dated November 7, 1996; and PW Alert Service Bulletin No. A6274, Revision 1, dated December 9, 1996, is approved by the Director of the Federal Register as of October 24, 1997.

The incorporation by reference of all other publications listed in the regulations was previously approved as of November 14, 1994 (59 FR 51842, October 13, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–20–08, Amendment 39–9036 (59 FR 51842, October 15, 1994), applicable to Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R series turbofan engines, was published in the **Federal Register** on April 1, 1997 (62 FR 15437). That action proposed to require inspections of low pressure turbine (LPT) blade sets for blade shroud crossnotch wear, and removal, if necessary. In addition, the current AD requires, as a terminating action to the inspections, installation of improved LPT containment hardware, and installation of an improved No. 6 bearing scavenge pump bracket bushing. The proposal would have reduced the compliance time for LPT containment hardware installation from the current calendar end-date to December 31, 1998.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the comments received.

Eight commenters state that the more stringent compliance times should only be applicable to those engines that have a suspect 4th stage LPT hub installed. Otherwise, the proposed AD imposes an undue burden to operators, since the proposed AD does not specifically address the threat of the 4th stage hub suspect population. The commenters offer several alternatives, such as withdrawal of the NPRM, writing a stand alone AD, changing the compliance paragraph, and adding a paragraph to NPRM Docket No. 96–ANE–32. The FAA concurs with the comments and is changing the compliance paragraph accordingly. This final rule contains a new compliance schedule, which is intended to meet the threat of an blade release due to the failure of the 4th stage LPT hub. The threat of a 4th hub failure has been isolated to a suspect population of hubs listed in PW Alert Service Bulletin No. A6274, Revision 1, dated December 9, 1996.

Two commenters state that the third stage turbine air sealing ring should not have the more stringent compliance times, as the third stage turbine air sealing ring does not affect 4th stage LPT containment, which is why the compliance end-date is being moved up. The FAA concurs. The third stage turbine air sealing ring does not contribute to the containment of 4th stage LPT blades, therefore the FAA has removed the more stringent compliance times for the third stage turbine air sealing ring in this final rule. The FAA has also relaxed the compliance time for the improved No. 6 bearing scavenge pump bracket bushing, as this part also does not contribute to the containment of 4th stage LPT blades released due to a 4th stage hub fracture.

One commenter states that the AD cannot be complied with on schedule as the replacement hardware is not available. The FAA does not concur. The manufacturer has advised the FAA that there are no current or foreseen shortages of hardware that will slow down operators' ability to comply with the AD.

One commenter states that the proposed rule should be withdrawn, as the risk is within acceptable limits without any further action and the actions described in NPRM Docket No. 96–ANE–32 are adequate to prevent future occurrences of uncontained failures from this cause. The FAA does not concur. While not yet published, the actions proposed in NPRM Docket No. 96–ANE–32 would, if adopted, minimize the threat of an uncontained blade release due to a hub fracture. The FAA has also evaluated the risk and crack growth analysis data and field experience for the 4th stage LPT hub and the data supports the conclusion that the failure mechanism is the loss of a 4th stage LPT blade and that the hub field management program must address non-containment of the LPT blade as well as the inspection of the LPT hub for cracks. The FAA feels the added measure of security offered by the improved containment is warranted in this case. However, the FAA agrees the more aggressive containment schedule should only apply to those hubs at highest risk of failing and releasing a blade as outlined in the compliance section described in previous responses to comments.

One commenter states that accomplishment of the actions described in PW ASB No. A6131, Revision 1, dated May 16, 1995, should be an acceptable alternative method of compliance to the AD's reference of the Original version of the ASB. The FAA concurs and has added reference to Revision 1 to the compliance section of this final rule.

One commenter states concern that the same containment hardware will be required for engines required to accomplish the actions described in AD 94–20–09 covering ''A'' model engines. The FAA does not concur. The suspect hubs are not approved for installation on ''A'' model engines; therefore, a similar condition does not exist for the ''A'' models.

Three commenters support the rule as proposed.

In addition, the FAA has reviewed and approved the technical contents of PW ASB No. A6274, Revision 1, dated December 9, 1996, and Original, dated November 7, 1996, that describe procedures for repetitive inspections of affected LPT hubs; and PW ASB No. A6131, Revision 2, dated July 28, 1997, that describes procedures for installation of the improved No. 6 bearing scavenge pump bracket bushing.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously.

The FAA has determined that the changes to the AD would neither increase the scope of the required actions over the current AD, nor increase the economic burden on operators over the costs of complying with the current AD. While the new AD alters the compliance times, operators should still be able to perform the required actions at scheduled maintenance. Therefore the FAA has determined that this new AD will result in no additional economic impact.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it 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 removing amendment 39–9036 (59 FR 51842, October 15, 1994) and by adding a new airworthiness directive to read as follows:

97–19–14 Pratt & Whitney: Amendment 39–10135. Docket 97–ANE–07. Supersedes AD 94–20–08, Amendment 39–9036.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R turbofan engines, installed on but not limited to Boeing 737 and 727 series aircraft, and McDonnell Douglas DC–9 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the aircraft resulting from engine debris following a low pressure turbine (LPT) blade, shaft, or hub failure, accomplish the following:

(a) For engines that do not contain fan exhaust inner front duct segment assemblies that are installed in accordance with PW Alert Service Bulletin (ASB) No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039, and either PW honeycomb third stage outer airseal Part Number (P/N) 801931, 802097, 797594, or 798279; or Pyromet Industries, Inc., honeycomb third stage outer airseal P/N PI9336; or McClain International, Inc., honeycomb third stage outer airseal P/N M2433; or a turbine case shield assembly installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039; or a third stage blade set that has third stage turbine blades that were installed in accordance with PW SB No. 5331, dated October 27, 1982, accomplish the following:

(1) Conduct initial and repetitive inspections on installed third and fourth stage LPT blade sets, and remove and replace with serviceable blade sets, as necessary, in accordance with Part 1 of the Accomplishment Instructions of PW ASB No. A5913, Revision 6, dated October 15, 1993; or PW ASB No. A5913, Revision 5, dated August 10, 1992; or PW ASB No. A5913, Revision 4, dated February 20, 1992, as follows:

(i) Initially inspect the blade shroud crossnotches of the third stage LPT blade set when specified in paragraphs (a)(1)(i)(A) or (a)(1)(i)(B) of this AD, whichever occurs later. Engines that contain a third stage blade set that have third stage turbine blades that were installed per the requirements specified in PW Service Bulletin (SB) No. 5331, dated October 27, 1982, do not require the third stage blade set inspection.

(A) Inspect within 6,000 cycles or 6,000 hours time in service, whichever occurs first, since new, since the last blade shroud crossnotch inspection specified in Section 72–53–12 of PW JT8D Engine Manual P/N 481672, or since last blade shroud crossnotch repair that was accomplished per the requirements specified in Section 72–53–12 of PW JT8D Engine Manual P/N 481672; or

(B) Inspect within 1,000 cycles or 1,000 hours time in service since November 14, 1994, whichever occurs first.

(ii) Initially inspect the blade shroud crossnotches of the fourth stage LPT blade set when specified in paragraph (a)(1)(ii)(A) or (a)(1)(ii)(B) of this AD, whichever occurs later. Engines that contain fan exhaust inner front duct segment assemblies that were installed per the requirements of PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039, do not require the fourth stage blade set inspection.

(A) Inspect within 6,000 cycles or 6,000 hours time in service, whichever occurs first, since new, since the last blade shroud crossnotch inspection specified in Section 72–53–13 of PW JT8D Engine Manual P/N 481672, or since last blade shroud crossnotch repair that was accomplished per the requirements specified in Section 72–53–13 of PW JT8D Engine Manual P/N 481672; or

(B) Inspect within 1,000 cycles or 1,000 hours time in service since November 14, 1994, whichever occurs first.

(iii) Thereafter, inspect the third and fourth stage LPT blade sets in accordance with the procedures and intervals specified in PW ASB No. A5913, Revision 6, dated October 15, 1993;

(2) At the next shop visit after the effective date of this AD, install the improved inner front fan exhaust duct and associated hardware in accordance with Part A of the Accomplishment Instructions of PW ASB A6110, Revision 1, dated October 15, 1993, as follows:

(i) For engines that have a 4th stage LPT hub installed with a serial number listed in PW ASB A6274, Table A, dated November 7, 1996, or Revision 1, dated December 9, 1996, install the improved inner front fan exhaust duct before December 31, 1998, or 8,000 hours time in service since November 14, 1994, or 7,000 cycles in service since November 14, 1994, whichever occurs first.

(ii) For engines that do not have a 4th stage LPT hub installed with a serial number listed in PW ASB A6274, Table A, dated November 7, 1996, or Revision 1, dated December 9, 1996, install the improved inner front fan exhaust duct before December 31, 1999, or 8,000 hours time in service since November 14, 1994, or 7,000 cycles in service since November 14, 1994, whichever occurs latest.

(3) At the next access to the third stage turbine air sealing ring, install the improved third stage turbine air sealing ring and associated hardware in accordance with Part B of the Accomplishment Instructions of PW ASB A6110, Revision 1, dated October 15, 1993. The installation of the improved third stage turbine air sealing ring must occur no later than December 31, 1999, or 8,000 hours time in service since November 14, 1994, or 7,000 cycles in service since November 14, 1994, whichever occurs latest.

Note 2: Third stage turbine outer air seal, P/N M2533, is an acceptable alternative to PW P/N 811962 for compliance with this paragraph.

(4) At the next shop visit after the effective date of this AD, install the improved No. 6 bearing scavenge pump bracket bushing in accordance with the Accomplishment Instructions of PW ASB No. A6131, dated August 24, 1993, or Revision 1, dated May 16, 1995, or Revision 2, dated July 28, 1997. The installation of the improved No. 6 bearing scavenge pump bracket bushing must be accomplished no later than December 31, 1999, or 8,000 hours time in service since November 14, 1994, or 7,000 cycles since November 14, 1994, whichever occurs latest.

(5) Accomplishment of the installations required by paragraphs (a)(2), (a)(3), and (a)(4) of this AD constitutes terminating action to the repetitive inspections required by paragraph (a)(1) of this AD.

(b) For engines that do contain fan exhaust inner front duct segment assemblies that are installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039, and either PW honeycomb third stage outer airseal P/N 801931, 802097, 797594, or 798279; or Pyromet Industries, Inc., honeycomb third stage outer airseal P/N PI9336; or McClain International, Inc., honeycomb third stage outer airseal P/N M2433; or a turbine case shield assembly installed in accordance with PW ASB No. 6039, Revision 3, dated October 15, 1993, or earlier revisions of PW ASB No. 6039; or a third stage blade set that has third stage turbine blades that were installed in accordance with PW SB No. 5331, dated October 27, 1982, perform the installations required by paragraphs (a)(2), (a)(3), and (a)(4) of this AD, at the times specified in those respective paragraphs.

(c) For the purpose of this AD, a shop visit is defined as an engine removal, where engine maintenance entails separation of pairs of major mating engine flanges or the removal of a disk, hub, or spool at a maintenance facility that is capable of compliance with the instructions of this AD, regardless of other planned maintenance, except for field maintenance type activities performed at this maintenance facility in lieu of performing them on-wing or at another peripheral facility.

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

Note 3: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(e) 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.

(f) The actions required by this AD shall be done in accordance with the following PW service documents:

Document No.	Pages	Revision	Date
ASB No. A5913	1–12	6	October 15, 1993.
Total pages: 12.			
ASB No. A6110	1–59	1	October 15, 1993.
Total pages: 59.			
ASB No. A6131	1–13	Original	August 24, 1993.
Total pages: 13.			
ASB No. A6131	1–14	1	May 16, 1995.
Total pages: 14.			
ASB No. A6131	1–21	2	July 28, 1997.
Total pages: 21.			
ASB No. A6274	1, 2	1	December 9, 1996.
	3, 4	Original	November 7, 1996.
	5	1	December 9, 1996.
	6–22	Original	November 7, 1996.
	23	1	December 9, 1996.
Total pages: 23.			
ASB No. A6274	1–23	Original	November 7, 1996.
Attachment NDIP–889	1–39	Original	November 1, 1996.
Total pages: 62.			

This incorporation by reference of PW ASB No. A5913, Revision 6, dated October 15, 1993; and PW ASB No. A6110, Revision 1, dated October 15, 1993; was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of November 14, 1994 (59 FR 51842, October 13, 1994). Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. 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.

(g) This amendment becomes effective on October 24, 1997.

Issued in Burlington, Massachusetts, on September 10, 1997.

Mark C. Fulmer,

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

[FR Doc. 97–24798 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29018; Amdt. No. 1821]

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, US 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 Aviations 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 NOTAN 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 September 5, 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. 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:

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
08/20/97	NC	Salisbury	Rowan County	7/5595	VOR or GPS Rwy 2, Amdt 5A...
08/20/97	NC	Salisbury	Rowan County	7/5596	VOR or GPS–A Amdt 7...
08/20/97	NC	Salisbury	Rowan County	7/5597	VOR or GPS Rwy 20, Amdt 1A...
08/20/97	WV	Elkins	Elkins-Randolph County, Jennings Randolph field.	7/5599	LDA-C Amdt 6A...
08/22/97	IL	Champaign/Urbana	University of Illinois—Willard	7/5641	NDB or GPS Rwy 32L, Amdt 10...
08/22/97	IL	Champaign/Urbana	University of Illinois—Willard	7/5643	VOR or GPS Rwy 4L, Amdt 10...
08/22/97	IL	Champaign/Urbana	University of Illinois—Willard	7/5644	LOC BC Rwy 14R, Amdt 7...
08/22/97	IL	Champaign/Urbana	University of Illinois—Willard	7/5645	ILS Rwy 32L, Amdt 11...
08/22/97	IL	Champaign/Urbana	University of Illinois—Willard	7/5646	VOR/DME or GPS Rwy 22R, Amdt 7...
08/25/97	MI	Holland	Park Township	7/5703	NDB or GPS Rwy 23, Amdt 2A...
09/03/97	LA	Alexandria	Alexandria Intl	7/5869	GPS Rwy 18, Orig...

[FR Doc. 97–24993 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29019; Amdt. No. 1822]

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 (SIAP's) 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 SIAP's, 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 SIAP's. 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 § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, 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 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.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States 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.

The FAA has determined through testing that current nonlocalizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable SIAP's will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as ''RNAV'' will be redesignated as ''VOR/DME RNAV'' without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's 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 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 September 5, 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 as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates

* * * *Effective Oct. 9, 1997*

Eagle River, WI, Eagle River Union, VOR/DME RWY 4, Amdt 1 Cancelled

Eagle River, WI, Eagle River Union, VOR/DME RWY 4, Amdt 1A

[FR Doc. 97–24994 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29017; Amdt. No. 1820]

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 Regulations (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 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 September 5, 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:

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 October 9, 1997*

Fort Pierce, FL, St. Lucie County Intl, NDB RWY 9, Orig
Fort Pierce, FL, St. Lucie County Intl, NDB RWY 9, Amdt 1, Cancelled
Fort Pierce, FL, St. Lucie County Intl, ILS RWY 9, Amdt 1
Rutland, VT, Rutland State, LDA 1 RWY 19, Amdt 8, Cancelled
Rutland, VT, Rutland State, LOC/DME 1 RWY 19, Orig

** * * Effective November 6, 1997*

Birmingham, AL, Birmingham Intl, GPS RWY 23, Orig
Talladega, AL, Talladega Muni, GPS RWY 3, Orig
Talladega, AL, Talladega Muni, GPS RWY 21, Orig
Little Rock, AR, Adams Field, GPS RWY 4R, Orig
Little Rock, AR, Adams Field, GPS RWY 22L, Orig
South Lake Tahoe, CA, Lake Tahoe, GPS RWY 18, Orig
Caldwell, ID, Caldwell Industrial, NDB RWY 30, Orig
Caldwell, ID, Caldwell Industrial, NDB OR GPSA RWY 30, Amdt 3A, Cancelled
Belleville, IL, Midamerica, NDB RWY 32R, Orig, Cancelled

Belleville, IL, Midamerica, NDB RWY 32R, Orig
Coldwater, MI, Branch County Memorial, VOR/DME OR GPS RWY 24, Amdt 3, Cancelled
Coldwater, MI, Branch County Memorial, VOR OR GPS RWY 6, Amdt 4
Coldwater, MI, Branch County Memorial, VOR RWY 24, Orig
Hillsdale, MI, Hillsdale Muni, VOR OR GPS-G, Amdt 7
Marshall, MI, Brooks Field, VOR OR GPS RWY 28, Amdt 14
Butte, MT, Bert Mooney, ILS RWY 15, Amdt 5
Cincinnati, OH, Cincinnati-Blue Ash, VOR RWY 24, Amdt 6
Cincinnati, OH, Cincinnati-Blue Ash, NDB RWY 6, Amdt 2
Cincinnati, OH, Cincinnati-Blue Ash, NDB OR GPS RWY 24, Amdt 2
Cincinnati, OH, Cincinnati Muni-Lunken Field, NDB OR GPS RWY 21L, Amdt 13
Harrison, OH, Cincinnati West, VOR OR GPS RWY 18, Amdt 3
Tulsa, OK, Tulsa Intl, GPS RWY 8, Orig
Tulsa, OK, Tulsa Intl, GPS RWY 18L, Orig
Tulsa, OK, Tulsa Intl, GPS RWY 18R, Orig
Tulsa, OK, Tulsa Intl, GPS RWY 36R, Orig
Redmond, OR, Roberts Field, GPS RWY 10, Orig
Redmond, OR, Roberts Field, GPS RWY 28, Orig
West Chester, PA, Brandywine, GPS RWY 9, Orig
Pineville, WV, Kee Field, GPS RWY 7, Orig
Summersville, WV, Summersville, GPS RWY 22, Orig

* * * *Effective Upon Publication*

Tinian Island, N. Mariana Islands, West Tinian, NDB–A, Amdt 1

Note: The FAA published the following procedure in Docket No. 28992, Amdt. No. 1813 to Part 97 of the Federal Aviation Regulations (Vol. 62, No. 163, Page 44542, dated Friday, August 22, 1997) under Section 97.25 effective November 6, 1997, which is hereby amended as follows:

Anchorage, AK, Anchorage Intl, ILS Rwy 6L, Amdt 9 should read: LOC Rwy 6L, Amdt 9.

[FR Doc. 97–24992 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 970318056–7211–02; I.D. 080497C]

RIN 0648–AJ43

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 20

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

ACTION: Final rule and correction.

SUMMARY: NMFS issues this final rule to adopt as final, with minor modifications for clarification purposes, the provisions of the interim final rule implementing Framework Adjustment 20 to the Northeast Multispecies Fishery Management Plan (FMP). The interim final rule implemented several management measures necessary to meet the mortality reduction goals of the FMP. The intent of this action is to address comments submitted in response to the interim final rule. This document also corrects the final rule published on March 3, 1997.

DATES: Effective September 18, 1997, except for § 648.14(c)(10) which is effective April 2, 1997.

ADDRESSES: Copies of Amendment 7 to the FMP, its regulatory impact review (RIR) and the regulatory flexibility analysis contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment 20 documents are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

Comments regarding burden-hour estimates for the collection- of-information requirement should be sent to Dr. Andrew A. Rosenberg, Regional Administrator, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 7 to the FMP became effective on July 1, 1996 (61 FR 27710, May 31, 1996). These regulations implemented a comprehensive set of measures to control fishing mortality by controlling fishing effort through days-at-sea (DAS) allocations, and rebuild the primary stocks of regulated multispecies. Additionally, a framework procedure was established which requires the New England Fishery Management Council (Council) to annually review the best scientific information available, set target total allowable catches for the primary cod, haddock, and yellowtail flounder stocks, and recommend management options to achieve the objectives of the plan. The following summarizes the measures implemented by the interim final rule and adopted as final, with minor modifications, by this final rule.

To address the needed reductions for Gulf of Maine (GOM) cod, the interim final rule, which became effective May 1, 1997 (62 FR 15381, April 1, 1997, and corrected 62 FR 37154, July 11, 1997), established a cod landing limit for vessels fishing on this stock. This landing limit is 1,000 lb (453.6 kg) of GOM cod per day, or any part of a day, for each of the first 4 days of a trip, and up to 1,500 lb (680.4 kg) of GOM cod per day, or any part of a day, in excess of 4 days. To mitigate discarding, vessels are allowed to retain cod in excess of the limit, provided that they do not call out of the multispecies DAS program until total DAS per trip correspond to the total allowable weight of cod off-loaded per trip, and if, upon entering port, they report their hailed weight of cod on board under a separate call-in system. Vessels operating south of 42°00' N. lat. for a minimum of 30 days are exempt from the cod landing limit if they obtain and keep a NMFS-issued exemption certificate on board the vessel.

The interim final rule also implemented a 1997 fishing year measure that increases the landing limit of haddock, beginning September 1, 1997, to 1,000 lb (453.6 kg) per day, to a maximum of 10,000 lb (4,536.0 kg) per trip. As a means of ensuring that landings are kept below the 1,608 mt target TAC level for Georges Bank (GB) haddock, this measure would revert to a 1,000 lb (453.6 kg) per trip possession limit when 1,150 mt is projected to be reached. A notification would be published in the **Federal Register** when the 1,000-lb (453.6 kg) trip limit is reinstated.

The interim final rule also implemented a set of additional gillnet restrictions requiring most multispecies gillnet vessels to declare into either a Day or Trip gillnet category designation.

Trip gillnet category vessels are required to remove all gillnet gear from the water before calling-out of the multispecies DAS program. Day gillnet category vessels are limited to no more than 80 roundfish gillnets or 160 flatfish gillnets and must mark the gear with NMFS-authorized tags: Two tags per roundfish gillnet and one tag per flatfish gillnet. In addition, Day gillnet category vessels must take a total of 120 days out of the multispecies gillnet fishery in no less than 7 consecutive-day increments and at least 21 of these days must be taken between June 1 and September 30. DAS, for Day gillnet vessels, will accrue at 15 hours for each trip between 3 and 15 hours.

The interim final rule modified two exempted fisheries. The first modification allowed unlimited amounts of skate to be retained in the current Southern New England (SNE) Monkfish Trawl Exemption Area south of 40°10' N. lat. The second modification prohibited the possession of monkfish in the Small Mesh Northern Shrimp Fishery Exemption Area and increased the allowable limit of silver hake (whiting) from two totes to an amount equal to the weight of shrimp on board. In addition, the interim rule exempted additional fisheries: A dredge fishery for mussels and sea urchins in the current Nantucket Shoals Dogfish Fishery Exemption Area and in the SNE Regulated Mesh Area; a seasonal gillnet fishery for vessels fishing for monkfish and dogfish in a portion of the GOM/GB Regulated Mesh Area; a year-round gillnet fishery for vessels fishing for monkfish and skate in a portion of the SNE Regulated Mesh Area; and a seasonal gillnet fishery for vessels fishing for dogfish in a portion of the SNE Regulated Mesh Area.

Interested persons were invited to comment on the interim final rule during the April 1, 1997, through May 1, 1997, comment period. The comments received are addressed below (see Comments and Responses section). NMFS issues this final rule to adopt as final, with minor modifications, the provisions of the interim final rule implementing Framework Adjustment 20 to the FMP. The modifications made are administrative in nature and help clarify and enhance enforcement and administration of the fishery management program.

Comments and Responses

Written comments on the interim final rule implementing Framework 20 were submitted by Cape Ann Gillnetters' Association, Maine Gillnetters' Association, Cape Cod Hook Fishermen's Association, Inc., and one individual.

Comment 1: An association reminds NMFS that in the preamble to the final rule implementing Amendment 7 to the FMP, NMFS states that habitat and selectivity issues could be revisited through a future management action, that research has shown mobile gear to have observable effects on the ocean bottom, and that the Council has a role in relation to habitat issues. Despite these acknowledgments by NMFS, the association remarks that habitat and selectivity issues were not addressed in Framework 20. The association contends that studies involving fishing gear impacts should be considered in development of a framework, and adds that this would be the risk averse approach to take. Rather than waiting for essential fish habitat guidelines to be finalized, the commenter suggests using the information already available (and cites several of these sources) to restrict mobile gear vessels.

Response: NMFS acknowledges that observable effects by mobile gear have been demonstrated in some areas of the ocean, while little discernable effect has been demonstrated in other areas. NMFS has recently proposed guidelines to implement the essential fish habitat provisions of the Magnuson-Stevens Act (62 FR 19723, April 23, 1997). These guidelines propose that, in determining whether it is practicable to minimize an adverse effect from fishing on essential fish habitat, Fishery Management Councils should consider three things: Whether and to what extent the fishing activity is adversely impacting the marine ecosystem; the nature and extent of the adverse effect on essential habitat; and whether the benefit to the habitat achieved by minimizing the adverse effect justifies the cost to the fishery. The Council intends to address habitat issues in the forthcoming amendment to the Multispecies FMP that will implement the new essential fish habitat requirements.

Comment 2: Two organizations comment that the cod trip limit increase to 1,500 lb (680.4 kg) after the fourth day of a fishing trip rewards larger vessels that are able to stay at sea for extended periods and is, therefore, biased against small vessels, particularly small gillnet vessels that fish in the GOM. The commenters contend that this allocation ''is not fair and equitable,'' does not promote conservation, and violates national standard 4.

Response: NMFS disagrees. To reduce fishing mortality on the GOM cod stock, the trip limit was set at a level to discourage vessels, particularly larger vessels, from targeting cod. Further, the increase to 1,500 lb (680.4 kg) after the fourth day was established as an incentive for larger vessels to fish offshore trips, offsetting steaming and offshore costs while providing an indirect benefit to small vessels that fish inshore. Based on this, NMFS determined that this measure promotes conservation, is fair and equitable, and does not violate national standard 4.

Comment 3: One individual requests that the cod trip limit be rescinded in favor of closed areas. It is the commenter's belief that trip limits will not conserve the resource, because the provision regulates what a vessel lands and not what a vessel catches. The commenter states that area closures are beneficial, because they eliminate discarding and cheating, are easily enforceable, and create essential fish habitat.

Response: The cod trip limit and some of the area closure options considered were shown to have equivalent conservation effectiveness. However, based on public comment raising concerns that closures may inequitably affect small sectors of the fishery, closures were rejected. The issue of discarding in relationship to the cod trip limit was addressed by allowing larger amounts of codfish on trips greater than 4 days and by allowing a vessel to land cod in excess of the trip limit provided that the vessel does not call out of the DAS program to end its trip until total DAS correspond to the total allowable weight of cod harvested. Enforcement of area closures is not necessarily easier than trip limits, because it requires a sea-based enforcement presence.

Comment 4: One association and one individual comment that administration and enforcement of the cod trip limit would be difficult.

Response: Although the cod trip limit does increase NMFS' administrative and enforcement burden, the program has been operational since May 1, 1997, and NMFS Law Enforcement believes it can monitor adherence to the regulations.

Comment 5: An association comments that the exemption from the cod landing limit for vessels fishing south of 42°00' N. lat. is unfair to small vessels. The association states that larger vessels are ''being rewarded and encouraged to further destroy the cod population which may or may not depend on both Georges's Bank and the GOM simultaneously for its habitat needs.''

Response: NMFS does not consider this unfair. Although inconvenient, smaller vessels wishing to fish on unlimited amounts of cod could relocate to a port that is south of 42°00' N. lat.

The Georges Bank and GOM cod stocks are separate stocks and the effects incurred on one stock when fishing on the other are negligible.

Comment 6: Two associations contend that the gillnet fleet, has contributed to effort reduction and that Framework Adjustment 20 is not needed. One association contends that these measures were developed by the Council based on a ''perceived inequity'' between gillnetters and other gear sectors and that there was no real attempt to quantify gillnet effort. The association adds that no determination was made under Amendment 7 on the proportional effects on gear sectors. The other association remarks that NMFS and the Council should implement regulations that are fair and equitable, and that are ''based more on stock impact by gear type and area.'' One association, referring to a document that it previously commented on, contends that gillnet vessels are treated unfairly as compared with otter trawl vessels, particularly within the 5–22 ton tonnage class. The association states that, according to this report, the baseline fleet allocation is far in excess of the average number of days fished by the small dragger fleet. The association further notes that the report appears to justify this excess of days for the smaller fleet by acknowledging that larger draggers are likely more responsible for contributing to the fishing mortality reduction of the groundfish stocks.

Response: The fleet baseline allocation established under Amendment 5 was based on a fleet average. The fact that different tonnage classes may be affected unequally by this fleet average has been acknowledged. This is an issue that the Council could consider in another action. Despite this, NMFS believes that the gillnet effort reduction measures implemented under Framework Adjustment 20 are necessary, fair, and consistent, to the extent possible, with the reductions imposed on other fleet components.

The Council has been deliberating measures to reduce gillnet effort commensurate with the reduction in other fleet since implementation of Amendment 7 in July 1996. Rather than analyze each fleet sector and its impacts on the resource individually, Amendment 7 strives to implement effort reduction, or increases, proportionately across all sectors. The Council determined that DAS reductions alone are not sufficient to reduce gillnet effort because the gear typically remains in the water, fishing while the vessel may be docked and not under a DAS.

Comment 7: An association questions the Council's Plan Development Team's (PDT) reliance on weigh-out data to calculate gillnet effort and claims that this data has proven to be unreliable in a previous study by the Northeast Fisheries Science Center.

Response: To calculate a fleet DAS average for gillnet vessels, the PDT examined the 1988–1990 NMFS weigh-out observer databases. Based on this information, the PDT found that to achieve the 50 percent effort reduction goal, gillnet vessels should not fish more than 80 days, or very close to the 1997 allocation of 88 DAS. These data are considered reliable, because they were collected by NMFS port agent interviews of vessel captains or by NMFS observers on board commercial fishing vessels.

Comment 8: A commenter states that net reductions may have many beneficial results, including assisting in marine mammal concerns, reducing gear conflicts, and reducing fishing effort. However, based on a study entitled ''Analysis of the Sink Gillnet Fishery in the Gulf of Maine and Adjacent Waters'' (DeAlteris and Lazar), the commenter states that 120 is the average number of groundfish nets used. The commenter further noted that based on the comments at Council hearings, 100–240 is the average number of nets used by flatfish fishers.

Response: The 80/160 net cap was developed by the Council's Gillnet subcommittee and based on industry comment. Although the net cap may result in a reduction for some segments of the fleet more than others, the net cap is justified as a means of limiting uncontrolled growth and standardizing gear usage by vessels.

Comment 9: Two associations remark that the effects of the marine mammal reduction efforts on gillnet vessels have not been assessed, which is contrary to the national standards and to the Council's previous positions under Amendments 5 and 7.

Response: Framework Adjustment 20 did take into account the effect of existing and proposed marine mammal protection measures and determined that, on a fleet average, they contributed to a 1 percent fishing mortality reduction for the 5 multispecies stocks of cod, haddock, and yellowtail flounder.

Comment 10: Two associations oppose the required minimum blocks of time out of the gillnet fishery. One association states that this will affect the way gillnet fishers operate and will impose an economic hardship on this fishery. The association suggests that NMFS require time out of the gillnet fishery on a daily basis and not in 7-day minimum blocks. The association further asserts that any enforcement concerns should be alleviated by the net tagging requirement and questions why daily removal of gillnet gear would be any more difficult to enforce than for Trip Category gillnet vessels.

The other association contends there is no scientific basis for requiring Day Category gillnet vessels to declare 21 days out of the gillnet fishery during the summer months and recommends elimination of this measure. The association notes that this sets a precedent for reducing fishing effort on a gear sector based on seasonal productivity, and may violate the national standard of fairness and equity. The association states that many affected small gillnet vessels, particularly vessels in the Northeast, fish primarily for flatfish during this time of year and are unlikely to be responsible for high catches of cod. Consequently, the association remarks, this measure will have little conservation value. The association further states that other fisheries are not available to the fleet during this time, essentially creating 21 days of down time and placing an undue economic burden on the inshore gillnet fleet.

Response: The 7-day minimum block enhances enforceability by providing a disincentive for vessels to leave their gear in the water when not under a DAS. A daily time-out system would be unadminsterable and ineffective since it would be taken in the normal course of fishing operations as a day off. Day gillnet vessels wishing to remove their gear and fish under the Trip Category rules have the option to select that category.

The purpose of the June through September period is to ensure the effectiveness of the timeout provision; there would be little conservation benefit if most vessels declared their 120 days out during the winter months when most gillnetters are not fishing. This seasonal restriction is necessary for the overall effort reduction plan to reduce, not only cod, but multispecies fishing mortality, including flatfish, by 50 percent.

NMFS disagrees that there are no opportunities to fish during the 21-day period out of the multispecies fishery during June through September. During this time, vessels may continue to fish for groundfish with gear other than gillnet gear, or fish in any of the exempted fisheries currently allowed.

Comment 11: One association claims that the cod trip limit, developed after the gillnet effort reduction measures, eliminates the need for the 21-day

summer block out of the gillnet fishery. The association explains that gillnet vessels are limited by how much cod they can take and, further, are unable to fish in the cod exemption area by virtue of their limited capacity.

Response: As mentioned in the previous comment, gillnet effort reduction measures under Framework Adjustment 20 were implemented to reduce multispecies gillnet effort on a level comparable to all other gear sectors. The cod trip limit is a separate measure developed under this framework to reduce fishing mortality on the GOM cod stock and applies equally across all gear sectors.

Comment 12: An association suggests that a reduction of ''soak time'' (i.e., the time gillnet gear is fishing in the water) should replace the measure that counts any trip between 3 to 15 hours as 15 hours for Day gillnet vessels and asserts that this would alleviate a regulatory burden by eliminating the need for vessels to report their gear fished when calling the DAS program to start a trip. The association contends that the 15–hour measure is unnecessary and places an undue burden on small vessels, while providing no positive effect on conservation. Additionally, the association notes that the method of counting DAS for Day gillnet vessels encourages unsafe fishing practices and is, therefore, contrary to the National Standards. The association states that the 3–hour window, by which a vessel could abort a trip and not be counted for a 15–hour trip, does not fully address changing weather conditions. The association contends that vessels, which may run into bad weather after one and half hours from port, are encouraged to remain fishing since they would otherwise forfeit a full day and suggest that DAS should be calculated hourly for all vessels.

Response: The 15–hour provision was developed to further calibrate gillnet DAS to the DAS of vessels using gear that either remains attached to a vessel or is tended at all times by a vessel. NMFS disagrees with the statement that this measure promotes unsafe fishing practices. The 3–hour window was set based on public comment that 3 hours was an adequate amount of time needed to abort a trip due to inclement weather or vessel breakdowns.

Comment 13: An association questions how days are counted for gillnet vessels fishing with hook gear, or for draggers fishing with gillnet gear.

Response: When fishing with gear other than gillnet gear, DAS are counted as actual time to the nearest minute.

Comment 14: An association contends that the net tagging requirement adds another financial burden to the small boat sector. The association states that the gillnet tags are expensive and further states that, should a vessel require replacement tags, the time needed to clear a check for the cost of the replacements renders the vessel unable to fish its untagged gear. The association states that these tags need to be removable or a fisher is locked into fishing with one mesh size.

Response: NMFS kept costs in mind when seeking a tag distributer. The cost for vessel owners for the maximum number of tags mailed directly to their respective places of business is less than $60.00. For an additional $2.00, a ''quick'' replacement option is provided. Under this option, NMFS will hold a supply of tags at the Northeast Regional Office to be issued immediately upon request. All tags are removable and reusable. A vessel owner must order a new series of tags at the start of each fishing year.

Comment 15: One association comments that, should a vessel become disabled, there is no provision in Framework Adjustment 20 that would allow another vessel to tend or retrieve its gillnets.

Response: Infrequent occurrences such as the one cited by the commenter are not always appropriate for regulatory action and can better be addressed through the enforcement and administrative procedures of the agency.

Changes in the Final Rule From the Final Interim Rule

As described above, this rule makes modifications to the final interim rule primarily to help clarify and enhance enforcement and administration of the fishery management program. In addition, a redesignation is made to correct codified text. These changes are listed below in the order that they appear in the regulations.

In § 648.2, definitions for ''non-exempt gillnet fishery'' and ''non-exempt species'' are added.

In § 648.14, paragraph (c)(9) is revised and made more explicit by changing the phrase ''NE multispecies fishery'' to ''NE multispecies DAS program.''

In § 648.14, paragraph (c)(11) published at 62 FR 9377 on March 3, 1997, is redesignated as (c)(10) to correct an inadvertent error in paragraph designation.

In § 648.14, paragraphs (c)(20) and (c)(21) are added to enhance enforcement of the provisions in § 648.86(b)(1)(ii)(B) and § 648.82(k)(1)(iv), respectively.

In § 648.80, paragraphs (a)(2)(iii) and (b)(2)(iii) are revised to include the small vessel exemption, defined under § 648.82(b)(3); this was an inadvertent omission in the previous regulations.

In § 648.80, paragraphs (a)(11) and (b)(8) are revised to explain the method by which mussel dredge gear is measured.

In § 648.82, paragraph (g) is revised by replacing the words ''regulated NE multispecies fishery'' with the words ''NE multispecies DAS program'' and to clarify that a vessel may not fish for, possess, or land any species of fish, unless exempt, when taking its required 20-day spawning block out of the NE multispecies DAS program.

In § 648.82, paragraph (h) is clarified by replacing the words ''NE multispecies fishery'' with the words ''NE multispecies DAS program,'' and to reflect that a Day gillnet category vessel must declare its 120 days out of the non-exempt gillnet fishery by using the notification requirements specified in § 648.10.

In § 648.82, paragraph (k)(1)(ii) is revised to clarify that a vessel is required to tag its gillnet gear only when participating under a NE multispecies DAS.

In § 648.82, paragraph (k)(1)(iv)(A) is revised by replacing the words ''multispecies gillnet fishery'' with the words ''non-exempt gillnet fishery'' to reflect that a vessel may not fish with gillnet gear, unless exempt, when declared out of the gillnet fishery.

Under NOAA Administrative Order 205–11, 7.01, dated

December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA (AA), the authority to sign material for publication in the **Federal Register**.

Classification

The Administrator, Northeast Region, NMFS, determined that Framework 20 is necessary for the conservation and management of the NE multispecies fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This rule adopts as final, with minor modifications, the provisions of Framework Adjustment 20 previously implemented by the interim final rule. As there were no significant changes made to the interim final rule and no requirement to promulgate a proposed rule, no regulatory flexibility analysis was done. Nevertheless, this action does not significantly increase the impact beyond the scope of impact on small entities already analyzed, discussed and described in Amendments 5 and 7 to the FMP.

Notice and opportunity for public comment was provided before and after

publishing the interim final rule that this rule adopts as final. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds for good cause that additional prior notice and opportunity for public comment is unnecessary. Because regulations implemented by this final rule are currently in effect and because the public is already knowledgeable of these provisions, the AA, under 5 U.S.C. 553(d)(3), finds for good cause that delaying for 30 days the effectiveness of this rule as unnecessary.

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

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

This final rule contains seven collection-of-information requirements which were new collections implemented under the interim final rule. Emergency approval under the Paperwork Reduction Act for collection of this information under the interim rule was provided by the Office of Management and Budget (OMB), under OMB Control Number 0648–0202. A follow-up submission of this collection-of-information requirement has been approved by OMB, under the same control number. The estimated response times are as follows:

1. Declaration into the Trip or Day Gillnet vessel category and request for initial gillnet tags will require written declaration (5 minutes/response).
2. Request for additional tags will require written declaration (2 minutes/response).
3. Notification of lost tags and request for replacement tags will require written response (2 minutes/response).
4. Attachment of tags to gillnet gear will require additional burden (1 minute/response).
5. Declaration of 120 days out of the gillnet fishery in minimum blocks of 7 days will require vessel notification (3 minutes/response).
6. Reporting of cod catch on board or off-loaded for vessels fishing north of 42°00' N. lat. will require vessel notification (3 minutes/response).
7. Declaration that a vessel will fish south of 42°00' N. lat. while fishing under a NE multispecies DAS will require vessel notification (2 minutes/per response).

This final rule also restates preexisting information requirements that had been approved by OMB under the PRA and that are needed for the implementation of Framework Adjustment 20. These preexisting information requirements were approved under OMB control number 0648–0202. Their estimated response times are as follows:

1. Requirement to provide a vendor installation receipt with a permit application if the applicant opts to use a VTS (2 minutes/response).
2. Call-in requirement for vessels under a DAS upon return to port (2 minutes/response).
3. Call-in requirement for vessels subject to the spawning season restriction (2 minutes/response).

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding any of these burden estimates or any other aspect of the collection-of-information to NMFS and to OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 12, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, the interim final rule amending 15 CFR part 902 and 50 CFR part 648, which was published at 62 FR 15381 on April 1, 1997, and a correction document amending 50 CFR part 648, which was published at 62 FR 37154 on July 11, 1997, are adopted as a final rule with the following changes:

50 CFR CHAPTER VI

PART 648–FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, definitions for ''Non-exempt gillnet fishery'' and ''Non-exempt species'' are added, in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Non-exempt gillnet fishery means a fishery which uses gillnet gear capable of catching multispecies.

Non-exempt species means species of fish not included under the GOM/GB and SNE Regulated Mesh Area exempted fisheries, as specified in § 648.80(a)(3), (a)(4), (a)(8) through (13), (b)(3)(i) and (ii), (b)(5) through (8), and (d), (e), (h), and (i).

* * * * *

3. In § 648.14, paragraph (c)(9) is revised, paragraph (c)(11) published at 62 FR 9377 on March 3, 1997, is corrected by redesignating it as (c)(10), and paragraphs (c)(20) and (21) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(c) * * *

(9) Fail to declare, and be, out of the NE multispecies DAS program as required by § 648.82(g), using the procedure described under § 648.82(h), as applicable.

* * * * *

(20) Fail to comply with the provisions of the cod hail weight notification specifications specified in § 648.86(b)(1)(ii)(B).

(21) Fail to declare, and be, out of the non-exempt gillnet fishery as required by § 648.82(k)(1)(iv), using the procedure described under § 648.82(h), as applicable.

* * * * *

4. In § 648.80, paragraphs (a)(2)(iii), (a)(11), (b)(2)(iii) and (b)(8) are revised to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(2) * * *

(iii) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the GOM/GB Regulated Mesh Area except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(3), (a)(4), (a)(6), (a)(8) through (13), (d), (e), (h), and (i) of this section, if fishing under a NE multispecies DAS, if fishing under the small vessel exemption specified in § 648.82((b)(3), if fishing under the scallop state waters exemptions specified in § 648.54 and (a)(10) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.81(e).

* * * * *

(11) *Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area.* A vessel may fish with a dredge in the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area,

provided that any dredge on board the vessel does not exceed 8 ft (2.44 m) measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins. The area coordinates of the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area are the same coordinates as those of the Nantucket Shoals Dogfish Fishery Exemption Area specified under paragraph (a)(9) of this section.

* * * * *

(b) * * *

(2) * * *

(iii) *Other restrictions and exemptions*. Vessels are prohibited from fishing in the SNE Regulated Mesh Area except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (8), (c), (e), (h), and (i) of this section, if fishing under a NE multispecies DAS, if fishing under the small vessel exemption specified in § 648.82(b)(3), if fishing under the scallop state waters exemption specified in § 648.54, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.81(e).

* * * * *

(8) *SNE Mussel and Sea Urchin Dredge Exemption*. A vessel may fish with a dredge in the SNE Regulated Mesh Area, provided that any dredge on board the vessel does not exceed 8 ft (2.44 m) measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins.

* * * * *

5. In § 648.82, paragraphs (g), (h), (k)(1)(ii), and (k)(1)(iv)(A) are revised to read as follows:

§ 648.82 Effort-control program for limited access vessels.

* * * * *

(g) *Spawning season restrictions*. A vessel issued a valid Small Vessel permit under paragraph (b)(3) of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access multispecies permit must declare out and be out of the NE multispecies DAS program, as described in paragraph (b) of this section, for a 20-day period between March 1 and May 31 of each calendar year using the notification requirements specified in § 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery as described in § 648.80. If a vessel owner has not declared and been out for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species or non-exempt species during the period May 12 through May 31, inclusive. If a vessel has taken a spawning season 20-day block out of the NE multispecies DAS program during May 1996, it is not required to take a 20-day block out of the NE multispecies DAS program in 1997. Beginning January 1, 1998, any such vessel must comply with the spawning season restriction specified in this part.

(h) *Declaring DAS and blocks of time out*. A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program, declaration of its 120 days out of the non-exempt gillnet fishery if designated as a Day gillnet category vessel, and declaration of its 20-day period out of the NE multispecies DAS program, using the notification requirements specified in § 648.10.

* * * * *

(k) * * *

(1) * * *

(ii) *Tagging requirements*. Beginning June 1, 1997, when under a NE multispecies DAS, all groundfish gillnets fished, hauled, possessed, or deployed must have two tags per net, with one tag secured to each bridle of every net within a string of nets and all flatfish gillnets fished, hauled, possessed, or deployed must have one tag per net, with one tag secured to every other bridle of every net within a string of nets. Tags must be obtained as described in § 648.4(c)(2)(iii) and vessels must have on board written confirmation issued by the Regional Administrator, indicating that the vessel is a Day gillnet vessel. The vessel operator must produce all net tags upon request by an authorized officer.

* * * * *

(iv) * * *

(A) During each fishing year, vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by § 648.82(g) will be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken, any or all of the remaining periods of time required by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.81(e)(4), while fishing under a multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

* * * * *

[FR Doc. 97–24810 Filed 9–18–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 7, 10, 148 and 178

[T.D. 97–75]

RIN 1515–AB14

Duty-Free Treatment of Articles Imported From U.S. Insular Possessions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the document published in the **Federal Register** which set forth final amendments to the Customs Regulations to clarify and update the legal requirements and procedures that apply for purposes of obtaining duty-free treatment on articles imported from insular possessions of the United States other than Puerto Rico. The correction involves the control number assigned by the Office of Management and Budget in connection with the approval of the collection of information provided for in the final regulations.

EFFECTIVE DATE: This correction is effective October 3, 1997.

FOR FURTHER INFORMATION CONTACT: Monika Rice, Office of Regulations and Rulings (202–482–7049).

SUPPLEMENTARY INFORMATION:

Background

On September 3, 1997, Customs published in the **Federal Register** (62 FR 46433) as T.D. 97–75 a final rule document setting forth amendments to

the Customs Regulations to clarify and update the legal requirements and procedures that apply for purposes of obtaining duty-free treatment on articles imported from insular possessions of the United States other than Puerto Rico. That final rule document provided for an October 3, 1997, effective date for the regulatory amendments contained therein.

The amendments in T.D. 97–75 included an update of the list of information collection approvals under the Paperwork Reduction Act contained in § 178.2 of the Customs Regulations (19 CFR 178.2). Although the discussion of the Paperwork Reduction Act in the **SUPPLEMENTARY INFORMATION** portion of T.D. 97–75 correctly set forth the control number assigned by the Office of Management and Budget (OMB) as 1515–0200, the amendment to § 178.2 incorrectly listed the OMB control number as 1515–0055. This document corrects this error.

Correction to the Final Regulations

On page 46443, in the table under § 178.2, in the column headed ''OMB control number'', the entry ''1515–0055'' is corrected to read ''1515–0200''.

Dated: September 11, 1997.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 97–24953 Filed 9–18–97; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA–056–5023; FRL–5895–6]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Interim Final Determination for the Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a proposed rule to amend the Inspection/Maintenance (I/M) Program Requirements (the I/M rule). That document proposes, in part, revisions to the Motor Vehicle I/M requirements by replacing the I/M rule requirement that the tailpipe portion of the mandatory program evaluation be performed using only an IM240 or equivalent mass-emission transient test with a requirement that states use a sound evaluation methodology capable of providing accurate information about the overall effectiveness of an I/M program. In addition, the proposal would amend the conditions relating to the program evaluation testing requirements that were part of the conditional interim approval actions taken on the I/M State Implementation Plans (SIPs) for the Commonwealths of Pennsylvania and Virginia and the State of Delaware, consistent with the proposed rule change. Based on the proposed rule and for the reasons discussed below, EPA is making an interim final determination by this action that the commitment dates concerning the major deficiencies in Virginia's I/M SIP should be extended out to June 16, 1998. The June 16, 1998 date is one year from the effective date of the final conditional interim approval of the I/M program, the outside date allowed under the Clean Air Act (CAA) for conditional approvals. Although this action is effective upon publication, EPA will take comment on whether this interim final determination should remain in place. In addition, this action will amend the commitment dates pertaining to the major deficiencies cited in the rulemaking section of the final conditional interim approval for the Commonwealth of Virginia's I/M program.

DATES: Effective Date: September 19, 1997. Comment Date: October 20, 1997.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Boylan,(215) 566–2094, at the EPA Region III office or via e-mail at boylan.jeffrey@ epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION:

I. Background

On November 6, 1996, (61 FR 57343) EPA proposed conditional interim approval of the Northern Virginia Enhanced Inspection and Maintenance program. In response to that proposal, the DEQ submitted a letter dated December 4, 1996, to EPA with a commitment to correct all of the major deficiencies cited in the proposal by September 15, 1997. After receiving this commitment letter, EPA proceeded with final rulemaking on the Virginia I/M program and published an interim final rule on May 15, 1997 (62 FR 2674). The three major deficiencies conditioned in the final rulemaking tasked Virginia to accomplish the following by September 15, 1997: (a) Perform and submit the new modeling demonstration illustrating how its program will meet the enhanced performance standard; (b) submit as a SIP amendment a final Virginia I/M regulation which requires a yearly mass-emission transient test based evaluation on 0.1% of the subject fleet; and (c) adopt and submit a final Virginia I/M regulation which requires and specifies detailed approvable test procedures and equipment specifications for all the evaporative and exhaust tests used in the enhanced I/M program.

EPA is proposing elsewhere in today's **Federal Register**, to further revise the rule related to state air quality implementation plans for Motor Vehicle Inspection and Maintenance (I/M) programs (40 CFR part 51, subpart S) (hereafter referred to as the I/M rule; see 57 FR 52950) to provide greater flexibility to states in conducting program evaluation. That proposed rulemaking proposes to: (1) Amend the I/M program evaluation requirements at 40 CFR 51.353(c) to remove the current requirement that the tailpipe portion of the program evaluation can be performed only by conducting mass emission transient testing (METT), (2) create a new evaluation requirement at 40 CFR 51.353(c) that will instead require states to conduct program evaluation testing using a sound evaluation methodology capable of providing accurate information about I/M program effectiveness, such evaluation to begin no later than November 30, 1998, (3) amend the requirement that the program evaluation tests be conducted ''at the time initial test is due'' to clarify that states are not barred from using alternative sample gathering methods like roadside pullovers by defining ''the time of initial test'' as any time prior to repairs during the inspection cycle under consideration, (4) delete the current conditions on Pennsylvania's and Virginia's conditional interim I/M approvals and Delaware's conditional approval (40 CFR part 52, subpart NN, § 52.2026(a)(2), 40 CFR part 52, subpart V, § 52.2450(b)(2), and 40 CFR part 52, subpart I, § 52.424(b), respectively) that require submission of program

evaluation regulations under the existing I/M rule, and (5) impose a new condition on Pennsylvania's, Virginia's, and Delaware's I/M approvals that will require them to submit I/M regulations which include a requirement to perform a program evaluation using a sound evaluation methodology meeting the amended requirements of 40 CFR 51.353(c) by November 30, 1998, if commitments are submitted by October 15, 1997 to submit such regulations within such time frame.

Since today's proposed amendments broaden the program evaluation requirement to include other sound evaluation methodologies, it is also appropriate to propose withdrawing these METT-based program evaluation conditions on the interim approval notice for Virginia. In place of these original conditions, EPA proposes to impose new conditions that will require the commonwealths instead to submit program evaluation regulations that meet the more flexible requirements of the amended 40 CFR 51.353(c). Virginia must submit a commitment by October 15, 1997, to adopt and submit the required evaluation methodology requirements by November 30, 1998 in order to support EPA's imposition of the new proposed conditions under section 110(k)(4) of the Act. However, Virginia's final conditional interim approval requires the Commonwealth to meet its METT-based program evaluation condition before EPA will be able to finalize today's proposed action. The current deadline for Virginia's meeting this condition is September 15, 1997, which is based upon a commitment made by the Commonwealth prior to EPA's decision to revise the program evaluation requirement. The September 15, 1997 date does not reflect the full twelve month period available under section 110(k)(4) of the statute for meeting conditions which, in the case of Virginia, would be June 16, 1998. Virginia has recently committed to submit program evaluation provisions meeting the existing I/M rule by June 16, 1998 should EPA fail to take final action on today's proposal. For these reasons, EPA is taking an interim final action to extend the deadline for Virginia's existing program evaluation condition to June 16, 1998. EPA believes it is appropriate to take such action without prior public notice and comment because it would be contrary to the public interest to require Virginia to comply with a condition based on a requirement that EPA has proposed to amend, and because Virginia's recent commitment is consistent with the statute.

On September 2, 1997, the DEQ submitted a recommitment letter officially requesting that the EPA extend all the commitment dates relevant to the major deficiencies as cited in the December 4, 1996 letter to June 16, 1998. This date represents a time frame one year from the effective date of the final conditional interim approval of Virginia's I/M program published on May 15, 1997. In light of the delay in the program evaluation, occasioned by EPA's proposal, EPA believes that it is appropriate to extend all the commitment dates to June 16, 1998, consistent with section 110(k)(4) of the CAA.

II. EPA Action

Based on the proposed rule to amend the I/M Program Requirements set forth in today's **Federal Register** and to properly satisfy the conditions in its final interim conditional approval, DEQ submitted a recommitment officially requesting that the September 15, 1997 deadline to remedy the major deficiencies of the I/M program be extended to June 16, 1998. EPA believes that the Commonwealth of Virginia is justified in its request. Furthermore, prior to the time EPA can take final action on today's proposed rule to amend the I/M rule, Virginia would be required to comply with a condition in the final I/M rulemaking, which EPA has proposed to alter. For all the above reasons, EPA is taking this interim final action finding that it is appropriate to allow the Commonwealth of Virginia to remedy all the major deficiencies within 12 months of the effective date of the I/M interim final rule. In addition, this action will amend the commitment dates pertaining to the major deficiencies cited in the rulemaking section of the final conditional interim approval for the Commonwealth of Virginia's I/M program.

Today EPA is also providing the public with an opportunity to comment on this interim final action. If based on any comments on this action EPA determines that this final action was inappropriate EPA will take further action to withdraw this interim final action, thereby reimposing the September 15, 1997 deadline for meeting the commitments. The final conditional interim approval would then convert to a disapproval based on the State's failure to timely comply with the conditions.

III. Administrative Requirements

In order to remedy conditions of their I/M program for the reasons described above, EPA has determined that the Commonwealth of Virginia is justified in its extension request and that the State is being afforded a time frame which is no longer than other States with pending final conditional approvals. Therefore, EPA is invoking the good clause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[1] The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest as EPA would be requiring Virginia to comply with the condition in question based on a requirement that EPA has proposed to amend. Moreover the section 110(k)(4) of the CAA allows states up to one year after the date of approval of a SIP revision to adopt specific enforceable measures to meet its commitments. Therefore, EPA believes it is necessary to use the interim final rulemaking process to extend the commitment dates from September 15, 1997 to June 16, 1998 while EPA completes its rulemaking processes on Virginia's I/M program and on the proposed I/M rule change.

Executive Order 12866

This action has been delegated to the Regional Administrator for decision-making and signature. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

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

Because this action is not subject to prior notice and comment requirements (see above), it is not subject to RFA. In any event, today's action merely extends the commitment dates to June 16, 1998 for the Commonwealth of Virginia to satisfy the major deficiency conditions already cited in I/M final conditional interim rule. Therefore, this action will not have a significant impact on a substantial number of small entities.

[1] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

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

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 1997.

Filing a petition for reconsideration by the Administrator of this interim final determination of Virginia's enhanced I/M SIP does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Administrative Procedures Act).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 12, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2450 is amended by revising the first sentence of paragraphs (b)(1), paragraph (b)(2), and the first sentence of paragraph (b)(3) to read as follows:

§ 52.2450 Conditional Approval.

* * * * *

(b) * * *

(1) The Commonwealth must perform and submit the new modeling demonstration that illustrates how its program will meet the relevant enhanced performance standard by June 16, 1998. * * *

(2) The Commonwealth must submit to EPA as a SIP amendment, by June 16, 1998, the final Virginia I/M regulation which requires a METT-based evaluation be performed on 0.1% of the subject fleet each year as per 40 CFR 51.353(c)(3) and which meets all other program evaluation elements specified in 40 CFR 51.353(c), including a program evaluation schedule, a protocol for the testing, and a system for collection and analysis of program evaluation data.

(3) By June 16, 1998, Virginia must adopt and submit a final Virginia I/M regulation which requires and which specifies detailed, approvable test procedures and equipment specifications for all of the evaporative and exhaust tests to be used in the enhanced I/M program. * * *

* * * * *

[FR Doc. 97–24945 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–21–1–7345a; FRL–5894–4]

Approval and Promulgation of State Implementation Plan: Employee Commute Options (Employer Trip Reduction) Program for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA is removing the Texas Employee Commute Options (ECO) rule from the State Implementation Plan (SIP) revision submitted by the State of Texas for the purpose of establishing an ECO program (also known as the Employer Trip Reduction (ETR) program). This action relieves the State from mandatory implementation of the ECO program in the Houston-Galveston ozone nonattainment area. The authority for this removal action is based on Public Law 104–70 and the subsequent EPA policy issued on April 23, 1996. This legislation allows the states to remove such provisions from the SIP, or withdraw their submission, if the state notifies the Administrator, in writing, that the state has undertaken, or will undertake, one or more alternative methods that will achieve emission reductions equivalent to those to be achieved by the removed or withdrawn provisions.

DATES: This action is effective on November 18, 1997, unless adverse or critical comments concerning this action are submitted and postmarked by October 20, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments must be submitted to Mr. J. Behnam, P.E., Air Planning Section (6PDL), Environmental Protection Agency,Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Copies of the State ECO withdrawal request are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone: (214) 665–7214.

Air and Radiation Docket and Information Center, Environmental

Protection Agency, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E., Air Planning Section (6PDL), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the 1990 Clean Air Act (the Act) required employers with 100 or more employees in the Houston-Galveston ozone nonattainment area to participate in a trip reduction program. Section 182(d)(1)(B) required that employers submit ETR compliance plans to the State two years after the SIP is submitted to the EPA. These compliance plans were intended to ''convincingly demonstrate'' that within four years after the SIP is submitted, the employer will achieve an increase in the average passenger occupancy of its employees who commute to work during the peak period by not less than 25 percent above the average vehicle occupancy of the nonattainment area.

On November 13, 1992, the Governor of Texas submitted a SIP revision for approval of the ECO regulation which was adopted by the State on October 16, 1992. On October 18, 1993, EPA proposed approval of the Texas ECO SIP in the **Federal Register** (FR) because it met the requirements of section 182(d)(1)(B) of the Act. The EPA issued its final approval of the original Texas ECO SIP revision in a **Federal Register** action on March 7, 1995.

Public Law 104–70 allows states to remove provisions for ECO programs from their SIPs. The state must notify the appropriate EPA Regional Administrator, in writing, that it will exercise this option and will use alternative methods to achieve emission reductions equivalent to those which would be achieved in the ECO program. The April 23, 1996, EPA policy memorandum specifies that the state's letter requesting removal of its ECO program from an approved SIP must include an estimate of the emission reductions to have been provided by the ECO program and explain the basis for this estimate. Also, the state is required to give the estimated emission reduction from the state's substitute measures to be used in place of its ECO program.

II. State Submission and EPA Evaluation

Pursuant to section 182(d)(1)(B) of the Act, the SIP was submitted by Texas to satisfy the statutory mandate that an ECO Program be established for employers with 100 or more employees, such that compliance plans developed by such employers are designed to convincingly demonstrate an increase in the average passenger occupancy of their employees who commute to work during the peak period, by no less than 25 percent above the average vehicle occupancy of the nonattainment area. In a letter dated September 23, 1996, Governor George W. Bush requested removal of the ECO provisions from the SIP. This request was based on Public Law 104–70, signed by President Clinton on December 23, 1995, which amended the 1990 Clean Air Act so that previously mandated ECO programs are now at the option of the states. The removal of the ECO SIP revision and the associated ECO plan submission date depends on identifying equivalent emissions reductions.

The State's request for removal of the ECO program indicated that the State would use the emission reductions from its motor vehicle inspection/maintenance (I/M) program, called Texas Motorist's Choice (TMC), as the emission offset. The reductions produced by the I/M program were to offset the volatile organic compound (VOC) emission reductions attributed to the ECO program in the 15 percent and 9 percent rate-of-progress (ROP) SIP revisions for the Houston/Galveston ozone nonattainment area. According to the State's modeling, the TMC program would have produced excess emission reductions of 8.30 tons per day in 1996 for the 15 percent ROP SIP and 10.52 tons per day in 1999 for the 9 percent ROP SIP. These reductions were intended to offset the 1.81 tons per day and 1.02 tons per day, respectively, which were claimed in the original ROP SIPs for the ECO program. However, the I/M rule (60 FR 48029) allows the State flexibility to design an I/M program that would meet the EPA's mandated low enhanced performance standards. The TMC I/M program meets the I/M flexible rule and is the federally mandated program for the State of Texas. Use of the excess emissions credits from the TMC I/M program is not consistent with EPA's interpretation of the I/M rule. The I/M rule at 40 CFR 51.351(g) entitled ''Alternate Low Enhanced I/M Performance Standard'' (60 FR 48035) specifies as a requirement that in order to be eligible for the low enhanced program, this program must provide sufficient reduction to allow for approval of the State's 15 and 9 percent SIPs. The Texas' 15 and 9 percent SIPs take emissions credits for the TMC I/M program, and therefore, there is no excess emissions from the TMC I/M program to offset the emissions reductions claimed for the ECO program in the original 15 and 9 percent ROP SIPs.

Subsequently, EPA conferred with the State to clarify the Texas emission offset approach. The State submitted a letter (received on March 28, 1997) which clarified the State emissions offset approach in the ROP SIPs. Based on this clarification, the State's offset for emissions reductions from the ECO program will come from the total excess emissions reductions identified from all control measures in the 15 percent and 9 percent ROP SIPs (23.73 tons per day and 10.69 tons per day, respectively). These reductions offset the ECO emissions reductions of 1.81 tons per day and 1.02 tons per day claimed in the original 15 percent and 9 percent ROP SIPs, respectively.

The EPA believes that it was necessary to offset the ECO emissions by non-federally-mandated control measures, and emissions reductions from the TMC I/M program, which is a federally mandated program as discussed above, cannot be used to offset the emissions reductions claimed in the original ROP SIPs. The EPA has determined that Texas' approach has adequately offset the ECO emissions reductions and meets the intended purpose of the EPA ECO Policy memorandum. Therefore, EPA is removing the Texas ECO rule, incorporated by reference, from Code of Federal Regulations and relieves the State of Texas from implementation of Texas ECO program, approved on March 7, 1995.

III. Final Action

In this action, EPA is removing the Texas ECO rule, which was submitted by the Governor to EPA on November 13, 1992, and approved by EPA on March 7, 1995, from the Code of Federal Regulations. The EPA has determined that the State of Texas has satisfied the requirements of the EPA ECO policy by offsetting the ECO emissions reductions claimed in the original 15 and 9 percent ROP SIPs by the excess emissions reductions form non-federally-mandated control measures.

The EPA is publishing this final approval action without advanced notice of proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this

Federal Register publication, EPA is simultaneously proposing to approve this SIP revision should adverse or critical comments be filed. This action will be effective November 18, 1997, unless adverse or critical comments concerning this action are submitted and postmarked by October 20, 1997.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received concerning this action will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective November 18, 1997.

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

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. See 46 FR 8709. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA from basing its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, 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 to State, local, or tribal governments in the aggregate; or to 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 action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Petition for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 1997. Filing a petition for reconsideration of this final rule by the Regional Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: August 12, 1997.

Jerry Clifford,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

§ 52.2270 [Amended]

2. Section 52.2270 is amended by removing and reserving paragraph (c)(91).

[FR Doc. 97–24843 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AL–40–7142; FRL–5895–5]

Approval and Promulgation of Implementation Plans for the State of Alabama

Approval and Promulgation of Implementation Plans for the State of Alabama—Proposed Disapproval of the Request to Redesignate the Birmingham, Alabama (Jefferson and Shelby Counties) Marginal Ozone Nonattainment Area to Attainment and the Associated Maintenance Plan.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is disapproving the State of Alabama's request submitted through the Alabama Department of Environmental Management's (ADEM) to redesignate the Birmingham marginal ozone nonattainment area (Jefferson and Shelby Counties) to attainment and the associated maintenance plan as a revision to the state implementation plan (SIP). Prior to the close of the administrative record, EPA determined that the area registered a violation of the ozone national ambient air quality standard (NAAQS). As a result, the Birmingham area no longer meets the

statutory criteria for redesignation to attainment of the ozone NAAQS.

EFFECTIVE DATE: September 19, 1997.

ADDRESSES: The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file AL–40–7142. The Region 4 office may have additional background documents not available at the other locations. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 4, Air Planning Branch, 1 Forsyth, SW, Atlanta, Georgia 30303. Kimberly Bingham, (404) 562–9038.

Alabama Department of Environmental Management, 1751 Congressman, W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham at (404) 562–9038.

SUPPLEMENTARY INFORMATION: On March 16, 1995, ADEM submitted a request to EPA to redesignate the Birmingham, Alabama, marginal ozone nonattainment area to attainment. On that date, they also submitted a maintenance plan for the area as a revision to the Alabama SIP.

According to section 107(d)(3)(E) of the Clean Air Act (CAA), 42 U.S.C. 7407(d)(3)(E), redesignation requests must meet five specific criteria in order for EPA to redesignate an area from nonattainment to attainment:

1. The Administrator determines that the area has attained the ozone NAAQS;
2. The Administrator has fully approved the applicable implementation plan for the area under section 110(k);
3. The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollution control regulations and other permanent and enforceable reductions;
4. The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and
5. The State containing such area has met all requirements applicable to the area under section 110 and part D.

The EPA provided guidance on redesignation in the General Preamble for the Implementation of the Clean Air Act Amendment of 1990, 57 FR 13498 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992). The primary memorandum providing further guidance with respect to section 107(d)(3)(E) of the amended Act is dated September 4, 1992, and issued by the Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Calcagni Memorandum).

The State submitted its request for redesignation on March 16, 1995. The request included information showing that the Birmingham area had three years of air quality attainment data from 1990–1993. The area continued to maintain the ozone NAAQS through 1994. The submittal was rendered administratively complete on April 11, 1995. Supplemental information was submitted on July 21, 1995. A direct final rule proposing approval of the redesignation request was signed by the Regional Administrator and forwarded to the EPA Federal Register Office on August 15, 1995 for publication. The direct final rule as drafted contained a thirty day period for public comment on the proposed approval of the redesignation request.

Prior to publication of the document, EPA determined that the area registered a violation of the ozone NAAQS on August 18, 1995. EPA therefore directed the Office of the Federal Register to recall the proposed direct final rule from publication. The ambient data which formed the basis of the registered violation was quality assured according to established procedures for validating such monitoring data. The State of Alabama does not contest that the area violated the NAAQS for ozone during the 1995 ozone season. As a result, the Birmingham area no longer meets the statutory criteria for redesignation to attainment of the ozone NAAQS found in section 107(d)(3)(E)(I) of the CAA. After the violations had been quality-assured, EPA issued a notice of proposed rulemaking proposing to disapprove the redesignation request, 62 FR 23421 (April 30, 1997). The maintenance plan SIP revision is also not approvable because its demonstration is based on a level of ozone precursor emissions in the ambient air thought to represent an inventory of emissions that would provide for attainment and maintenance. That underlying basis of the maintenance plan's demonstration is no longer valid due to the violation of the NAAQS that occurred during the 1995 ozone season.

The Administrator is prohibited under section 107(d)(3)(E)(I) from redesignating an area to attainment when it has not attained the NAAQS. Furthermore, section 107(d)(1)(A) defines an attainment area as ''any area that meets'' the NAAQS. Consequently, if a violation occurs prior to EPA's final action on redesignation, the area is no longer in attainment and does not meet the definition of an attainment area under section 107. In the September 4, 1992, policy memorandum of John Calcagni, EPA stated: ''Regions should advise States of the practical planning consequences if EPA disapproves the redesignation request *or if the request is invalidated because of violations recorded during EPA's review.*'' See for example, 59 FR 22757 dated May 3, 1994, disapproving the redesignation of Richmond, Virginia due to violations occurring after the proposed approval; 61 FR 50718 dated September 27, 1996, disapproving the redesignation request for the Kentucky portion of the Cincinnati-Hamilton nonattainment area; and 61 FR 19193 dated May 1, 1996, disapproving of the redesignation request for Pittsburgh, Pennsylvania.

Request for Comments

EPA published a document on April 30, 1997, (62 FR 23421), proposing disapproval of the maintenance plan and redesignation request and soliciting comments on the disapproval and relevant issues. EPA received comments on the proposal. Those comments and the response thereto are summarized below.

Comment #1—''EPA inappropriately considered monitored exceedances which occurred after the redesignation request was submitted. If the Agency had considered only the monitor data which preceded the redesignation request, then EPA should have allowed the direct final rule granting redesignation which had been signed by the regional administrator to be published in the **Federal Register**. If EPA had taken this action, then the Birmingham area could possibly be enjoying attainment status at this time.''

Response—Section 107(d)(1)(A)(ii) of the Act provides that an attainment area is one that ''meets'' the NAAQS. Section 107(d)(3)(E)(I) of the Act prohibits EPA from redesignating an area to attainment unless EPA determines that the area ''has attained'' the NAAQS. By use of the words ''has attained'' (in the present perfect tense), Congress expressed its intent that EPA may not redesignate an area unless it determines that the area is attaining the standard at the time EPA takes its final action. It is not sufficient that at some previous time the area ''had'' attained the NAAQS. EPA must find that the area, in the words of the statute, ''has'' attained the NAAQS. Congress expressed the same intent in the definition of an attainment area in CAA section 107(d)(1)(A)(ii) as an area

that meets the NAAQS. Therefore, contrary to the commenters' contention, it was not ''inappropriate'' for EPA to consider ''exceedances which occurred after the redesignation request was submitted.'' Indeed, EPA was obligated to consider such data.

EPA's redesignation policy (Calcagni Memo) provides that if monitoring data indicates a violation of the NAAQS before a redesignation action is effective, the redesignation should not be approved. EPA may not lawfully redesignate a nonattainment area to attainment unless it is attaining the air quality standard at the time EPA takes its final action. Thus, it is not sufficient that an area show that it had attained the standard prior to submission of its redesignation request. If, during the pendency of EPA's review of the redesignation request, exceedances occur that EPA determines constitute a violation, EPA is obligated to consider those in determining whether the area is attaining the standard. Thus, EPA was obligated to disapprove the request to redesignate the Birmingham nonattainment area, since it could not determine that the area had attained the standard at the time of the final rulemaking.

EPA recently reaffirmed its adherence to the principle that an area may not be redesignated to attainment if it violates the standard while its request for redesignation is pending in a notice of proposed correction to the designation of LaFourche Parish, Louisiana (62 FR 38237, July 17, 1997). After publication of a direct final notice approving the area's redesignation request, but prior to its effective date, a violation of the NAAQS for ozone was recorded at an area monitor. The direct final notice restated EPA's interpretation of the statute: ''If the monitoring data records a violation of the NAAQS before the direct final action is effective, approval of the redesignation will be withdrawn and a proposed disapproval substituted for the direct final approval (60 FR 43021–43022, August 18, 1995). Nonetheless, EPA did not withdraw its approval of the redesignation action, and the area was redesignated to attainment. EPA's proposed correction notice states that allowing the redesignation to become effective was in conflict with the statute, EPA policy, and with the statement in the direct final notice itself.

The LaFourche redesignation was also at odds with other actions regarding areas that EPA determined had violated the NAAQS while their redesignation requests were pending: Richmond, Virginia, (59 FR 22757, May 3, 1994) (final notice of disapproval); the Pittsburgh-Beaver Valley nonattainment area, (61 FR 19193, May 1, 1996) (final notice of disapproval); the Kentucky portion of the Cincinnati-Hamilton nonattainment area, (61 FR 50718, September 27, 1996) (final notice of disapproval); and the Ohio portion of the Cincinnati-Hamilton nonattainment area, (62 FR 7194, February 18, 1997) (notice of proposed disapproval).

Based on the statute, policy, and history of EPA rulemakings, it is clear that redesignating Birmingham to attainment in the face of monitored violations would be an error. EPA was obliged to disapprove the request to redesignate.

The United States Court of Appeals for the Third Circuit recently upheld EPA's interpretation of its statutory obligation to consider exceedances occurring after submission of redesignation requests. *Southwestern Pennsylvania Growth Alliance* v. *Browner*, No. 96–3364 (July 28, 1997). The Court affirmed the application of this interpretation even as to exceedances that occurred more than eighteen months after the submission of a redesignation request.

Comment #2—''In our opinion, EPA failed to consider appropriately the local extreme weather conditions which occurred during the summer of 1995 and the associated ozone exceedances. ADEM pointed out to EPA that July 1995 had more days above 95 degrees Fahrenheit than any July in over 60 years and that August 1995 was the hottest August on record. The nine day period between August 10 and August 18 is the third highest such event in over 60 years. Seven of the eleven exceedances measured in Birmingham in 1995 occurred during this nine day period.''

Comment #3—''It is EPA's own policy to consider exceptional weather events regarding achievement of ozone air quality standards. Yet, EPA stated in a January 11, 1996, letter to ADEM that the summer of 1995 was not the hottest summer in the last ten years *nationally*, and that the conditions during 1995 cannot be considered an exceptional weather event.''

Responses—The commenters contended that even if EPA were correct in considering violations that occurred after the redesignation request was submitted, EPA should have found such exceedances ''attributable to extreme weather.'' But even if 1995 were determined to have been an exceptionally hot year for Birmingham (and 1990, only five years earlier, was even hotter), this provides no grounds for excluding quality-assured monitored exceedances of the ozone standard. EPA's applicable regulations governing ozone attainment provide no basis for excluding data due to exceptionally hot weather (See 40 CFR 50.9 Appendix D and H and part 58). By contrast, the regulations regarding particulate matter expressly authorize adjustments to take into account exceptional events (See 40 CFR 50.6 and Appendix K, section 2.4 ''Adjustments for Exceptional Events and Trends''). The methods used by EPA to determine whether an area is attaining the ozone standard were decided upon through notice and comment rulemaking and EPA is bound by those methods until they are changed through further rulemaking on that subject.

EPA's ''Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events'' sets forth guidance regarding exceptional events that may sufficiently influence the data for various criteria pollutants so as to provide a basis for possible exclusion of data for various regulatory purposes. ''The guideline has no regulatory or legal significance regarding use of any air quality data. Use or non-use of air quality data, whether flagged or not, must be subject to full public disclosure and rulemaking procedures.'' Guideline at 5. Thus, use or non-use of the data is determined by the appropriate statutory or regulatory authority, which does not provide for exclusion of ozone data based on hot weather. Moreover, only one of the l8 exceptional events defined in the Guideline applies to ozone data—stratospheric ozone intrusion. A stratospheric ozone intrusion occurs when a parcel of air originating in the stratosphere falls directly to the surface of the earth (such as occasionally happens during severe thunderstorms). Such events are infrequent, very localized, and of short duration. No allegation that a stratospheric ozone intrusion occurred has been made with respect to Birmingham. Other climatological occurrences, including stagnations and inversions, were considered and rejected as possible exceptional events for data flagging purposes. Thus, neither EPA's regulations nor guidance furnish a justification for excluding quality assured ozone exceedances from consideration based upon a finding that they are an ''extreme weather event'' due to hot weather. It is undisputed that Birmingham experienced eleven exceedances during the summer of 1995.

Hot weather does not provide a basis for excluding documented exceedances from consideration. While EPA recognizes that high temperatures can

play a role in ozone formation, quality assured data reflect the quality of the air people are breathing. Exceedances of the standard have been determined to cause measurable health effects in healthy individuals. Compliance with the ozone NAAQS is determined using three consecutive years of data to account for year-to-year variations in emissions and meteorological conditions. These determinations were made pursuant to long-standing EPA regulations, and this rulemaking is not the appropriate forum for comments regarding the ozone standard or the methodology for determining attainment of the standard. Even if temperatures were unusually high in 1995 (and they were not as high as in 1990), in light of the methodology used to determine attainment of the ozone NAAQS, there is no basis for ignoring the violations monitored during the time period. Because the area has not adequately reduced its VOC and NO_X emissions, it is subject to ozone exceedances whenever meteorological conditions are conducive to ozone formation. The nine exceedances that occurred in the Birmingham area in 1996 proves that temperature is not the only precursor for ozone formation. One of the goals of the CAA is to minimize the health risks that people encounter. Since meteorological conditions cannot be controlled, the way to reduce health risks due to ozone in the Birmingham area is to reduce the anthropogenic emissions of VOC and NO_X. (See 61 FR 19193, 191195–19197, May 1, 1996) (disapproval of Pittsburgh-Beaver Valley request for redesignation to attainment for ozone).

Moreover, in a study entitled ''Clean Air Act Ozone Design Value Study, Final Report, dated December, 1994 EPA considered the impact of meteorology in ozone formation and found that ''high temperature by itself is not sufficient to produce high ozone concentrations'' (pages 7–18). It also determined ozone design values should not be adjusted for meteorology, since ''compliance with the ozone standard is judged on the basis of the actual ambient air quality measurements. It is the actual ambient air quality, not a hypothetical adjusted value, which is of concern with respect to the potential for adverse health impacts.'' It concluded that a meteorologically adjusted design value may not be the best indicator of the air people actually breathe, and is a major departure from current EPA policy.

In *Southwestern Pennsylvania Growth Alliance* v. *Browner*, No. 96.3364 (July 28, 1997), the United States Court of Appeals for the Third Circuit recently rejected petitioners' argument that an allegation that exceedances were caused by transport should result in excluding data from consideration in redesignation actions.

''Accordingly, we accept the EPA's position that the origin of the ozone that caused exceedances at issue is legally irrelevant.'' Similarly, here, the allegation that hot weather may have contributed to exceedances is legally irrelevant.

Final Action

EPA is disapproving the State of Alabama's March 16, 1995, redesignation request and maintenance plan SIP revision. The Agency has reviewed this request for redesignation and approval of the maintenance plan as a revision of the Federally-approved SIP for conformance with the provisions of the CAA. The Agency has determined that this action does not conform with the statute as amended and should be disapproved.

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

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this regulatory action pursuant to E.O. 12866.

Regulatory Flexibility Act

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

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

EPA's denial of the State's redesignation request under section 107(d)(3)(E) of the CAA does not affect any existing requirements applicable to small entities nor does it impose new requirements. The area retains its current designation status and will continue to be subject to the same statutory requirements. Therefore, the Regional Administrator certifies that the disapproval of the redesignation request will not affect a substantial number of small entities.

Unfunded Mandates

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

EPA has determined that the disapproval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action disapproves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

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

Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 18, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 81

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

Dated: September 5, 1997.

A. Stan Meiburg,

Acting Regional Administrator.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart B—Alabama

2. Section 52.66 is added to read as follows:

§ 52.66 Control Strategy: Ozone.

The redesignation request submitted by the State of Alabama, on March 16, 1995 for the Birmingham marginal ozone nonattainment area from nonattainment to attainment was disapproved on September 19, 1997.

[FR Doc. 97–24942 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300550; FRL–5744–2]

RIN 2070–AB78

Cloransulam-methyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of cloransulam-methyl in or on soybeans, soybean forage and soybean hay. DowElanco requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective September 19, 1997. Objections and requests for hearings must be received by EPA on or before November 18, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300550], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300550], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300550]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 26, 1997 (52 FR 14421)(FRL–5592–8), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) 5F4560 for tolerance by DowElanco, 9330 Zionville Road, Indianapolis, IN 46268-1054. This notice included a summary of the petition prepared by DowElanco. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180 be amended by establishing tolerances for residues of the herbicide cloransulam-methyl, *N*-(2-carboxymethyl-6-chlorophenyl)-5-ethoxy-7-fluoro-(1,2,4)-triazolo[1,5c]-pyrimidine-2-sulfonamide, in or on soybean seed at 0.02 parts per million (ppm), soybean forage at 0.1 ppm, and soybean hay at 0.2 ppm. The tolerance expression is being editorially amended to read cloransulam-methyl plus its acid, cloransulam, calculated as parent ester.

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable

certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute'', ''short-term'', ''intermediate term'', and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD

or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants <1 year old) was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of cloransulam-methyl, *N*-(2-carboxymethyl-6-chlorophenyl)-5-ethoxy-7-fluoro-(1,2,4)-triazolo[1,5c]-pyrimidine-2-sulfonamide, and to make a determination on aggregate exposure, consistent with section 408(b)(2), tolerances for residues of cloransulam-methyl plus its acid, cloransulam, calculated as parent ester on soybean seed at 0.02 ppm, soybean forage at 0.1 ppm, and soybean hay at 0.2 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cloransulam-methyl are discussed below.

1. A rat acute oral study with a LD_{50} greater than 5,000 milligrams (mg)/kilogram (kg) for males and for females.
2. A 90–day mouse feeding study with a No Observed Effect Level (NOEL) of 50 mg/kg/day for males and a Lowest Observed Effect Level (LOEL) of 100 mg/kg/day for males based on increased levels of alkaline phosphatase and increased liver weights and an increase in the size of hepatocytes.
3. A 21–day rabbit dermal study with a Dermal Irritation NOEL greater than 1,000 mg/kg/day for males and females and with a Systemic NOEL of 500 mg/kg/day (males and females) and a Systemic LOEL of 1,000 mg/kg/day based on decreased red cell count, hemoglobin and hematocrit, anisocytosis and macrocytosis of red cells for females.
4. A carcinogenicity study in mice with a NOEL of 10 mg/kg/day for both sexes and a LOEL of 100 mg/kg/day (males and females) based on a decrease in renal tubule vacuolation in male mice, increased size of centrilobular and midzonal hepatocytes accompanied by altered tinctorial properties in females and centrilobular hepatocyte hypertrophy in males. Total tumor incidence (adenoma + carcinoma) was not increased by dosing with cloransulam-methyl.
5. A rat chronic feeding/carcinogenicity study with a NOEL of 75 mg/kg/day and LOEL of 325 mg/kg/day for both sexes based on significant increase in hemoglobin, hematocrit, and red cell count in males, activities of the liver enzymes aspartate and alanine aminotransferase as well as alkaline phosphatase were decreased in males, cholesterol was decreased in females, specific gravity of urine was decreased in females, increased relative wight in liver and relative weight of testes in males, males exhibited an increased incidence of collecting duct hypertrophy and females exhibited increased incidence of vacuolation in the kidney. There was no evidence of carcinogenicity for cloransulam-methyl in this study.
6. A dog chronic feeding study with a NOEL of 10 mg/kg/day and a LOEL of 50 mg/kg/day based on hepatocellular hypertrophy and accumulation of pigment, and increased activity of alkaline phosphatase and alanine aminotransferase liver enzymes and decrease in albumin and total bilirubin.
7. A two-generation reproduction study in rats with a Parental Systemic Toxicity NOEL of 10 mg/kg/day and a Parental Systemic Toxicity LOEL of 100 mg/kg/day ppm based on hypertrophy of the collecting ducts and vacuolation consistent with fatty changes. The Reproductive and Developmental NOEL is 100 mg/kg/day and the Reproductive and Developmental LOEL is 500 mg/kg/day based on decreased live pups and increased pup deaths.
8. A developmental toxicity study in rabbits with a Maternal NOEL of 100 mg/kg/day and Developmental NOEL of 300 mg/kg/day (Highest Dose Tested [HDT]) and a Maternal LOEL of 300 mg/kg/day based on reduced weight gain, food efficiency, increased abortions, and cesarean section observations.
9. A developmental toxicity study in rats with a Maternal NOEL and Developmental NOEL of 1,000 mg/kg/day (HDT).
10. In a mouse micronucleus assay no lethality or evidence of target tissue cytotoxicity and no significant increase in frequency of micro nucleated polychromatic erythrocytes were observed. In two cytogenetic assays, cloransulam-methyl did not induce either cytotoxic or clastogenic effects in rat lymphocytes. In a cultured chinese hamster ovary cell study, cloransulam-methyl was neither cytotoxic nor mutagenic.
11. A rat metabolism study showed that radio labeled cloransulam-methyl was excreted mainly via urine in females and urine and feces in males. Less than 0.1% of administered dose was found in any tissue at 72 hours post-dose.

B. Toxicological Endpoints

1. *Acute toxicity*. EPA has concluded that a risk estimate is not required since no endpoint exists to suggest any evidence of significant toxicity from one-day or single-event exposure.
2. *Short - term and intermediate - term toxicity*. EPA has concluded that available evidence does not indicate any evidence of significant toxicity from short and intermediate term exposure.
3. *Chronic toxicity*. EPA has established the RfD for cloransulam-methyl at 0.1 milligrams/kilogram/day (mg/kg/day). This RfD is based on the systemic NOEL of 10 mg/kg/day in the dog chronic feeding study with a 100-fold safety factor to account for interspecies extrapolation and intraspecies variability.
4. *Carcinogenicity*. The Health Effects Division Carcinogenicity Peer Review Committee has classified cloransulam-methyl as ''not likely'' to be carcinogenic to humans based on the lack of carcinogenicity in rats and mice.

C. Exposures and Risks

1. *From food and feed uses*. The proposed tolerances would be the first tolerances established in 40 CFR part 180 for the residues of cloransulam-

methyl plus its acid, cloransulam, calculated as parent ester in or on raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from cloransulam-methyl as follows:

The dietary risk assessment uses very conservative assumptions that 100% of the soybeans will contain cloransulam-methyl residues and that these residues would be at the tolerance level. The theoretical maximum residue contribution (TMRC) from the proposed tolerances is 0.000007 mg/kg/day and utilizes 0.007 percent of the RfD for the overall U. S. population. For exposure of the most highly exposed subgroup in the population, non-nursing infants, the TMRC is 0.000033 mg/kg/day which utilizes 0.033 percent of the RfD.

2. *From drinking water.* Cloransulam-methyl concentration in surface water has been estimated by using the Generic Expected Environmental Concentrations (GENEEC) model. The worst case exposure estimate for surface water is 1.83 parts per billion (ppb). Based on the estimated exposures to Cloransulam-methyl from drinking water, the percentage of the RfD utilized for a child would be 0.183% of the Reference Dose (RfD). The exposure for a female would be 0.061% of the RfD.

3. *From non-dietary exposure.* There are no non-food uses of cloransulam-methyl currently registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended. No non-dietary exposures are expected for the general population.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Cloransulam-methyl is a triazolopyrimidine sulfonamide herbicide. Another member of this class is Flumetsulam. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

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

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

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute, short-term, and intermediate-term risk.* EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from acute, short-term or intermediate-term exposures from the use of cloransulam-methyl on soybeans.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to cloransulam-methyl from food and drinking water will utilize less than 0.061% of the RfD for females 20 years old (not pregnant - not nursing). For the major identifiable subgroup with the highest aggregate exposure, non-nursing infants, the aggregate exposure to cloransulam-methyl from food and drinking water will utilize less than 0.216% of the RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

E. Aggregate Cancer Risk for U.S. Population

EPA has classified cloransulam-methyl as ''not likely'' to be carcinogenic to humans based on the lack of carcinogenicity in rats and mice.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children.* a. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of cloransulam-methyl, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise

concerns regarding the adequacy of the standard MOE/safety factor.

b. *Developmental and Reproductive toxicity studies.* The pre- and post-natal toxicology data base for cloransulam-methyl is complete with respect to current toxicological data requirements. The results of these studies indicate that infants and children are not more sensitive to exposure, based on the results of the oral rat and rabbit developmental toxicity studies and the 2-generation reproductive toxicity study in rats. Therefore, EPA concludes that an additional ten-fold safety factor is not necessary.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to cloransulam-methyl from food and drinking water will utilize less than 0.216% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cloransulam-methyl residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of cloransulam-methyl in plants and animals is adequately understood for purposes of this tolerance.

B. Analytical Enforcement Methodology

An adequate analytical method, Capillary Gas Chromatography with Mass Spectrometry is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 1130A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–305–5937).

C. Magnitude of Residues

The nature of the residue in plants is adequately understood for the purposes of this tolerance. Based on the results of animal metabolism studies it is unlikely that significant residues would occur in secondary animal commodities from this use.

D. Rotational Crop Restrictions

No tolerances for inadvertent residues of cloransulam-methyl are required in rotational crops. The restrictions that appear on the labeling proposed for registration under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), as amended, are due to potential of phytotoxicity to susceptible plants.

E. International Residue Limits

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for cloransulam-methyl.

IV. Conclusion

The analysis for cloransulam-methyl using tolerance level residues for all population subgroups examined by EPA shows the use on soybeans will not cause exposure at which the Agency believes there is an appreciable risk. Based on the information cited above, EPA has determined that establishing tolerances for residues of cloransulam-methyl plus its acid, cloransulam, calculated as parent ester in or on soybean seed at 0.02 parts per million (ppm), soybean forage at 0.1 ppm, and soybean hay at 0.2 ppm will be safe; therefore, the tolerances are established as set forth below.

V. Objections and Hearing Requests

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

Any person may, by November 18, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300550] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

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

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 180

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

Dated: August 29, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. By adding § 180.514 to read as follows:

§ 180.514 Cloransulam-methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide, cloransulam-methyl, *N*-(2-carboxymethyl-6-chlorophenyl)-5-ethoxy-7-fluoro-(1,2,4)-triazolo[1,5c]-pyrimidine-2-sulfonamide, plus its acid, cloransulam, calculated as parent ester in or on the following raw agricultural commodities:

Commodity	Parts per million
Soybean, forage	0.1
Soybean, hay	0.2
Soybean seed	0.02

(b) *Section 18 emergency exemptions.* [Reserved]

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

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

[FR Doc. 97–24939 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[FRL–5871–3]

Texas:Final Authorization and Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA)

ACTION: Immediate final rule.

SUMMARY: Texas has revised its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed Texas' changes to its program and has made a decision, subject to public review and comment, that Texas' hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve Texas' hazardous waste program revisions. Texas' program revisions are available for public review and comment. In addition, today's document corrects technical errors made in the table of authorities published in the May 24, 1990, April 11, 1994 and April 12, 1994 authorization notices for Texas.

The EPA uses part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA Sections 3008, 3013 and 7003. Thus, EPA intends to codify the Texas authorized State program in 40 CFR part 272. The purpose of this action is to incorporate by reference EPA's approval of Texas' base hazardous waste program and its revisions to that program.

DATES: Final authorization for Texas' program revisions shall be effective December 3, 1997 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Texas' program revisions must be received by the close of business November 3, 1997. The corrections to the May 24, 1990, April 11, 1994, and April 12, 1994 authorization notices go into effect immediately. The incorporation by reference of certain Texas statutes and regulations was approved by the Director of the Federal Register as of December 3, 1997 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Copies of Texas' program revisions and materials EPA used in evaluating the revisions are available during 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses for inspection and copying: Texas Natural Resource Conservation Commission, 1700 N. Congress Avenue, Austin, TX 78711–3087; EPA Region 6 Library, First Interstate Bank Tower at Fountain Place, 1445 Rose Avenue, Dallas, Texas 65202, phone (214) 655–6444. Written comments referring to Docket Number TX96–1 should be sent to Alima Patterson, Region 6 Authorization Coordinator, Multi-Media Planning and Permitting Division, (6PD–G), EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Multi-Media Planning and Permitting Division (6PD–G), EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214)–665–8533.

SUPPLEMENTARY INFORMATION:

I. Authorization of State Initiated Changes

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter HSWA) allow States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive interim authorization for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 266, 268, 270, 273, and 279.

B. Texas

Texas initially received final authorization to implement its hazardous waste program on December 12, 1984, effective December 26, 1984 (49 FR 48300). This authorization was clarified in a notice published on March 26, 1985 (50 FR 11858). Texas received final authorization for revisions to its program in notices published in the **Federal Register** on January 31, 1986, effective October 4, 1985 (51 FR 3952); on December 18, 1986, effective February 17, 1987 (51 FR 45320); on March 1, 1990, effective March 15, 1990 (55 FR 7318); on May 24, 1990, effective July 23, 1990 (55 FR 21383); on August 22, 1991, effective October 21, 1991 (56 FR 41626); on October 5, 1992, effective December 4, 1992 (57 FR 45719); on April 11, 1994, effective June 27, 1994 (59 FR 16987); and on April 12, 1994, effective June 27, 1994 (59 FR 17273). Regarding today's document, Texas has made conforming changes to make its regulations internally consistent relative to the revisions made for the above listed authorizations. Texas has also changed its regulations to make them more consistent with the Federal requirements.

The EPA has reviewed these changes and has made an immediate final decision, in accordance with 40 CFR 271.21(b)(3), that Texas' hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Texas' hazardous waste program. The public may submit written comments on EPA's immediate final decision until November 3, 1997. Copies of Texas' program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of Texas' program revision shall become effective in 75 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either: (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Texas will be authorized to carry out, in lieu of the Federal program, the following State-initiated changes to provisions of the State's program, which are analogous to the indicated RCRA provisions found at Title 40 CFR.

State requirement	Federal requirement
31 Texas Administrative Code (TAC) § 305.63, introductory paragraph, effective October 29, 1990.	40 CFR 270.10(h).
30 TAC § 335.1 definitions of ''Closure'' and ''Hazardous waste management facility'', effective November 23, 1993.	40 CFR 270.2 definitions of ''Closure'' and ''Hazardous waste management facility''.
30 TAC § 335.1 definition of ''PCB's or polychlorinated biphenyl compounds'', effective November 23, 1993.	40 CFR 268.2(e).
30 TAC § 335.10(a)(1), effective November 23, 1993	40 CFR 262.20(a).
30 TAC § 335.10(a)(3), effective November 23, 1993	40 CFR 262.21 (a)–(c).
31 TAC § 335.11, effective July 27, 1988	40 CFR 263.20, 263.22.
31 TAC § 335.15(1), effective July 27, 1988	40 CFR 264.71(a)(5).
30 TAC § 335.41(e), effective November 23, 1993	40 CFR 264.1(g)(1) and 265.1(c)(5).
31 TAC § 335.43(b)(1), effective November 7, 1991	40 CFR 270.10(e)(1)(i).
31 TAC § 335.43(b)(2), effective November 7, 1991	40 CFR 279.10(e)(1)(ii).
31 TAC § 335.114(a) introductory paragraph, effective July 27, 1988	40 CFR 265.75 introductory paragraph.
31 TAC § 335.114(a) (1)–(6), effective July 27, 1988	40 CFR 265.75 (a), (b) & (d)–(g).
31 TAC § 335.154(a) (2) & (5), effective July 27, 1988	40 CFR 264.75 (b) & (g).

In addition to the above listed changes, EPA is authorizing changes to the following State provisions. These provisions do not have a direct analog in the Federal RCRA regulations. However, none of these provisions are considered broader in scope than the Federal program. This is so because these provisions were either previously authorized as part of Texas' base authorization or have been added to make the State's regulations internally

consistent with changes made for the other authorizations listed in the first paragraph of this section. The EPA has reviewed these provisions and has determined that they are consistent with and no less stringent than the Federal requirements. Additionally, this authorization does not affect the status of State permits and those permits issued by EPA because no new substantive requirements are a part of these revisions.

State requirement
Texas Solid Waste Disposal Act (TSWDA) § 361.003 (14), (16)–(18), and (25); Texas Health and Safety Code Ann. (THSC) (Vernon's Supp. 1992), effective September 1, 1991, as amended.
TSWDA § 361.082(f); THSC (Vernon's Supp. 1992), effective September 1, 1991, as amended.
TSWDA § 361.089 (e)–(g); THSC (Vernon's Supp. 1992), effective September 1, 1991, as amended.
30 Texas Administrative Code (TAC) § 305.50(4)(E), effective November 23, 1993.
30 TAC § 305.61, effective October 29, 1990.
30 TAC § 335.2 (d)–(f), effective November 23, 1993.
30 TAC § 335.2(j), effective November 23, 1993.
30 TAC § 335.13(f), effective November 23, 1993.
31 TAC § 335.43(e), effective November 7, 1991.
30 TAC § 335.112(b), effective November 23, 1993.
30 TAC § 335.152(b), effective November 23, 1993.
30 TAC § 335.152(c), effective November 23, 1993.
30 TAC § 335.224 (3)(F), (9), (10), and (15), effective November 23, 1993.
31 TAC § 335.225(b), effective July 29, 1992.
30 TAC § 335.226, effective July 29, 1992.
30 TAC Subchapter L (335.361 through 335.367), effective June 21, 1988.

Texas is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that Texas' program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Texas is granted final authorization to operate its hazardous waste program as revised.

Texas now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Texas also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

II. Corrections

A. Corrections to the May 24, 1990 (55 FR 21383) Authorization Notice

There was an error in the table of authorities published as part of the May 24, 1990 (55 FR 21383) authorization notice for Texas. Section 335.46 was erroneously cited on this table as one of the State's analogs to the Land Disposal Restriction Rule (November 7, 1986, 51 FR 40572). Today's notice corrects this error by removing Section 335.46 from the table for that rule.

B. Corrections to April 11, 1994 (59 FR 16987) Authorization Notice

There were numerous typographical and effective date errors in the table published as part of the April 11, 1994 (59 FR 16987) authorization notice for Texas. The affected entries for that table are shown in the table below. The corrections have been italicized. In addition, in the April 11, 1994 notice, the authorization for Revision Checklist 61 was inadvertently omitted. This has been added as Entry 41.

Federal citation	State analog
1. California List Waste Land Disposal Restrictions, July 8, 1987 (52 FR 25760), as amended on October 27, 1987 (52 FR 41295). (Checklists 39 and 39.1).	Texas Solid Waste Disposal Act (TSWDA) §§ 361.017 and 361.024; Texas Health and Safety Code Ann. (THSC) (Vernon's Supp. 1991), effective June 7, 1991, as amended; *31* Texas Administrative Code (TAC) § 305.51(c), *effective July 29, 1992; 30 TAC* § 335.2(j), § 335.112(a)(1), § 335.152(a)(1), and § 335.431(c), all effective November 23, 1993; and 31 TAC § 335.77, effective *July 14, 1987*.
2. Exception Reporting for Small Quantity Generators of Hazardous Waste, September 23, 1987 (52 FR 35894). (Checklist 42).	TSWDA §§ 361.017, and 361.024; THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; *30* TAC § 335.13(c), (d) and (g), effective *November 23, 1993* as amended; and 30 TAC § 335.74, effective November 23, 1993.
5. HSWA Codification Rule 2; Corrective Action for Injection Wells, December 1, 1987 (52 FR 45788). (Checklist 44C).	TSWDA §§ 361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 30 TAC § 33*1*.121(f), and § 33*1*.121(e)(1)–(3), both effective November 23, 1993.
10. Technical Correction to Checklist 23, Small Quantity Generators, July 19, 1988 (53 FR 27162). (Checklist 47).	TSWDA §§ 361.017, and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 31 TAC § 335.78(e) and § 335.78(f)(2), both effective *February 1, 1989,* as amended.
21. Land Disposal Restrictions for Third Scheduled Wastes, June 1, 1990 (55 FR 22520) (Checklists 78H and *78N*).	TSWDA §§ 361.017 and 361.024, THSC (Vernon's Supp. 1991), effective June 7, 1991, as amended; and 30 TAC § 305.69(i) Appendix I.B.1.b., § 335.1, § 335.29, § 335.69(a)(4), § 335.111(c), § 335.112(a)(1) and (a)(10)–(a)(13), § 335.152(a)(9)–(a)(12), § 335.431(c) and *§ 335.504(2),* all effective November 23, 1993.

Federal citation	State analog
26. Permit Modifications for Hazardous Waste Management Facilities, September 28, 1988 (53 FR 37912), as amended on October 24, 1988 (53 FR 41649. (Checklists 54 and 54.1).	TSWDA §§ 361.017, and 361.024; THSC (Vernon 1990), effective September 1, 1989, as amended; TWC §§ 5.103, 5.105, and 26.011 (Vernon 1990), effective September 1, 1985, as amended; Texas Open Records Act, TEX. REV. CIV. STAT. ANN. art.6252–17a (Vernon 1990); 31 TAC § 305.66, *effective November 7, 1991;* 31 TAC § 305.62(a), effective October 29, 1990; 31 TAC § 335.112(a)(6), § 335.152(a)(3) and (a)(5), all effective December 13, 1991, as amended; 31 TAC § 305.64(a) and (g), and § 305.144, § 305.62(d)(3), § 305.62(e)(2)(C)(iv)–(e)(2)(C)(xi), all effective October 29, 1990; 31 TAC § 305.62(e), effective July 17, 1989; 31 TAC 305.100, effective October 8, 1990; 31 TAC § 305.102, § 305.171, § 305.172(10), all effective October 29, 1990; 31 TAC § 305.69(a), § 305.69(a)(1)(A)–(a)(1)(C), § 305.69(a)(2) and (a)(3), § 305.69(b) and (b)(1), § 305.69(b)(1)(A)–(b)(1)(D), § 305.69(b)(2), § 305.69(b)(2)(A)–(b)(2)(G), § 305.69(b)(3)–(b)(6), § 305.69(b)(6)(A)–(b)(6)(C), § 305.69 (b)(6)(C)(i) and (b)(6)(C)(ii), § 305.69 (b)(6)(D) and (b)(6)(E), § 305.69(b)(7), § 305.69(b)(7)(A)–(b)(7)(C), § 305.69 (b)(7)(C)(i) and (b)(7)(C)(ii), § 305.69(b)(7)(D), § 305.69(b)(8) and (b)(9), § 305.69(b)(9)(A) and (b)(9)(B), § 305.69(b)(10)–(b)(14), § 305.69(b)(14)(A)–(b)(14)(C), § 305.69(b)(15), § 305.69(c), § 305.69(c)(1), § 305.69(c)(1)(A)–(c)(1)(D), § 305.69(c)(2), § 305.69(c)(2)(A)–(c)(2)(F), § 305.69(c)(3)–(c)(6),§ 305.69(d), § 305.69(d)(1) and (d)(2), § 305.69(d)(2)(A), § 305.69(d)(2)(B)(i) and (d)(2)(B)(ii), § 305.69(d)(2)(C), § 305.69(e), § 305.69(e)(1) and (e)(2), § 305.69(e)(2)(A) and (e)(2)(B), § 305.69(e)(3), § 305.69(e)(3)(A)–(e)(3)(C), § 305.69(e)(4) and (e)(5), § 305.69(e)(5)(A) and (e)(5)(B), § 305.69(e)(5)(B)(i)–(e)(5)(B)(v), § 305.69(e)(6), § 305.69(e)(6)(A) and (e)(6)(B), § 305.69(f), § 305.69(f)(1) and (f)(2), § 305.69(g), § 305.69(g)(1), § 305.69(g)(1)(A)–(g)(1)(E), § 305.69(g)(2), and § 305.180(1)–(3), all effective October 29, 1990.
30. Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators, January 9, 1989 (54 FR 615). (Checklist 59).	TSWDA §§ 361.003, 361.024, 361.088; THSC (Vernon 1990), effective September 1, 1989, as amended; TWC §§ 5.103, 5.105, and 26.011 (Vernon 1990), effective September 1, 1985, as amended; and *30* TAC § 305.50(4), effective *July 29, 1992,* as amended.
31. Amendment to Requirements for Hazardous Waste Incinerator Permits, January 30, 1989 (54 FR *4286*), (Checklist 60).	TSWDA §§ 361.003, 361.024, 361.088; THSC (Vernon 1990), effective September 1, 1989, as amended; TWC §§ 5.103, 5.105 and 26.011 (Vernon 1990), effective September 1, 1985, as amended; and 31 TAC § 305.174, effective October 29, 1990.
35. Changes to Part 124 Not Accounted for by Present Checklists, June 30, 1983 (48 FR 30113); *April 1, 1983 (48 FR 14146);* July 26, 1988 (53 FR 28118); September 26, 1988 (53 FR 37396); and January 4, 1989 (54 FR 246). (Checklist 70).	TSWDA §§ 361.017, 361.024, 361.032, 361.066, and 361.068; THSC Chapter 361 (Vernon's Supp. 1992), effective September 1, 1989, as amended; TWC §§ 5.103, 5.105, 26.011, and 27.019 (Vernon 1992), effective September 1, 1985, as amended; 31 TAC 281.22, effective July 14, 1987; 31 TAC §§ 305.42, 305.44, 305.62, 305.102, 305.103, and 305.105, 305.127 (1)(B), (2) and (3), and 305.144, all effective October 29, 1990; 31 TAC 305.66, effective *November 7, 1991;* 31 TAC §§ 305.100, 305.101, 305.121, 305.122(a), 305.125, and 305.128, all effective October 8, 1990; 31 TAC §§ 305.123, 305.124, 305.141, 305.142, 305.143, and 305.146, all effective June 19, 1986; and 31 TAC 305.145, effective April 8, 1987.
41. Changes to *Interim Status Facilities for Hazardous Waste Management Permits; Modification of Hazardous Waste Management Permits; Procedures for Post-Closure Permitting, March 7, 1989 (54 FR 9596), (Checklist 61).*	*TSWDA §§ 361.017, 361.024, 361.088; THSC (Vernon 1990), effective September 1, 1989, as amended; TWC §§ 5.103, 5.105 and 26.011 (Vernon 1990), effective September 1, 1985, as amended; 31 TAC 305.69(h), effective October 29, 1990.*

C. Corrections to the April 12, 1994 (59 FR 17273) Authorization Notice

There were numerous typographical and effective date errors in the tables published as part of the April 12, 1994 (59 FR 17273) authorization notice for Texas. The affected entries for that table are shown in the table below. The corrections have been italicized.

Federal citation	State analog
1. Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listing (F037 and F038), November 2, 1990 (55 FR 46354), as amended on December 17, 1990 (55 FR 51707). (Checklists 81 and 81.1).	Texas Solid Waste Disposal Act (TSWDA), Chapter 361, § 361.003(15), § 361.017 and § 361.024; Texas Health and Safety Code (THSC) Ann. (Vernon Pamphlet 1992), effective September 1, 1991, as amended; Title 31 Texas Administrative Code (TAC) Chapter 335, § 335.1, effective March 31, 1992, as amended*; and Title 30 TAC § 335.29, effective November 23, 1993.*
2. Wood Preserving Listings, December 6, 1990 (55 FR 50450). (Checklist 82).	TSWDA Chapter 361, § 361.003(15), § 361.017 and § 361.024; THSC Ann. (Vernon Pamphlet 1992), effective September 1, 1991, as amended; Title 30 TAC, Chapter 305, § 305.50(4)(A), effective November 23, 1993; Title 31 TAC Chapter 335, § 335.1, effective March 31, 1992, as amended; *Title 30 TAC Chapter 335, § 335.29, effective November 23, 1993*; Title 31 TAC Chapter 335, § 335.1 and 335.29, both effective September 30, 1992, as amended; and Title *30* TAC Chapter 335, § 335.1, § 335.69*(a)(1)(C)*, § 335.112(a)(9), § 335.112(a)(*18*), § 335.152(a)(8), and § 335.152(a)(14) all effective November 23, 1993.

Federal citation	State analog
3. Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendments, January 31, 1991 (56 FR 3864). (Checklist 83)..	TSWDA, Chapter 361, § 361.003(15), § 361.017 and § 361.024; THSC Ann. (Vernon Pamphlet 1992), effective September 1, 1991, as amended; Title 31 TAC, Chapter 335, § 335.1, effective March 31, 1992, as amended; Title 31 TAC Chapter 335, § 335.1, effective January 31, 1992 as amended; Title *30* TAC Chapter 335, § 335.29, effective *November 23, 1993*; Title *30* TAC Chapter 335, § 335.504(2) and § 335.69(f)(4), both effective November 23, 1993; Title 31 TAC Chapter 335, § 335.152(a)(9)–(a)(12), § 335.112(a)(1), and § 335.112(a)(10)–(a)(13), all effective March 31, 1992, as amended; Title *30* TAC Chapter 335, § 335.431, and § 335.431(c), both effective November 23, 1993.
4. Burning of Hazardous Waste in Boilers and Industrial Furnaces, February 21, 1991 (56 FR 7134). (Checklist 85).	TSWDA Chapter 361, § 361.003(15), § 361.017, and § 361.024; THSC Ann. (Vernon Pamphlet 1992), effective September 1, 1991, as amended; Title 31 TAC, Chapter 335, § 335.1, effective March 31, 1992 as amended; Title 30 TAC Chapter 335, *§ 335.29, effective November 23,1993*; Title 31 TAC, Chapter 335, § 335.221(a)(23), effective July 14, 1992, as amended; Title 31 TAC, Chapter 335, § 335.1, effective August 22, 1991, as amended; Title 31 TAC, Chapter 305, § 305.50(4), § 305.50(13), § 305.69(h), § 305.571, § 305.572, § 305.573, § 305.51(a)(5), § 305.51(c)(7), all effective July 29, 1992, as amended; Title 31 TAC Chapter 335, *§ 335.2(c), effective November 7, 1991;* Title 31 TAC § 335.1, effective January 31, 1992, as amended; Title *30* TAC § 335.2(*k*), effective November 23, 1993; Title 31 TAC § 335.6 and § 335.6(i)(1)–(i)(3), § 335.24(c), § 335.152(a)(5), § 335.152(a)(13), § 335.112(a)(6), § 335.221*(a),* (a)(1)–(a)(23), § 335.221(b), § 335.222(a)–(c), § 335.223*(a)*, (a)(1)–(a)(8), § 335.223(b), *§ 335.224 introductory paragraph,* § 335.224(1)–(2), § 335.224(3)(A)–(3)(E), § 335.224(4), § 335.224(5)(A)–(5)(J), § 335.224(6)–(8), § 335.224(11)–(14), and § 335.225(a), all effective July 29, 1992, as amended*; and Title 30 TAC Chapter 335, § 335.112(a)(14), effective November 23, 1993.*
5. Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment, February 25, 1991 (55 FR 7567). (Checklist 86).	TSWDA, Chapter 361, § 361.003(15), § 361.017 and § 361.024; THSC Ann., (Vernon Pamphlet 1992), effective September 1, 1991, as amended; Title 31 TAC, Chapter 335, § 335.1, effective March 31, 1992, as amended*; and Title 30 TAC Chapter 335, § 335.29, effective November 23, 1993.*
6. Organic Air Emission Standards for *P*rocess Vents and Equipment Leaks; Technical Amendment, April 26, 1991 (56 FR 19290). (Checklist 87).	TSWDA, Chapter 361, § 361.003(15); THSC Ann., (Vernon Pamphlet 1992), effective September 1, 1991, as amended; Title 31 TAC, Chapter 335, § 335.152(a)(1), § 335.152(a)(4), § 335.152(a)(16), and § 335.152(a)(17), all effective August 31, 1992, as amended; Title 31 TAC Chapter 335, § 335.112(a)(1), § 335.112(a)(4), § 335.112(a)(19), and § 335.112(a)(20), all effective August 31, 1992, as amended; Title *30* TAC Chapter 305, § 305.50(4)(A), effective *July 29, 1992*, as amended.
7. Mining Waste Exclusion III June 13, 1991 (56 FR 27300). (Checklist 90).	TSWDA, Chapter 361, § 361.003(15), § 361.017, and § 361.024; THSC Ann., (Vernon Pamphlet 1992), effective September 1, 1991, as amended; Title 31 TAC, Chapter 335, § 335.1, effective March 31, 1992, as amended*; and Title 30 TAC Chapter 335, § 335.29, effective November 23, 1993.*

III. Incorporation by Reference

A. Background

EPA provides both notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that EPA will enforce under Sections 3008, 3013 and 7003 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Texas. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98–616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Texas program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Texas, the status of Federally approved requirements of the Texas program will be readily discernible.

The Agency will only enforce those provisions of the Texas hazardous waste management program for which authorization approval has been granted by EPA. This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogues.

B. Texas Authorized Hazardous Waste Program

To incorporate by reference the Texas authorized hazardous waste program, EPA intends to add subpart SS to 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.2201(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at 40 CFR 272.2201(b)(6), (b)(7) and (b)(8), respectively.

The Agency retains the authority under Sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Texas enforcement authorities. Section 272.2201(b)(2) of 40 CFR lists those authorized Texas authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These nonauthorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they

are ''broader in scope'' than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Federal rules for which Texas is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference;

(3) Unauthorized amendments to State provisions previously reviewed and approved by EPA.

State provisions which are ''broader in scope'' than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.2201(b)(3) of 40 CFR lists for reference and clarity the Texas statutory and regulatory provisions which are ''broader in scope'' than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. ''Broader in scope'' provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

At 335.112(a) and 335.152(a), Title 30 of the Texas Administrative Code (TAC), as amended through November 23, 1993, Texas has adopted by reference the Code of Federal Regulations through June 1, 1990. However, the State is not authorized for the Federal rule addressing liability coverage published on September 1, 1988 (53 FR 33938). In addition, Texas' hazardous waste regulations include State amendments which have not been approved by EPA. Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting Federal law by reference has the effect of including unauthorized requirements, or where a State has made unauthorized amendments to previously authorized sections of State code, EPA will provide this clarification by: (1) incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in 272.2201(b)(4) and 272.2201(b)(5) any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. Thus, notwithstanding the language in the Texas hazardous waste regulations incorporated by reference at 272.2201(b)(1), EPA would only enforce the State provisions that are actually authorized by EPA. For the convenience of the regulated community, the actual State regulatory text authorized by EPA for the citations listed at 272.2201(b)(5) are compiled as a separate document, *Addendum to the EPA-Approved Texas Regulatory and Statutory Requirements Applicable to the Hazardous Waste Management Program, December 1996*. This document is available from the Grants and Authorization Section, 6PD–G, Multimedia Planning and Permitting Division, EPA Region 6, First Interstate Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. Regarding HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

C. HSWA Provisions

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in Texas and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. The EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a ''Federal mandate'' and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because it merely makes federally enforceable existing requirements with which regulated entities must already comply under State law. Second, the Act also generally excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program. The requirements being authorized and codified today are the result of Texas' voluntary participation in accordance with RCRA Subtitle C.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector because today's action merely codifies an existing State program that EPA previously authorized. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of UMRA requires EPA to develop a small

government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may be hazardous waste generators, transporters, or own and/or operate treatment, storage, or disposal facilities (TSDFs), this codification incorporates into the CFR Texas' requirements which have already been authorized by EPA under 40 CFR part 271 and, thus, small governments are not subject to any additional significant or unique requirements by virtue of this authorization and codification.

Certification Under the Regulatory Flexibility Act

The EPA has determined that this authorization and codification will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the State requirements authorized by EPA under 40 CFR part 271. The EPA's authorization and codification does not impose any additional burdens on these small entities. This is because EPA's codification would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates Texas' requirements which have been authorized by EPA under 40 CFR part 271 into the Code of Federal Regulations. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

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

Compliance With Executive Order 12866

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

Paperwork Reduction Act

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

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Indian lands, Incorporation by reference, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This rule is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 21, 1997.

W.B. Hathaway,

Acting Regional Administrator.

40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart SS is amended by adding § 272.2201 to read as follows:

§ 272.2201 Texas State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Texas has final authorization for the following elements as submitted to EPA in Texas' base program application for final authorizations which was approved by EPA effective on December 26, 1984. Subsequent program revision applications were approved effective on October 4, 1985, February 17, 1987, March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992, June 27, 1994 and December 3, 1997.

(b) *State Statutes and Regulations.* (1) The Texas statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) EPA Approved Texas Statutory Requirements Applicable to the Hazardous Waste Management Program, December 1996.

(ii) EPA Approved Texas Regulatory Requirements Applicable to the Hazardous Waste Management Program, December 1996.

(2) The following statutes and regulations concerning State enforcement, although not incorporated by reference, are part of the authorized State program:

(i) The Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC) Annotated, (Vernon, 1992), effective September 1, 1991: Chapter 361, sections 361.002, 361.016 through 361.018, 361.024, 361.032, 361.033, 361.036, 361.037(a), 361.061, 361.063, 361.064, 361.066(b), 361.067 through 361.076, 361.078, 361.079, 361.080(a), 361.082(b), 361.082(c) (first sentence only), 361.082(e), 361.083, 361.084 (except the phrase '', or evidence of * * * waste management''), 361.085 (c)–(j), 361.088 (a)–(c), 361.089, 361.090, 361.095 (b)–(f), 361.096, 361.097, 361.098(a) (except the phrase ''Except as provided in Subsections (b) and (c),''), 361.099(a), 361.100, 361.101, 361.102(a) (except the phrases ''Except as provided by Subsections (b) and (c)'' and ''and the Texas Air Control Board''), 361.103 through 361.108, 361.109(a), 361.221 (except 361.221 (c) & (e)), 361.222 (except 361.222 (d)–(u)), 361.223 (a)–(c), 361.224 (a) & (b), 361.225 through 361.229, 361.301, 361.303, 361.321 (a) & (b), 361.321(c) (except the phrase ''Except as provided by Section 361.222(a)''), 361.321(d), 361.321(e) (except the phrase ''Except as provided by Section 361.222(e)'').

(ii) Texas Water Code (TWC), Texas Codes Annotated (Vernon, 1992), effective September 1, 1985, as amended: Chapter 5, sections 5.103, 5.104, 5.105; Chapter 26, section 26.011; and Chapter 27, section 27.019.

(iii) Texas Administrative Code (TAC), Title 30, Environmental Quality, 1994, as amended, effective through January 1, 1994: Chapter 281, sections 281.1, 281.2 (except 281.2(10)), 281.3 (a) & (b), 281.5, 281.17 (d)–(f), 281.18(a), 281.19, 281.20, 281.21 (a)–(d), 281.22 through 281.24; Chapter 305, sections 305.29 (b) & (c), 305.64 (d) & (f), 305.66(c), 305.66 (e)–(l), 305.91 through 305.95, 305.97 through 305.103, 305.105, 305.123, 305.125 (1) & (3), 305.125(20), 305.127(1)(B)(i), 305.127(4) (A) & (C), 305.127(6), 305.401 (a) & (b), 305.401 (d)–(h); and Chapter 335,

sections 335.2(b), 335.206, 335.391 through 335.393.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) The Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC) Annotated, (Vernon, 1992), effective September 1, 1991: Chapter 361, sections 361.131 through 361.140.

(ii) Texas Administrative Code (TAC), Title 30, Environmental Quality, 1994, as amended, effective through January 1, 1994: Chapter 305, sections 305.27, 305.53, 305.64(b)(4); and Chapter 335, sections 335.321 through 335.332 Appendices I and II.

(4) *Unauthorized State Provisions:* The State's adoption of the Federal rule addressing liability coverage (September 1, 1988), while adopted at 335.112(a) and 335.152(a) and incorporated by reference at § 272.2201(b)(1), is not approved by EPA and is, therefore, not enforceable.

(5) *Unauthorized State Amendments.* The following authorized provisions of the State regulations include amendments published in the Texas Register that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. Thus, notwithstanding the language in the Texas hazardous waste regulations incorporated by reference at § 272.2201(b)(1), EPA will only enforce the authorized State provisions with the effective dates indicated in the table below. The actual State regulatory text authorized by EPA for the listed provisions are available as a separate document, Addendum to the EPA-Approved Texas Regulatory and Statutory Requirements Applicable to the Hazardous Waste Management Program, December 1996. Copies of the document can be obtained from U.S. EPA Region 6, Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202.

State provision	Effective date of authorized provision	Unauthorized state amendments	
		Texas register reference	Effective date
335.2(c)	Nov. 7, 1991	18 TexReg 2799	05/12/93
		18 TexReg 8218	11/23/93
335.6(a)	July 29, 1992	18 TexReg 2799	5/12/93
335.6(c) introductory paragraph	July 29, 1992	17 TexReg 8010	11/27/92
335.6(g)	July 29, 1992	18 TexReg 3814	6/28/93
335.10(b)(22)	July 27, 1988	17 TexReg 8010	11/27/92
335.41(c)	May 28, 1986	18 TexReg 8218	11/23/93
335.43(b) introductory paragraph	July 14, 1987	17 TexReg 6065	11/7/91
335.45(b)	Sept. 1, 1986	17 TexReg 5017	7/29/92
335.111(a)	July 14, 1987	18 TexReg 8218	11/23/93
335.204(a)(1)	May 28, 1986	16 TexReg 6065	11/7/91
335.204(b)(1)	May 28, 1986	16 TexReg 6065	11/7/91
335.204(b)(6)	May 28, 1986	16 TexReg 6065	11/7/91
335.204(c)(1)	May 28, 1986	16 TexReg 6065	11/7/91
335.204(d)(1)	May 28, 1986	16 TexReg 6065	11/7/91
335.204(e)(6)	May 28, 1986	16 TexReg 6065	11/7/91

(6) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the Texas Natural Resources Conservation Commission (TNRCC) signed by the EPA Regional Administrator on September 24, 1992, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Statement of Legal Authority.* ''Attorney General's Statement for Final Authorization'', signed by the Attorney General of Texas on May 22, 1984 and revisions, supplements and addenda to that Statement dated November 21, 1986, July 21, 1988, December 4, 1989, April 11, 1990, July 31, 1991, February 25, 1992, November 30, 1992, March 8, 1993, and January 7, 1994 are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(8) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to Part 272 is amended by adding in alphabetical order, ''Texas'' and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Texas

The statutory provisions include:

The Texas Solid Waste Disposal Act, Texas Health and Safety Code (THSC) Annotated, (Vernon, 1992), effective September 1, 1991: Chapter 361, sections 361.001, 361.003 (except 361.003(4), (5), (22), (30), (38), and (44)), 361.066(a), 361.077, 361.082(a), 361.082(f), 361.086, 361.087, 361.093, 361.094, 361.095(a), 361.099(b), and 361.110.

Copies of the Texas statutes that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164–0526.

The regulatory provisions include:

Texas Administrative Code (TAC), Title 30, Environmental Quality, 1994, as amended, effective through January 1, 1994: Chapter 281, section 281.3(c); Chapter 305, 305.1(a), 305.2 (except the definitions for ''by-pass'', ''Class I sludge management facility'', ''component'', ''continuous discharge'', ''CWA'', ''daily average concentration'', ''daily average flow'', ''direct discharge'', ''discharge monitoring report'', ''effluent limitation'', ''Environmental Protection Agency'', ''facility mailing list'', ''functionally equivalent component'', ''indirect discharger'', ''injection well permit'', ''National Pollution Discharge Elimination System'', ''new discharger'', ''new source'', ''outfall'', ''primary industry category'', ''process wastewater'', ''publicly owned treatment works'', ''recommencing discharger'', ''regional administrator'', ''schedule of compliance'', ''severe property damage'', ''sewage sludge'',

''Texas pollution discharge elimination system'', ''toxic pollutant'', ''treatment works treating domestic sewage'', ''variance'', and ''wetlands''), 305.29 (a) & (d), 305.41, 305.42, 305.43(b), 305.44, 305.45, 305.47, 305.50(1), 305.50(2) (except the last two sentences), 305.50 (3)–(8), 305.50 (13) & (14), 305.51, 305.61, 305.62, 305.63 (except the last sentence of 305.63(3) and 306.63(7)), 305.64(a), 305.64(b) (except 305.64(b) (4) & (5)), 305.64(c), 305.64(e), 305.64(g), 305.66(a) (except 305.66(a) (7) & (8)), 305.66(d), 305.67, 305.69, 305.121, 305.122 (b) & (c), 305.124, 305.125 (except 305.125 (1), (3), and (20)), 305.127 introductory paragraph, 305.127(1)(B)(iii), 305.127(1) (E) & (F), 305.127 (2) & (3), 305.127(4)(B), 305.127(5)(C), 305.128, 305.141 through 305.145, 305.146 introductory paragraph, 305.146(1), 305.171 through 305.174, 305.181 through 305.184, 305.191 through 305.194, 305.401(c), 305.571 through 305.573; Chapter 335, sections 335.1 (except the definitions for ''activities associated with the exploration, development, and protection of oil or gas, or geothermal resources'', ''class 1 wastes'', ''class 2 wastes'', ''class 3 wastes'', ''contaminant'', ''contaminated medium/media'', ''control'', ''decontaminate'', ''essentially insoluable'', ''hazardous industrial waste'', ''hazardous substance'', ''industrial solid waste'', ''remediation'', ''remove'', ''shipment'', ''spill'', and ''treatment''), 335.2(a), 335.2 (c)–(g), 335.2 (i)–(k), 335.4, 335.5, 335.6 (except the last sentence of 335.6(d)), 335.7, 335.8(a) (3) & (4), 335.10(a) (except 335.10(a) (2) & (5)), 335.10(b), 335.10(c) (except ''the United States customs official,''), 335.10 (d)–(f), 335.11, 335.12 (except 335.12(a)(5)), 335.13(a) (except for ''or until the generator * * * by the initial transporter''), 335.13 (c)–(g), 335.14, 335.15 introductory paragraph, 335.15(1), 335.17 through 335.23, 335.24 (a)–(f), 335.29, 335.30, 335.41 (a)–(h), 335.43 through 335.45, 335.47 (except for the second sentence in 335.47(c)(3)), 335.61 (a)–(e), 335.63 through 335.68, 335.69 (a)–(h), 335.70 through 335.74, 335.76, 335.77, 335.78 (except 335.78(d)(2)), 335.91 through 335.94, 335.111, 335.112(a) introductory paragraph, 335.112(a) (1)–(6), 335.112(a)(7) (except the phrase ''(as amended through July 1, 1991);''), 335.112(a) (8)–(14), 335.112(a)(15) (except the phrase ''(as amended through July 17, 1991)''), 335.112(a)(16), 335.112(a) (18)–(20), 335.112(b), 335.113, 335.114(a), 335.115 through 335.127, 335.151 through 335.153, 335.154(a) (except the phrase ''TWC hazardous waste code and'' in 335.154(a)(3)), 335.155 through 335.178, 335.201(a) introductory paragraph, 335.201(a) (1) & (2), 335.201(c), 335.202 (except the definitions for ''active geologic processes'', ''area subject to active shoreline erosion'', ''areas of direct drainage'', ''commercial hazardous waste management facility'', ''critical habitat of an endangered species'', ''erosion'', ''public water system'', and ''residence''), 335.203, 335.204(a) (1)–(5), 335.204(b) (1)–(6), 335.204(c) (1)–(5), 335.204(d) (1)–(5), 335.204(e) introductory paragraph, 335.204(e)(1) introductory paragraph (except the phrase ''Except as provided in subparagraphs (A) and (B) of this paragraph,'' and the word ''event'' at the end of the paragraph), 335.204(e) (2)–(7), 335.204(f), 335.205 (a), (b), and (i), 335.211 through 335.223, 335.224 introductory paragraph, 335.224 (1)–(6), 335.224(7) first sentence, 335.224 (8)–(15), 335.225 through 335.251, 335.361 through 335.367, 335.431, and 335.504.

Copies of the Texas regulations that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164–0526.

[FR Doc. 97–24841 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–265; RM–8913]

Radio Broadcasting Services; Dickson and Kingston Springs, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Tuned In Broadcasting, Inc., reallots Channel 229A from Dickson to Kingston Springs, Tennessee, and modifies Station WYYB-FM's license to specify Kingston Springs, Tennessee, as its community of license. *See* 62 FR 4515, January 30, 1997. Channel 229A can be allotted to Kingston Springs in compliance with the Commission's minimum distance separation requirements with a site . The coordinates for Channel 229A are 36–07–13 NL and 86–59–03 WL. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 27, 1997.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–265, adopted September 3, 1997, and released September 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 229A at Dickson and by adding Kingston Springs, Channel 229A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–24936 Filed 9–18–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA–97–2133 (HM–225)]

RIN 2137–AC97

Hazardous Materials: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Advisory Guidance for Leak Testing Discharge Systems

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advisory guidance.

SUMMARY: On August 18, 1997, RSPA published in the **Federal Register** a final rule adopting certain safety standards applicable to cargo tank motor vehicles used in liquefied compressed gas

service. This advisory guidance identifies a potential safety problem when leak testing a cargo tank motor vehicle's discharge system and clarifies a pressure test requirement for new or repaired transfer hoses. It is responsive to a petition for reconsideration and a request for clarification.

FOR FURTHER INFORMATION CONTACT: Ronald Kirkpatrick, Office of Hazardous Materials Technology, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone (202) 366–4545, or Nancy Machado, Office of the Chief Counsel, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION: On August 18, 1997, RSPA published a final rule in the **Federal Register** (62 FR 44038) that adopts temporary requirements for cargo tank motor vehicles in certain liquefied compressed gas service. It requires a specific marking on affected cargo tank motor vehicles and requires motor carriers to comply with additional operational controls intended to compensate for the inability of passive emergency discharge control systems to function as required by the Hazardous Materials Regulations. The interim operational controls specified in the rule are intended to assure an acceptable level of safety while the industry and government continue to work to develop a system that effectively stops the discharge of hazardous materials from a cargo tank if there is a failure of a transfer hose or piping.

Following publication of the August 18, 1997 final rule, The Fertilizer Institute (TFI) filed a petition for reconsideration seeking, in part, a revision to a requirement in § 171.5(a)(1)(i) which specifies that an operator must subject the transfer hose to full transfer pressure before commencing the first transfer of each day. TFI's petition stated, in pertinent part:

In the final rule, RSPA adopts a requirement concerning the pressure testing of the transfer hose prior to the first transfer each day. Specifically, RSPA requires that ''prior to commencing the first transfer of each day, the transfer hose shall be subjected to full transfer pressure.'' 49 CFR 171.5(a)(1)(i). No further guidance concerning this requirement is found in the regulations or the preamble to the final rule. TFI is concerned that RSPA or Federal Highway Administration (FHWA) inspectors may interpret this requirement to mandate pressurizing the hose, after opening the vapor valves on the cargo tank and customer tank, and engaging the power take-off (PTO) without opening the product valve on the customer's tank. Under such an interpretation, this requirement is unreasonable and not in the public interest. To explain why such a requirement is unreasonable and not in the public interest, it is necessary to describe a typical anhydrous ammonia unloading operation.

To unload a cargo tank containing ammonia, the operator first connects the vapor line from the cargo tank to the customer's tank and opens the valve at each end of the line. Next, the operator connects the product transfer hose to the cargo tank and customer's tank. After making this connection, the operator opens the internal valve on the cargo tank to flood the pump and, after the pump is flooded, opens the discharge valve on the pump to charge the transfer hose. At this point in the delivery process, the transfer hose is charged with the product pressure. Next, if there are no signs of leakage, then the operator opens the product valve on the customer's tank. Finally, the operator engages the PTO to commence product transfer.

If § 171.5(a)(1)(i) is interpreted to require engagement of the PTO and pumping against a closed product valve at the customer's storage tank, TFI asserts that such a requirement is unreasonable. This requirement is unreasonable because pumping against a closed valve could cause the vanes in the transfer pump to break. Also, the PTO, which is rotating at 650 revolutions per minute, could be damaged and break. Because of the likely potential for damage to the pump and PTO, it is unreasonable for RSPA to require an ammonia cargo tank operator to pump against a closed product valve to ensure the integrity of the transfer hose.

In addition to being unreasonable, such a requirement is not in the public interest because failure of the pump or PTO may result in injury to the cargo tank operator and public in proximity to the unloading operation. If the vanes in the pump break, it is possible that the integrity of the pump casing may be compromised, resulting in flying debris. Also, a PTO which breaks, while rotating at 650 revolutions per minute, may cause injury, including death, to those within proximity of the cargo tank.

TFI understands RSPA's concern with ensuring the integrity of the transfer hose prior to commencing product transfer. As RSPA is aware, TFI has consistently been a proponent through this rulemaking of measures designed to ensure the integrity of the transfer hose and couplers. TFI believes that RSPA's goal of ensuring that a hose is sound prior to commencing transfer may be accomplished through the daily visual inspection of the discharge system, including the transfer hose and couplers, and charging of the transfer hose with product at the pressure within the closed system. This is especially true when RSPA considers the safety implications of engaging the PTO with the customer's storage tank product valve closed.

For these reasons, TFI requests that RSPA modify the language in 49 CFR 171.5(a)(1)(i) to read:

In addition, prior to commencing the first transfer of each day, the transfer hose shall be subjected to product pressure without mechanical influence (e.g., engaging the power take-off).

The provisions of § 171.5(a)(1)(i) are intended to ensure that a cargo tank's discharge system, including transfer hose and couplings, is subjected to pressure prior to beginning transfer of product from a cargo tank motor vehicle to a receiving tank. It is not intended that any components of the discharge system should be subjected to pressures greater than full transfer pressure as part of this leak test.

RSPA believes that the problem described by TFI is common to larger cargo tank motor vehicles, known as transports, which may not have separate back-to-tank bypass valves; smaller cargo tank motor vehicles, known as bobtails, generally do have separate back-to-tank bypass valves, and during delivery the transfer hose is charged with pump discharge pressure all the way to the hose end valve, which tests the integrity of the transfer system at each delivery.

RSPA agrees with TFI's concern that some cargo tank pumping systems are not capable of pumping against a closed product valve without being damaged. Therefore, operators may determine the leakproofness of a delivery system, before beginning transfer of product from a cargo tank motor vehicle to a receiving system, by flooding the pump and charging the transfer hose with product pressure before the receiving system is opened.

RSPA will publish a response to TFI's petition for rule change and petition to extend the termination date of the final rule in the near future.

Section 171.5(a)(1)(ii) requires, in part, that prior to commencing transfer using a new or repaired transfer hose or a modified hose assembly for the first time, the hose assembly must be subjected to a pressure test performed at no less than 120 percent of the design pressure or maximum allowable working pressure (MAWP) marked on the cargo tank motor vehicle, or the pressure a hose is expected to be subjected to during product transfer, whichever is greater. In response to a recent telephone inquiry, RSPA noted that this requirement is based on the MAWP marked on a cargo tank motor vehicle, not the maximum working pressure marked on a transfer hose.

Issued in Washington, DC on September 16, 1997.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–24974 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register

Vol. 62, No. 182

Friday, September 19, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 32

RIN: 3150–AF76

License Applications for Certain Items Containing Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is resolving a petition for rulemaking submitted by mb-microtec, Inc. (PRM–32–4) by proposing to amend its regulations to permit the distribution of timepieces containing gaseous tritium light sources (GTLS) to be regulated in accordance with the same requirements as timepieces containing tritium paint. The proposed rule would remove from the regulations the specific requirements for prototype testing of these products containing tritium, and provide guidance for prototype testing in a separate document. If adopted, this proposed amendment would simplify the licensing process for distribution of certain timepieces containing tritium and would facilitate the use of a new technology in self-illuminated timepieces.

DATES: Submit comments by December 3, 1997. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays.

Examine comments received, the regulatory analysis, and other documents related to this rulemaking at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, 301–415–5905; Email CAG@nrc.gov.

Single copies of this proposed rulemaking may be obtained by written request or telefax from Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission. These same documents may also be viewed and downloaded via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone 301–415–6230, telefax 301–415–5389, Email MLT1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

The Petition for Rulemaking

In a letter dated July 30, 1993, mb-microtec, Inc. petitioned the NRC to amend its regulations ''to include timepieces containing gaseous tritium light sources (GTLS) on the same regulatory basis as those with tritium paint in regard to their distribution exempt from the requirements of 10 CFR 32.14(d).''

In the petition, the petitioner stated the following:

> With new technology greater illumination could be achieved with less radioactivity than needed for a painted watch but that the additional requirements to get a GTLS watch approved for distribution results in manufacturers not using this technology.

On August 9, 1993, the NRC docketed the letter as a petition for rulemaking (Docket No. PRM–32–4). A notice of receipt of petition for rulemaking was published for public comment in the **Federal Register** on October 29, 1993 (58 FR 52670). No public comments were received on the notice concerning the petition.

Current NRC Regulations for Certain Items Containing Byproduct Material

Section 30.15(a)(1) states that if a timepiece containing byproduct material is to be distributed to persons exempt from the NRC's licensing requirements, it may not contain more than 5 millicuries per hand, not more than 15 millicuries in the dial, and not more than 25 millicuries of tritium in total. Section 32.14(d)(1) contains overall performance requirements for the binding of tritium to watch hands, pointers, and dials, as well as specific prototype testing requirements for tritium-painted watch hands, pointers, and dials. Although 10 CFR 30.15(a)(1) does not specify a form for tritium in timepieces, the prototype testing requirements in 10 CFR 32.14(d)(1)—the section of the NRC's regulations under which a specific license to distribute watches exempt under 10 CFR 30.15(a)(1) is granted—are only applicable to timepieces employing tritium paint.

Watches containing greater than 25 millicuries of tritium in GTLSs may be distributed to persons exempt from licensing requirements in accordance with 10 CFR 30.19, ''Self-luminous products containing tritium, krypton-85, or promethium-147,'' which, unlike 10 CFR 30.15(a)(1), specifies neither a limit on the amount of tritium that may be incorporated into self-luminous products nor the end use of the product. However, to distribute a self-luminous watch containing tritium to persons exempt from licensing requirements in 10 CFR 30.19, a specific license must be obtained in accordance with 10 CFR 32.22. To manufacture, process, produce, or initially transfer self-luminous products containing unrestricted amounts of tritium under 10 CFR 32.22(a)(2), the applicant must submit detailed information and analyses concerning the particular product in order to obtain approval for distribution. The information required by 10 CFR 32.22 must be sufficient to demonstrate that the product meets a number of specific safety criteria, including dose criteria for use and disposal. The application must include proposed prototype testing procedures, which must be approved by the NRC. Further, the evaluations conducted by both the licensee and the staff, as well as the prototype testing proposed, apply to the entire product rather than its

components. Conversely, approval for distribution of timepieces containing less than 25 millicuries of tritium to persons exempt from licensing requirements in 10 CFR 30.15(a)(1)(i) requires a specific license under 10 CFR 32.14, but only requires satisfaction of the prototype testing requirements contained in 10 CFR 32.14(d). Consequently, it is less burdensome upon a licensee to distribute watches employing tritium illumination under 10 CFR 32.14 than under 10 CFR 32.22.

Proposed Amendments

The NRC has carefully reviewed the arguments presented by the petitioner and is proposing to resolve the petition by initiating this rulemaking that incorporates the petition in part. Rather than revise the specific testing requirements in the regulations as proposed by the petitioner to accommodate both tritium paint and GTLSs, the NRC is proposing a more performance-based approach by removing the existing specific testing procedures from the regulations. Guidance on specific prototype testing procedures will be provided in draft NUREG–1562, ''Standard Review Plan for Applications for Licenses to Distribute Byproduct Material to Persons Exempt from the Requirements for an NRC License,'' which will be issued for public comment. Further, the proposed rule would modify but not change the intent of the existing general performance standard. This modification will state that the method of containment or binding of the byproduct be such that the radioactive material will be bound and will not become detached from the product under the most severe conditions which are likely to be encountered in normal use and handling. By making these modifications to § 32.14(d), increased flexibility in the regulations will be provided and future developments in technology and design of tritium illuminated timepieces will be accommodated. These modifications will not decrease the level of radiation protection provided to users of tritium illuminated timepieces. Also, the radiation skin dose to an individual from timepieces containing GTLSs has been determined to be significantly less, per millicurie of tritium used, than the skin dose from timepieces containing tritium paint.

Rationale

The licensing process is more burdensome to potential distributors of timepieces under 10 CFR 30.19 than under 10 CFR 30.15(a)(1). Changing the prototype testing requirements in 10 CFR 32.14(d)(1) would simplify the licensing process for distributors of timepieces containing small quantities of tritium in the GTLS form by allowing them to apply to distribute these timepieces for use under the same requirements of the regulations as timepieces using tritium paint (10 CFR 30.15(a)(1)).

Effects of the Proposed Amendments

The effect of this proposed amendment would allow distribution of self-illuminated timepieces that utilize a new technology (GTLS) under the same requirements that currently allow distribution of timepieces using tritium paint.

Agreement State Compatibility

Under the Atomic Energy Act, certain regulatory functions are reserved to the NRC. Among these are the distribution of products to persons exempt from licensing, as discussed in 10 CFR part 150. Hence, the proposed rule, if adopted, would be an NRC Category of compatibility with regard to the manufacture and initial distribution of watches and other products for use. NRC Category rules address those regulatory areas which are reserved to NRC pursuant to the Atomic Energy Act and 10 CFR part 150.

Environmental Impact: Categorical Exclusion

The NRC has determined that the proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule would reduce the burden to licensees for GTLS by allowing them to file an application under the provisions of section 32.14 rather than under those of section 32.22, which also requires that the applicant obtain a registration certificate. The reduction in burden is estimated to be 21 hours per response. Because the application requirements contained in sections 32.14 and 32.22 are not being substantively changed, no Office of Management and Budget (OMB) clearance is required. 10 CFR part 32 requirements are approved by the OMB approval number 3150–0001.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Regulatory Analysis

The NRC has prepared a draft regulatory analysis for the proposed amendment. The analysis examines the benefits and impacts considered by the NRC. The draft regulatory analysis is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies may be obtained from Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–6230 or e-mail at MLT1@NRC.GOV.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The licensee's size and how the regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee.

(b) How the regulations could be modified to take into account the licensee's differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the regulations were modified as suggested by the licensee.

(d) How the regulation, as modified, would more closely equalize the impact of regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group.

(e) How the regulation, as modified, would still adequately protect public health and safety.

Backfit Analysis

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

List of Subjects in 10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the

Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR Part 32.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

1. The authority citation for Part 32 continues to read as follows:

Authority: Secs. 81, 161, 183, 186, 68 Stat. 935, 948, 953, 954, as amended, (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended, (42 U.S.C. 5841).

2. In § 32.14, paragraph (d) is revised to read as follows:

§ 32.14 Certain items containing byproduct material; requirements for license to apply or initially transfer.

* * * * *

(d) The Commission determines that:

(1) The method of containment or binding of the byproduct material in the product is such that the radioactive material will be bound and will not become detached from the product under the most severe conditions which are likely to be encountered in normal use and handling.

(2) Prototype tests for automobile lock illuminators are prescribed by 10 CFR 32.40, Schedule A.

Dated at Rockville, Maryland, this 15th day of September, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–24913 Filed 9–18–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

Proposed Airworthiness Standards for Acceptance Under the Primary Category Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments.

SUMMARY: This notice requests comments on proposed airworthiness standards for acceptance of the Dragonfly Model 333 helicopter under 14 CFR 21.17(f), designation of applicable regulations for primary category aircraft.

DATES: Comments must be received on or before October 20, 1997.

ADDRESSES: Send all comments to the FAA, Rotorcraft Directorate, Aircraft Certification Service, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110.

FOR FURTHER INFORMATION CONTACT: Scott Horn, Aerospace Engineer, Rotorcraft Standards Staff (ASW–110), Rotorcraft Directorate, Aircraft Certification Service, FAA; telephone number (817) 222–5125, fax number (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested parties to submit comments on the proposed airworthiness standards to the address specified above. The FAA will consider all communications received on or before the closing date before issuing the final acceptance. The proposed airworthiness standards and comments received may be inspected at the FAA, Rotorcraft Directorate, Aircraft Certification Service, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, TX 76137, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

The ''primary'' category for aircraft was created specifically for the simple, low performance personal aircraft. Section 21.17(f) provides a means for applicants to propose airworthiness standards for their particular primary category aircraft. The FAA procedure establishing appropriate airworthiness standards includes reviewing and possibly revising the applicants proposal, publication of the submittal in the **Federal Register** for public review and comment, and addressing the comments. After all necessary revisions, the standards are published as approved FAA airworthiness standards.

Accordingly, the applicant has submitted a request to the FAA to include the Italian airworthiness authority's very light rotorcraft (VLR) rules as part of the primary category rotorcraft rules. The requester justifies this request by noting that the Italian airworthiness authority has approved the applicant's aircraft in Italy under the VLR rules. The FAA has considered the applicant's proposal and has determined that those 14 CFR part 27 and 33 requirements equivalent to the Italian VLR rules and certain additional airworthiness standards should apply.

Proposed Airworthiness Standards for Acceptance Under the Primary Category Rule (PCR)

PCR.1 Applicability

(a) This document prescribes airworthiness standards for the issue of a type certificate and changes to that type certificate for the Dragon Fly Model 333, a Primary Category rotorcraft and its engine.

(b) Each person who applies under part 21 for a change to this certificate must show compliance with these requirements.

27.2(a), (b), and (c); 27.21; 27.25(a) and (b); 27.27; 27.29; 27.31; 27.33; 27.45(a), (b), (c), and (d); 27.51; 27.71; 27.73(a)(1)(i), (a)(1)(iii), and (a)(2)(i); 27.75(a)(1), (a)(2)(i), and (a)(3); 27.79(a), and (b)(1); 27.141(a), (b)(2), and (b)(3); 27.143(a), (b), (d), and (e);

PCR.143(c) A wind direction and velocity must be established in which the rotorcraft can be operated without loss of control on or near the ground in any maneuver appropriate to the type including crosswind takeoffs, sideward flight, and rearward flight with—

(1) Critical weight;

(2) Critical center of gravity;

(3) Critical rotor RPM and

(4) Altitude, from standard sea level conditions to the maximum altitude capability of the rotorcraft or 7000 feet, whichever is less.

27.151; 27.161; 27.171; 27.173; 27.175; 27.177; 27.231; 27.235; 27.239; 27.241; 27.251; 27.301; 27.305; 27.307; 27.309; 27.321; 27.337; 27.339; 27.341; 27.351; 27.361; 27.391; 27.395; 27.397; 27.399; 27.411; 27.427; 27.471; 27.473; 27.475; 27.477; 27.479; 27.481; 27.483; 27.485; 27.493; 27.497; 27.501; 27.505; 27.521; 27.547; 27.549; 27.561(a), (b)(1), and (c);

PCR.561(b)(2) Each occupant and each item of mass inside the cabin that could injure an occupant is restrained when subjected to the following ultimate inertial load factors relative to the surrounding structure: (i) Upward—3g. (ii) Forward—9g. (iii) Sideward—3g. (iv) Downward—9g.

27.571(a), (b), and (c); 27.601; 27.603; 27.605; 27.607; 27.609; 27.611; 27.613(a);

PCR.613(b) The design values must be so chosen that the probability of any structure being understrength because of material variations is extremely remote.

(c) Values contained in MIL–HDBK–5, MIL–HDBK–17 Part I, ANC–17 Part II, ANC–18, MIL–HDBK–23 Part I, and ANC–23 Part II must be used unless shown to be inapplicable in a particular case.

(d) The strength, detail design, and fabrication of the structure must minimize the probability of disastrous fatigue failure.

27.619; 27.621; 27.623; 27.625;

PCR.625(d) Each seat and safety belt with harness attachment to the structure must be shown by analysis, tests, or

both, to be able to withstand the inertia forces prescribed in PCR.561(b)(2) multiplied by a fitting factor of 1.33.

27.629; 27.653; 27.659; 27.661; 27.663; 27.671; 27.673; 27.675; 27.679; 27.681; 27.683; 27.685; 27.687; 27.691; 27.723; 27.725; 27.727; 27.731; 27.733; 27.735; 27.737; 27.751; 27.753; 27.755; 27.771; 27.773; 27.777; 27.779; 27.783; 27.785 (a), (b), (c), (e), (f), (g), (h), (i), and (j); 27.787; 27.807 (a), (b), and (c); 27.831; 27.853(a), (b), and (c)(1); 27.855; 27.859(a) and (b); 27.861; 27.863; 27.871; 27.873; 27.901;

PCR.903(a) Engine type certification. The engine must have an approved type certificate or meet the requirements provided in this document for the engine. The engine must be qualified in accordance with 33.49(d) or be otherwise approved for the intended usage.

27.903(b); 27.907; 27.917; 27.921; 27.923(a), (b), (c), (d), (f), (g), and (l); 27.927; 27.931; 27.935; 27.951; 27.955(a)(1), (2), (3), (4), (5), (6);

PCR.955(a)(7) The fuel filter required by 27.997 must be blocked to the degree necessary to provide the highest pressure drop across the filter prior to the filter going into bypass.

27.955(b) and (c); 27.959; 27.961; 27.963[Amdt. 27–23];

PCR.965 Fuel Tank Tests. Each fuel tank must be able to withstand, without failure or leakage:

(a) For each conventional metal tank and nonmetallic tank with walls not supported by the rotorcraft structure, a pressure of 3.5 p.s.i.

(b) For each integral tank, the pressure developed during the maximum limit acceleration of the rotorcraft with a full tank, with simultaneous application of the critical limit structure loads.

(c) For each nonmetallic tank with walls supported by the rotorcraft structure and with actual support conditions, a pressure of 2.0 p.s.i. The supporting structure must be designed for the critical loads occurring in the flight or landing condition combined with the fuel pressure loads resulting from the corresponding accelerations.

27.969;

PCR.971 Fuel Tank Sump. (a) Each fuel tank must have a drainable sump with an effective capacity in any ground attitude to be expected in service of 0.10 percent of the tank capacity or 120 cc, whichever is greater, unless—

(1) The fuel system has a sediment bowl or chamber that is accessible for preflight drainage and has a minimum capacity; and

(2) Each fuel tank drain is located so that in any ground attitude to be expected in service, water will drain from all parts of the tank to the sediment bowl or chamber.

(b) Each sump, sediment bowl, and sediment chamber drain required by this section must comply with the drain provisions of paragraph 27.999(b).

27.973; 27.975; 27.977; 27.991; 27.993; 27.995; 27.997; 27.999;

PCR.1011 Engine Oil System: General.

(a) Each engine must have an independent oil system that can supply it with the appropriate quantity of oil at a temperature not above that safe for continuous operation.

(b) The usable capacity of each oil system may not be less than the product of the endurance of the rotorcraft under critical operating conditions and the maximum oil consumption of the engine under the same conditions.

(c) If an engine depends upon a fuel/oil mixture for lubrication, then a reliable means of providing it with the appropriate mixture must be established.

27.1013; 27.1015; 27.1017; 27.1019(b); 27.1021; 27.1027; 27.1041; 27.1043; 27.1045; 27.1091; 27.1093; 27.1121; 27.1123; 27.1141; 27.1143; 27.1145; 27.1147; 27.1163; 27.1183; 27.1185; 27.1187; 27.1189; 27.1191; 27.1193(a),(b),(c),(d), and (e); 27.1194; 27.1301; 27.1303; 27.1305(a), (c) through (m), (r);

PCR.1305(b) A cylinder head temperature warning device to indicate when the temperature exceeds a safe value.

27.1307; 27.1309(a) and (c); 27.1321(a) and (c); 27.1322; 27.1323(a) and (b); 27.1325(a),(c), and (d); 27.1327; 27.1337; 27.1351; 27.1353; 27.1357; 27.1361(a) and (c); 27.1365; 27.1367; 27.1401; 27.1411; 27.1413; 27.1461; 27.1501; 27.1503; 27.1505; 27.1509; 27.1521; 27.1523; 27.1525; 27.1527; 27.1529; 27.1541; 27.1543; 27.1545; 27.1547; 27.1549; 27.1551; 27.1553; 27.1555; 27.1557(a), (b), and (d);

PCR.1557(c) Fuel and Oil Filler Openings Marking. The following apply:

(1) Fuel filler openings must be marked at or near the filler cover with—

(i) The word ''fuel';

(ii) For reciprocating engine powered rotorcraft, the minimum fuel grade; and

(iii) For each two stroke engine without a separate oil system, the fuel/oil mixture.

(2) Oil filler openings must be marked at or near the filler cover with the word ''oil''.

27.1559; 27.1565; 27.1581; 27.1583; 27.1585; 27.1587; 27.1589; 33.5; 33.7 (a) and (b); 33.8; 33.15; 33.17(a),(b),(c), and (e);

PCR.33.19 Engine design and construction must minimize the development of an unsafe condition of the engine between overhaul periods.

33.21; 33.23; 33.25; 33.29(a); 33.31; 33.33; 33.35; 33.37; 33.39;

PCR.33.39(d) For engine lubrication depending upon oil premixed with fuel in a declared fixed percentage, it must be demonstrated that this mixture can assure appropriate engine lubrication, throughout the range of conditions in which the rotorcraft is expected to operate, to include reduced fuel consumption conditions.

33.41; 33.42;

PCR.33.43 Vibration test. Each engine must undergo a vibration survey when installed in the airframe to show compliance with 27.907 and 33.33. The survey must be conducted throughout the expected operating range of rotational speed and power of the engine. Each accessory drive and mounting attachment must be loaded with the maximum loads expected in service.

33.45; 33.47;

PCR.33.49 Endurance Test

(a) The engine must be subjected to an endurance test that includes a total of 50 hours of operation and consists of the cycles specified in (b) below.

(b) Each cycle consists of 120 minutes of run time and must be conducted as follows:

(1) A start and idle period of 5 minutes.

(2) Increase to takeoff torque and maximum speed for takeoff torque and maintain the takeoff condition for a period of 5 minutes.

(3) Decrease to idle and maintain the idle condition for 5 minutes.

(4) Increase to takeoff torque and maximum speed for takeoff torque and maintain the takeoff condition for a period of 5 minutes.

(5) Decrease to idle and maintain the idle condition for 5 minutes.

(6) Increase to takeoff torque and maximum speed for takeoff torque and maintain the takeoff condition for a period of 5 minutes.

(7) Decrease to idle and maintain the idle condition for 5 minutes.

(8) Increase to 75 percent of maximum continuous torque and maximum speed for 75 percent of maximum continuous torque and maintain this condition for a period of 15 minutes.

(9) Decrease to idle and maintain the idle condition for 5 minutes.

(10) Increase to maximum continuous torque and maximum speed for maximum continuous torque and maintain this condition for a period of 60 minutes.

(11) Decrease to idle and maintain the idle condition for 5 minutes.

(12) Perform an engine shutdown.

(c) During or following the endurance test the fuel and oil consumption must be determined.

33.51; 33.53; 33.55; 33.57

Noise requirements of FAR Part 36 Noise Standards Appendix J amended by amendments 36–1 through the latest amendment in effect at the time of Type Certification.

Issued in Fort Worth, Texas, on September 3, 1997.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–25010 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–ANE–05]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–2, –3, –3B, –3C, and –5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the revision of an existing airworthiness directive (AD), applicable to CFM International (CFMI) CFM56–2, –3, –3B, –3C, and –5 series turbofan engines, that currently requires repetitive magnetic chip detector (MCD) inspections and removal from service of certain No. 3 bearings. This action would remove the requirement for MCD inspections for certain No. 3 bearings if the bearing has 6,000 or more hours time in service since new, extend the removal from service date for certain No. 3 bearings, change the inspection interval for certain No. 3 bearings, delete a specific No. 3 bearing part number, and replace reference to specific maintenance manuals with service bulletins. Other requirements of the current AD would remain unchanged and be carried over into the proposed AD. This proposal is prompted by additional data which demonstrates a reduced bearing failure rate after a period of time in service, therefore, an acceptable level of safety can be maintained with a relaxation of some of the current AD requirements. The actions specified by the proposed AD are intended to prevent a No. 3 bearing failure, and a subsequent inflight engine shutdown.

DATES: Comments must be received by November 18, 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. 89–ANE–05, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Glorianne Messemer, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 89–ANE–05.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 89–ANE–05, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 11, 1989, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 89–23–06, Amendment 39–6370 (54 FR 43581, October 26, 1989), to require a repetitive inspection and removal from service program for certain No. 3 bearings installed on CFM International (CFMI) CFM56–2, –3, –3B, –3C, and –5 series turbofan engines. That action was prompted by a high rate of No. 3 bearing failures on CFM56 engines. That condition, if not corrected, could result in a No. 3 bearing failure, and a subsequent inflight engine shutdown.

Since the issuance of AD 89–23–06, the FAA has received additional data concerning No. 3 bearing failures. This data demonstrates that the failure rate for No. 3 bearings with more than 6,000 hours time in service since new is significantly lower than for those with less than 6,000 hours. Therefore, the FAA has determined that an acceptable level of safety will be maintained with a relaxation of some of the current AD requirements.

In addition, since the issuance of AD 89–23–06, the manufacturer has also requested and obtained approval for an extension to the removal from service date for certain No. 3 bearings. The new date is December 31, 1997. Paragraphs (a)(2) and (b)(2) of the proposed rule reflect this new date.

Also, since the issuance of AD 89–23–06, the manufacturer has obtained approval for a new inspection interval for CFM56–2 series engines. The new interval is 75 hours. Paragraph (d) of the proposed rule reflects this new interval.

Further, since the issuance of AD 89–23–06, the manufacturer has advised the FAA that No. 3 bearing, Part Number (P/N) 1362M76P02, is not approved for CFM56–2 series engines. The manufacturer has confirmed that there are currently none in service, and have indicated that they do not plan to introduce any into service in the future. The manufacturer has therefore requested that this P/N be deleted from the AD. Paragraph (b) of the proposed rule omits this P/N.

Finally, this proposal deletes reference to specific maintenance manuals. Since issuance of AD 89–23–06, the manufacturer has issued service bulletins (SBs) which outline all aspects of the No. 3 bearing inspection and replacement program.

The FAA has reviewed and approved the technical contents of CFM56–2 SB No. 72–620, Revision 4, dated November 17, 1995, CFM56–3/–3B/–3C SB No. 72–530, Revision 3, dated November 17, 1995, and CFM56–5 Alert Service Bulletin (ASB) No. 72–A118, Revision 1, dated August 1, 1997, that describe the No. 3 bearing inspection and replacement program.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 89–23–06 to remove the requirement for MCD inspections for certain No. 3 bearings if the bearing has 6,000 or more hours time in service since new, extend the removal from service date for certain No. 3 bearings, change the inspection interval for certain No. 3 bearings, delete a specific No. 3 bearing P/N, and replace reference to specific maintenance manuals with service bulletins. Other requirements of the current AD would remain unchanged and be carried over into the proposed AD.

All changes introduced in the proposed rule are relaxatory in nature except for the new inspection interval in paragraph (d). The manufacturer has advised the FAA that there is only one engine not installed on a U.S. registered aircraft that would be affected by this new inspection interval. Therefore, no additional cost to U.S. operators is expected to result from this proposed relaxatory action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''major rule'' under Executive Order 12291; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6370 (54 FR 43581, October 26, 1989) and by adding the following new airworthiness directive (AD):

CFM International: Docket No. 89–ANE–05. Revises AD 89–23–06, Amendment 39–6370.

Applicability: CFM International (CFMI) CFM56–2, –3, –3B, –3C, and –5 series turbofan engines, installed on but not limited to Airbus A319 and A320 series, McDonnell Douglas DC–8 series, and Boeing 737 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 (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a No. 3 bearing failure and subsequent inflight engine shutdown, accomplish the following:

(a) For CFM56–3, –3B, and –3C series engines equipped with No. 3 bearings, Part Number (P/N) 9732M10P12 (Serial Number (S/N) series FAFDxxxx and FAFExxxx); 9732M10P18; or 1362M76P02 accomplish the following:

(1) Inspect the forward sump magnetic chip detector (MCD) in accordance with CFM56–3/–3B/–3C Service Bulletin (SB) No. 72–530, Revision 3, dated November 17, 1995, within the next 50 hours time in service (TIS) after the effective date of this AD. Thereafter, inspect the forward sump MCD at intervals not to exceed 50 hours TIS since the last inspection (SLI) in accordance with CFM56–3/–3B/–3C SB No. 72–530, Revision 3, dated November 17, 1995, until accomplishment of paragraph (a)(2) of this AD, or, for bearing P/N 9732M10P12, until the TIS since new is 6,000 hours or more. Remove from service, prior to further flight, engines which exhibit MCD metallic debris defined as not serviceable in accordance with CFM56–3/–3B/–3C SB No. 72–530, Revision 3, dated November 17, 1995.

(2) Remove from service affected No. 3 bearings at the next shop visit, or before December 31, 1997, whichever occurs first.

(b) For CFM56–2 series engines equipped with No. 3 bearings, P/N 9732M10P12 (S/N series FAFDxxxx and FAFExxxx) or 9732M10P18, accomplish the following:

(1) Inspect the forward sump MCD in accordance with CFM56–2 SB No. 72–620, Revision 4, dated November 17, 1995, within the next 50 hours TIS after the effective date of this AD. Thereafter, inspect the forward sump MCD at intervals not to exceed 50 hours TIS SLI in accordance with CFM56–2 SB No. 72–620, Revision 4, dated November 17, 1995, until accomplishment of paragraph (b)(2) below, or, for bearing P/N 9732M10P12, until the TIS since new is 6,000 hours or more. Remove from service, prior to further flight, engines which exhibit MCD metallic debris defined as not serviceable in accordance with CFM56–2 SB No. 72–620, Revision 4, dated November 17, 1995.

(2) Remove from service affected No. 3 bearings at the next engine shop visit, or before December 31, 1997, whichever occurs first.

(c) For CFM56–3, –3B, and –3C series engines equipped with No. 3 bearings, P/N 9732M10P10; 9732M10P17; or 9732M10P12 (S/N series other than FAFDxxxx or FAFExxxx), inspect the forward sump MCD in accordance with CFM56–3/–3B/–3C SB No. 72–530, Revision 3, dated November 17, 1995, within the next 75 hours TIS after the effective date of this AD. Thereafter, inspect the forward sump MCD at intervals not to exceed 75 hours TIS SLI in accordance with CFM56–3/–3B/–3C SB No. 72–530, Revision 3, dated November 17, 1995, until the bearing TIS since new is 6,000 hours or more. Remove from service, prior to further flight, engines which exhibit MCD metallic debris defined as not serviceable in accordance with CFM56–3/–3B/–3C SB No. 72–530, Revision 3, dated November 17, 1995.

(d) For CFM56–2 series engines equipped with No. 3 bearings, P/N 9732M10P10; 9732M10P17; or 9732M10P12 (S/N series other than FAFDxxxx or FAFExxxx), inspect the forward sump MCD in accordance with the instructions of CFM56–2 SB No. 72–620, Revision 4, dated November 17, 1995, within the next 75 hours TIS after the effective date of this AD. Thereafter, inspect the forward sump MCD at intervals not to exceed 75 hours TIS SLI in accordance with CFM56–2 SB No. 72–620, Revision 4, dated November

17, 1995, until the bearing TIS since new is 6,000 hours or more. Remove from service, prior to further flight, engines which exhibit MCD metallic debris defined as not serviceable in accordance with CFM56–2 SB No. 72–620, Revision 4, dated November 17, 1995.

(e) For CFM56–5 series engines equipped with No. 3 bearing, P/N 9542M60P01, inspect the forward sump MCD in accordance with CFM56–5 Alert Service Bulletin (ASB) No. 72–A118, Revision 1, dated August 1, 1997, within the next 50 hours TIS after the effective date of this AD. Thereafter, inspect the forward sump MCD at intervals not to exceed 50 hours TIS SLI in accordance with CFM56–5 ASB No. 72–A118, Revision 1, dated August 1, 1997. Remove from service, prior to further flight, engines which exhibit MCD metallic debris defined as not serviceable in accordance with CFM56–5 ASB No. 72–A118, Revision 1, dated August 1, 1997.

(f) Bearing inspections accomplished in accordance with AD 89–17–04 or AD 89–23–06 satisfy the corresponding requirements of this AD.

(g) For the purpose of this AD, a shop visit is defined as exposure of the inlet gearbox.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded 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.

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

Issued in Burlington, Massachusetts, on September 12, 1997.

Mark C. Fulmer,

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

[FR Doc. 97–24909 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–29–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–5B/2P Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to CFM International (CFMI) CFM56–5B/2P series turbofan engines. This proposal would require a reduction of the low cycle fatigue (LCF) retirement life for certain low pressure turbine (LPT) cases. This proposal is prompted by the results of a refined life analysis performed by the manufacturer which revealed minimum calculated LCF lives significantly lower than the published LCF retirement life. The actions specified by the proposed AD are intended to prevent a LCF failure of the LPT case, which could result in damage to the aircraft.

DATES: Comments must be received by November 18, 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–29–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7138; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–29–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 97–ANE–29–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

This proposed airworthiness directive (AD) is applicable to CFM International (CFMI) CFM56–5B/2P series turbofan engines. A study performed by the manufacturer using updated lifing analyses based on recent engine test results revealed that certain low pressure turbine (LPT) cases have minimum calculated low cycle fatigue (LCF) lives which are significantly lower than the published LCF retirement life. This condition, if not corrected, could result in a LCF failure of the LPT case, which could result in damage to the aircraft.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a reduction of the LCF retirement life for certain LPT cases.

There are approximately 18 engines of the affected design in the worldwide fleet. The manufacturer has advised the FAA that there are no engines installed on U.S. registered aircraft that would be affected by this AD. Therefore, there is no associated cost impact on U.S. operators as a result of this AD. However, should an affected engine be imported on an aircraft and placed on the U.S. registry in the future, and assuming that the parts cost is proportional to the reduction of the LCF retirement life, the required parts would cost approximately $40,423 per engine. Based on these figures, the total cost impact of the proposed AD is estimated to be $40,423 per engine.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

CFM International: Docket No. 97–ANE–29–AD.

Applicability: CFM International (CFMI) CFM56–5B1/2P, –5B2/2P, –5B3/2P, and –5B4/2P turbofan engines, installed with low pressure turbine (LPT) case, Part Number (P/N) 338–117–004–0, installed on but not limited to Airbus A320 and A321 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 a low cycle fatigue (LCF) failure of the LPT case, which could result in damage to the aircraft, accomplish the following:

(a) Remove from service LPT case, P/N 338–117–004–0, and replace with a serviceable part, as follows:

(1) For CFM56–5B2/2P and –5B3/2P engines, prior to accumulating 10,500 cycles.

(2) For CFM56–5B1/2P and –5B4/2P engines, prior to accumulating 15,500 cycles.

(b) This action establishes the new LCF retirement lives of 10,500 and 15,500 cycles for the engines stated in paragraphs (a)(1) and (a)(2) of this AD, which are published in Chapter 05 of CFM56–5B Engine Shop Manual, CFMI–TP.SM.9.

(c) For the purpose of this AD, a ''serviceable part'' is one that has not exceeded its respective new life limit as set out in this AD.

(d) Except as provided in paragraph (e) of this AD, no alternative replacement times may be approved for LPT case, P/N 338–117–004–0.

(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. The request should be forwarded 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 requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on September 12, 1997.

Mark C. Fulmer,

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

[FR Doc. 97–24911 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–42]

Proposed Modification of Class D and Class E Airspace and Removal of Class E Airspace; Belleville, IL, MidAmerica Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class D and Class E airspace and remove Class E airspace at Belleville, IL. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 14R, a GPS SIAP to Runway 14L, a GPS SIAP to Runway 32R, a GPS SIAP to Runway 32L, an Instrument Landing System (ILS) SIAP to Runway 14R, a IH–ILS SIAP to Runway 14R, a HI–ILS SIAP to Runway 32L, an ILS SIAP to Runway 32L, an ILS SIAP to Runway 32R, a Nondirectional Radio Beacon (NDB) SIAP to Runway 32R, an NDB SIAP to Runway 32L, a Tactical Air Navigation (TACAN) SIAP to Runway 32L, a TACAN SIAP to Runway 14R, a HI–TACAN SIAP to Runway 14R, a HI–TACAN SIAP to Runway 32L, and a TACAN–A SIAP have been developed for MidAmerica Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing these approaches. This action would increase the radius of the existing Class D airspace, and decrease the radius of the existing Class E airspace while adding an extension to the northwest of the existing Class E airspace. This action would also remove the existing Class E airspace designated as an extension to the existing Class D airspace. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before November 3, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–42, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AGL–42.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the rules docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3494. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class D and Class E airspace and remove Class E airspace at Belleville, IL. This proposal would provide adequate Class D and Class E airspace for operators executing the GPS SIAP to Runway 14R, the GPS SIAP to Runway 14L, the GPS SIAP to Runway 32R, the GPS SIAP to Runway 32L, the ILS SIAP to Runway 14R, the HI–ILS SIAP to Runway 14R, the HI–ILS SIAP to Runway 32L, the ILS SIAP To Runway 32L, the ILS SIAP to Runway 32R, the NDB SIAP to Runway 32R, the NDB SIAP to Runway 32L, the TACAN SIAP to Runway 32L, the TACAN SIAP to Runway 14R, the HI–TACAN SIAP to Runway 14R, the HI–TACAN SIAP to Runway 32L, and the TACAN–A SIAP for MidAmerican Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing these approaches. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class D airspace designations are published in paragraph 5000 Class E airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL IL D Belleville, IL [**Revised**]

MidAmerica Airport, IL
(Lat. 38°32′41″ N, long. 89°50′01″ W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.8-mile radius of the MidAmerica Airport.

* * * * *

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

* * * * *

AGL IL E4 Belleville, IL [**Removed**]

* * * * *

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Belleville, IL [**Revised**]

MidAmerica Airport, IL
(Lat. 38°32′41″ N, long. 89°50′01″ W)
Scott TACAN
(Lat. 38°32′42″ N, long. 89°50′58″ W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of MidAmerica Airport and within 4 miles each side of the Scott TACAN 311° radial extending from the 7.3-mile radius to 10.6 miles northwest of the airport, excluding that airspace within the St. Jacob, IL, and Cahokia, IL, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on September 3, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–24853 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–44]

Proposed Modification of Class E Airspace; Grand Rapids, MI, Kent County International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Grand Rapids, MI. An Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway 35 has been developed for Kent County International Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action would increase the radius of the existing Class E airspace. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before November 3, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–44, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AGL–44.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Grand Rapids, MI. This proposal would provide adequate Class E airspace for operators executing the ILS Runway 35 SIAP at Kent County International Airport by increasing the radius of the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. the authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 The Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Grand Rapids, MI [Revised]

Kent County International Airport, MI (Lat. 42°52′57″N, long. 85°31′16″W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Kent County International Airport.

* * * * *

Issued in Des Plaines, Illinois on September 3, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–24854 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104893–97]

RIN 1545–AV10

Guidance Regarding Claims for Income Tax Convention Benefits; 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 regarding rules for determining whether U.S. source payments made to entities, including entities that are fiscally transparent in the United States and/or the applicable treaty jurisdiction, are eligible for treaty-reduced tax rates.

DATES: The public hearing originally scheduled for September 24, 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 894 of the Internal Revenue Code. A notice of proposed rulemaking and public hearing appearing in the **Federal Register** on Wednesday, July 2, 1997, (62 FR 35755), announced that a public hearing would be held on Wednesday, September 24, 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, September 24, 1997, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97–24878 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

[MD–043–FOR]

Maryland Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Maryland regulatory program (hereinafter the ''Maryland program'' under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Maryland statutes pertaining to the financial interests of committee members. The amendment is intended to revise the Maryland program to be consistent with the corresponding Federal regulations and SMCRA.

DATES: Written comments must be received by 4:00 p.m. e.s.t. October 20, 1977. If requested, a public hearing on the proposed amendment will be held on October 14, 1997. Requests to speak at the hearing must be received by 4:00 p.m., e.s.t., on October 6, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Program Manager, at the address listed below.

Copies of the Maryland program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Program Manager, OSM, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220. Telephone: (412) 937–2153.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone: (301) 689–4136.

FOR FURTHER INFORMATION CONTACT:

George Rieger, Program Manager, Appalachian Regional Coordinating Center, at (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

On December 1, 1980, the Secretary of the Interior conditionally approved the Maryland program. Background information on the Maryland program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 1, 1980, **Federal Register** (45 FR 79449). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 920.12, 920.15, and 920.16.

II. Description of the Proposed Amendment

By letter dated August 22, 1997 (Administrative Record No. MD–578.00), Maryland submitted a proposed amendment to its program pursuant to SMCRA in response to a required amendment at 30 CFR 920.16(1). Maryland is revising the 1997 Laws of Maryland, Chapter 223 (House Bill 245), at section 15–204(a)(4). Specifically, Maryland proposes to require that Land Reclamation Committee members rescue themselves from proceedings that may affect their direct or indirect financial interests.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on October 6, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OMS. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act.

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certificate made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 10, 1997.

John A. Holbrook, II,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–24986 Filed 9–18–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL–5889–1]

Minor Amendments to Inspection Maintenance Program Evaluation Requirements

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes revisions to the Motor Vehicle Inspection/Maintenance (I/M) requirements by replacing the I/M rule requirement that the tailpipe portion of the mandatory program evaluation be performed using only an IM240 or equivalent mass-emission transient test with a requirement that states use a sound evaluation methodology capable of providing accurate information about the overall effectiveness of an I/M program. The goal of this proposed rule change is to allow states additional flexibility to use not only IM240 but other approved alternative methodologies for their program evaluation. This proposal also clarifies that such program evaluation testing shall begin no later than November 30, 1998, and is not required to be coincident with program start up (though the first report is still due two years after program start up). This proposal also clarifies that ''initial test'' simply means that the test is conducted before repairs for each test cycle, and does not therefore preclude states from using alternative sampling methodologies such as roadside pullover to sample the fleet.

This proposal also amends the conditions relating to the program evaluation testing requirements that were part of the conditional interim approval actions taken on the I/M State Implementation Plans (SIPs) for the Commonwealths of Pennsylvania and Virginia and the State of Delaware. Lastly, through this document, EPA requests that other states that would like to take advantage of the flexibility proposed today review their

implementation plans for any language that conflicts with these proposed changes. Such language will need to be amended and the amendment submitted as a SIP revision once today's proposed action becomes final.

DATES: Written comments on this proposal must be received no later than October 20, 1997. No public hearing will be held unless a request is received in writing by October 6, 1997.

ADDRESSESS: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–97–46. It is requested that a duplicate copy be submitted to Tracey Bradish at the address in the **FOR FURTHER INFORMATION CONTACT** section below. The docket is located at the Air Docket, Room M–1500 (6102), Waterside Mall SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 3:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Tracey Bradish, Office of Mobile Sources, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone (313) 668–4239.

SUPPLEMENTARY INFORMATION:

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II. Summary of Proposal

Under the Clean Air Act as amended in 1990 (the Act), 42 U.S.C. 7401 *et seq.*, the U.S. Environmental Protection Agency (EPA) published in the **Federal Register** on November 5, 1992, (40 CFR part 51, subpart S) a rule related to state air quality implementation plans for Motor Vehicle Inspection and Maintenance (I/M) programs (hereafter referred to as the I/M rule; see 57 FR 52950). EPA is proposing today to further revise this rule to provide greater flexibility to states in conducting program evaluation. This proposed rulemaking proposes to: (1) Amend the I/M program evaluation requirements at 40 CFR 51.353(c) to remove the current requirement that the tailpipe portion of the program evaluation can be performed only by conducting mass emission transient testing (METT), (2) create a new evaluation requirement at 40 CFR 51.353(c) that will instead require states to conduct program evaluation testing using a sound evaluation methodology capable of providing accurate information about I/M program effectiveness, such evaluation to begin no later than November 30, 1998, (3) amend the requirement that the program evaluation tests be conducted ''at the time initial test is due'' to clarify that states are not barred from using alternative sample gathering methods like roadside pullovers by defining ''the time of initial test'' as any time prior to repairs during the inspection cycle under consideration, (4) delete the current conditions on Pennsylvania's and Virginia's conditional interim I/M approvals and Delaware's conditional approval (40 CFR part 52, subpart NN, § 52.2026(a)(2), 40 CFR part 52, subpart V, § 52.2450(b)(2), and 40 CFR part 52, subpart I, § 52.424(b), respectively) that require submission of program evaluation regulations under the existing I/M rule, and (5) impose a new condition on Pennsylvania's, Virginia's, and Delaware's I/M approvals that will require them to submit I/M regulations which include a requirement to perform a program evaluation using a sound evaluation methodology meeting the amended requirements of 40 CFR 51.353(c) by November 30, 1998, if commitments are submitted by October 15, 1997 to submit such regulations within such time frame.

The I/M rule currently requires states to test at least 0.1 percent of the vehicles subject to inspection in a given year using a state administered or monitored IM240 or an EPA approved equivalent METT evaluation methodology. This proposed action revises the current rule to allow states the option of using an approved, alternative, sound methodology for their program evaluation. This proposed action also clarifies that states are to start vehicle testing for their program evaluation no later than November 30, 1998, and are not required to do so coincident with program start up.

Today's proposed action is in response to the many changes that have occurred in the field of I/M since the original rule was promulgated in November 1992. Program designs and test types not originally envisioned in 1992 are now becoming the options of choice among many states required to implement enhanced I/M programs. For example, non-METTs like the Acceleration Simulation Mode (ASM) test have been adopted by several enhanced I/M states that were originally expected to choose the METT-based IM240. These states have subsequently voiced the concern that requiring a METT like the IM240 for the purpose of evaluating a program using a non-METT as its day-to-day test poses certain practical implementation difficulties not experienced in programs that have opted to use a METT as the day-to-day test. While these problems are not insurmountable, EPA acknowledges the practical benefits of developing a sound evaluation methodology that does not rely on METT. Today's proposal, therefore, introduces the flexibility needed to allow states who choose to do so to make the case for alternative evaluation methodologies, including those centered on non-METT-based testing. Today's proposed amendments will also better accommodate new advances in analytical methodologies, given the speed at which new technology in this field has been shown to evolve and mature.

To ensure that all states have an equal opportunity to take advantage of the flexibilities created by today's proposed amendments, it is necessary that EPA also amend certain I/M SIP approval actions previously published in the **Federal Register** in response to the National Highway System Designation Act of 1995 (NHSDA), as well as those published in response to EPA's own I/M flexibility amendments of September 18, 1995 and July 25, 1996. The NHSDA and I/M amendments introduced additional flexibility with regard to I/M program design, and states that opted to take advantage of this flexibility were required to submit new SIPs. In review of these revised I/M SIPs, EPA found that many failed to fully address one aspect or another of the I/M rule, leading the Agency to propose either conditional interim approvals (in the case of NHSDA-triggered revisions) or conditional approvals in the remaining cases. For example, the Commonwealths of Pennsylvania and Virginia failed to fully address the I/M rule's program evaluation requirements for conducting the IM240 or an equivalent, approved METT on 0.1 percent of their in-use fleet. In response to this omission, EPA originally placed conditions on the Virginia and Pennsylvania interim approval actions, based on commitments made by the Commonwealths, requiring them to adopt the regulations needed to meet the METT-based program evaluation requirement. Since today's proposed amendments broaden the program evaluation requirement to include other

sound evaluation methodologies, it is also appropriate to propose withdrawing these METT-based program evaluation conditions on the interim approval notices for Virginia and Pennsylvania. In place of these original conditions, EPA proposes to impose new conditions that will require the commonwealths instead to submit program evaluation regulations that meet the more flexible requirements of the amended 40 CFR 51.353(c). In the case of Delaware, while the program evaluation condition did not explicitly require METT-based program evaluation, the deadline for meeting that condition falls sooner than it would based upon today's proposed amendments. To take advantage of this deadline extension, it is necessary for EPA to also amend the **Federal Register** notice conditionally approving the Delaware I/M SIP. All three—Delaware, Virginia, and Pennsylvania—must submit a commitment by October 15, 1997, to adopt and submit the required evaluation methodology requirements by November 30, 1998 in order to support EPA's imposition of the new proposed conditions under section 110(k)(4) of the Act.

Of the three above SIP approval notices, only Virginia's requires the Commonwealth to meet its METT-based program evaluation condition before EPA will be able to finalize today's proposed action. The current deadline for Virginia's meeting this condition is September 15, 1997, which is based upon a commitment made by the Commonwealth prior to EPA's decision to revise the program evaluation requirement. The September 15, 1997 date does not reflect the full twelve month period available under the statute for meeting conditions which, in the case of Virginia, would be May 15, 1998. Virginia has recently committed to submit program evaluation provisions meeting the existing I/M rule by May 15, 1998 should EPA fail to take final action on today's proposal. For these reasons, EPA is taking an interim final action elsewhere in this **Federal Register** to extend the deadline for Virginia's existing program evaluation condition to May 15, 1998. EPA believes it is appropriate to take such action without prior public notice and comment because it would be contrary to the public interest to require Virginia to comply with a condition based on a requirement that EPA has proposed to amend, and because Virginia's recent commitment is consistent with the statute.

Lastly, it may be necessary for some states to amend their currently approved I/M SIPs to take advantage of today's proposed flexibilities. EPA therefore requests that such states review their enhanced I/M SIPs for any language that may conflict with today's proposed changes. Such language will need to be amended and the amendment submitted as a SIP revision once today's proposed action becomes final.

III. Authority

Authority for the rule change proposed in this notice is granted to EPA by section 182 of the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*). Authority to conditionally approve a SIP based on a state's commitment to revise the SIP by a date certain within one year is provided by section 110(k)(4) of the Act.

IV. Background of the Proposed Amendments

Section 182(c)(3)(C) of the 1990 Clean Air Act required that enhanced I/M programs ''biennially prepare a report to the Administrator which assesses the emission reductions achieved by the program * * * based on data collected during inspection and repair of vehicles. The methods used to assess the emission reductions shall be those established by the Administrator.'' EPA established the criteria for this program evaluation under section 51.353(c) of the original I/M rule (November 5, 1992).

As originally promulgated, the program evaluation was to include state administered or monitored program evaluation tests on a random, representative sample of at least 0.1 percent of the annual subject vehicle population. The program evaluation tests included measuring the gram-per-mile tailpipe emissions of this sample using the IM240. Alternative, equivalent METTs were allowed in place of the IM240, but these had to be approved by EPA. The results of the program evaluation testing were to be reported every two years, beginning with the second anniversary of program start up.

The IM240 was originally selected as the basis for program evaluation because of its high degree of correlation to the Federal Test Procedure (FTP), the one test method that all vehicles have in common due to its use in the vehicle certification process. Both the FTP and the IM240 are METTs, which means that they measure the actual mass of emissions produced by a vehicle (in terms of grams per mile) as opposed to simply measuring the concentrations of those emissions. METTs like the IM240 and FTP also simulate real world driving conditions by testing the vehicle over the course of a driving cycle covering a wide range of speeds and operating conditions. This is especially important in determining a vehicle's precise emissions output, since most on-road vehicles emit different amounts depending upon their operating conditions.

Of these two METTs, the IM240 was deemed to be the most cost effective for use as a program evaluation method. Furthermore, at the time the I/M rule was promulgated in 1992, it was anticipated that most programs subject to the enhanced I/M requirement would opt to use IM240 as part of their routine testing program. Therefore, requiring additional, state administered or monitored IM240s to confirm the overall program's effectiveness did not require states to invest in additional, program evaluation testing equipment and did not call for the development of an alternative program evaluation testing methodology.

On November 28, 1995, President Clinton signed the National Highway System Designation Act of 1995 (NHSDA). Section 348 of this legislation addressed I/M program requirements, and specifically prohibited EPA from mandating the ''adoption or implementation by a State of a test-only IM240 enhanced vehicle inspection and maintenance program as a means of compliance with'' the Clean Air Act. Nevertheless, EPA has determined that additional flexibility is desirable in the program evaluation area as well, to better accommodate the wider range of enhanced I/M program designs states are in the process of adopting and implementing under both the NHSDA and EPA's previous I/M flexibility amendments, and which were not anticipated at the time the original program evaluation criteria were promulgated. Furthermore, EPA now believes that alternative, sound methods for meeting the Clean Air Act's program evaluation requirement may exist, and the Agency intends to work with states and other interested parties during the proposed period of delay in evaluation requirements to identify and approve these alternatives.

EPA is therefore proposing to provide greater flexibility in two specific areas with regard to these criteria. The first is to broaden the universe of potentially acceptable program evaluation tests by changing the requirement from the IM240 or an approved, equivalent METT to the less prescriptive, and more innovation-friendly requirement for a ''sound evaluation methodology.'' Second, to give EPA and the states time to evaluate potential alternative methodologies, EPA is proposing to delay the start up of the mandatory evaluation program to no later than

November 30, 1998. EPA believes that postponing this requirement is a logical extension of the deadline deferment otherwise provided for or implicit in the flexibilities provided by the NHSDA and EPA's own I/M flexibility amendments.

V. Discussion of Major Issues

A. Emission Impact of the Proposed Amendments

The program effectiveness evaluation does not itself produce emission reductions. Rather, the program evaluation is intended to confirm that emission reductions projected by modeling and claimed in the states' implementation plans have been achieved in actual practice. This evaluation assesses the effectiveness of the entire program, not just the test type being used. Should a shortfall be discovered between the credit claimed and the reductions actually achieved, the program evaluation is also used to define the extent of that shortfall. Therefore, the program evaluation measurement methodology has an impact on a state's ability to determine whether or not additional reductions are needed to achieve its clean air goals within the prescribed time frame. The evaluation may also demonstrate that a program is exceeding its reduction goals and therefore deserves additional credit.

It is important to note that the Clean Air Act does not mandate the method to be used in evaluating program effectiveness. Instead, the responsibility for determining and approving the program evaluation methodology is delegated to the Administrator. Some states have already adopted or have indicated an intention to adopt the IM240 or some other, as-yet unapproved, equivalent mass-emission transient test for the purpose of performing the required program evaluation. Today's proposed action does not retract the Administrator's previous approval of the IM240, and it does not compel states that have chosen to use an approved METT as their program evaluation method to change to another, as-yet-undefined method. EPA believes that the IM240 and potentially other equivalent METTs provide a sound methodology for program evaluation.

Furthermore, today's proposed action is not intended to eliminate the need for states to perform the program evaluation required by the Act; it does not change the fact that such evaluation must be based upon actual data as opposed to modeled projections. It also does not change the fact that EPA must approve the program evaluation methodology selected for any state program, as a SIP revision. Instead, today's proposed action is intended to broaden the range of potentially acceptable evaluation methods and delay the time for their implementation; it will also serve as an incentive for innovation in the development of such methods.

Lastly, while today's proposed action will have the effect of delaying when the program effectiveness evaluation begins, it does not change when the first program evaluation report is due, which remains two years after the initial start date of mandatory testing. Thus, the first report will be based on only one year of data. Given this and the above, EPA concludes that today's proposed action will have no net impact on emission reductions.

B. Impact on Existing and Future I/M Programs

Only states that choose to utilize the additional flexibilities discussed in this notice will be affected by today's proposal to change the I/M rule. Modifications to a state's I/M program as a result of this rule change may require a SIP revision. Each case is likely to be different, depending upon the magnitude of the change. It is important to note that today's proposal in no way increases the existing burden on states. States that currently comply, or are in the process of complying, with the existing I/M rule will only be affected by today's rule revisions if they so choose. Today's proposed amendments represent options for those states that choose to take advantage of the flexibilities proposed in today's notice.

The specific changes of the program evaluation based conditions on Virginia, Pennsylvania, and Delaware also do not present an additional burden on those states. None is compelled to pursue the opportunities for flexibility that will be created by finalization of the proposed changes to their conditional approvals. Should any of the three states choose not to submit a new commitment consistent with the amended rule, EPA will retain in place the current condition for such state based on the existing state commitment, even while proceeding to change the I/M rule.

VI. Economic Costs and Benefits

Today's proposed revisions provide states additional flexibility that lessens rather than increases the potential economic burden on states choosing to take advantage of this regulation. Furthermore, states are under no obligation, legal or otherwise, to modify existing plans meeting the previously applicable requirements as a result of today's proposal.

VII. Public Participation

EPA desires full public participation in arriving at final decisions in this Rulemaking action. EPA solicits comments on all aspects of this proposal from all parties. Wherever applicable, full supporting data and detailed analysis should also be submitted to allow EPA to make maximum use of the comments. All comments should be directed to the Air Docket, Docket No. A–97–46.

VIII. Administrative Requirements

A. Administrative Designation

It has been determined that this proposed amendment to the I/M rule is not a significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to OMB review. Any impacts associated with these revisions do not constitute additional burdens when compared to the existing I/M requirements published in the **Federal Register** on November 5, 1992 (57 FR 52950) as amended. Nor does the proposed amendment create an annual effect on the economy of $100 million or more or otherwise adversely affect the economy or the environment. It is not inconsistent with nor does it interfere with actions by other agencies. It does not alter budgetary impacts of entitlements or other programs, and it does not raise any new or unusual legal or policy issues.

B. Reporting and Recordkeeping Requirement

There are no information requirements in this supplemental proposed rule which require the approval of the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this proposal will not have a significant economic impact on a substantial number of small entities and, therefore, is not subject to the requirement of a Regulatory Impact Analysis. A small entity may include a small government entity or jurisdiction. This certification is based on the fact that the I/M areas impacted by the proposed rulemaking do not meet the definition of a small government jurisdiction, that is, ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' The enhanced I/M requirements only apply to urbanized

areas with population in excess of either 100,000 or 200,000 depending on location. Furthermore, the impact created by the proposed action does not increase the preexisting burden of the existing rules which this proposal seeks to amend.

D. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more. Under § 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. To the extent that the rules being proposed by this action would impose any mandate at all as defined in section 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this proposed rule is not estimated to impose costs in excess of $100 million. Therefore, EPA has not prepared a statement with respect to budgetary impacts. As noted above, this rule offers opportunities to states that would enable them to lower economic burdens from those resulting from the currently existing I/M rule.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Transportation.

Dated: September 2, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 51—[AMENDED]

1.The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 51.353 is amended by revising paragraphs (c)(3) and (c)(4) to read as follows:

§ 51.353 Network type and program evaluation.

* * * * *

(c) * * *

(3) The evaluation program shall consist, at a minimum, of those items described in paragraph (b)(1) of this section and program evaluation data using a sound evaluation methodology, as approved by EPA, and evaporative system checks, specified in § 51.357(a)(9) and (10) of this subpart, for model years subject to those evaporative system test procedures. The test data shall be obtained from a representative, random sample, taken at the time of initial inspection (before repair) on a minimum of 0.1 percent of the vehicles subject to inspection in a given year. Such vehicles shall receive a state administered or monitored test, as specified in this paragraph (c)(3), prior to the performance of I/M-triggered repairs during the inspection cycle under consideration.

(4) The program evaluation test data shall be submitted to EPA and shall be capable of providing accurate information about the overall effectiveness of an I/M program, such evaluation to begin no later than November 30, 1998.

* * * * *

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.2026 is amended by revising paragraph (a)(2) to read as follows:

§ 52.2026 Conditional approval.

* * * * *

(a) * * *

(2) The Commonwealth must submit to EPA as a SIP amendment, by November 30, 1998, the final Pennsylvania I/M program evaluation regulation requiring an approved alternative sound evaluation methodology to be performed on a minimum of 0.1 percent of the subject fleet each year as per 40 CFR 51.353(c)(3) and which meets the program evaluation elements as specified in 40 CFR 51.353(c).

* * * * *

3. Section 52.2450 is amended by revising paragraph (b)(2) to read as follows:

§ 52.2450 Conditional approval.

* * * * *

(b) * * *

(2) The Commonwealth must submit to EPA as a SIP amendment, by November 30, 1998, the final Virginia I/M program evaluation regulation requiring an approved alternative sound evaluation methodology to be performed on a minimum of 0.1 percent of the subject fleet each year as per 40 CFR § 51.353(c)(3) and which meets the program evaluation elements as specified in 40 CFR 51.353(c).

4. Section 52.424 is amended by revising paragraph (b) introductory text to read as follows:

§ 52.424 Conditional approval.

* * * * *

(b) The State of Delaware's February 17, 1995 submittal for an enhanced motor vehicle inspection and maintenance (I/M) program, and the November 30, 1995 submittal of the performance standard evaluation of the low enhanced program, is conditionally approved based on certain contingencies.

The following conditions must be addressed in a revised SIP submission. Along with the conditions listed is a separate detailed I/M checklist explaining what is required to fully remedy the deficiencies found in the proposed notice of conditional approval. This checklist is found in the Technical Support Document (TSD), located in the docket of this rulemaking, that was prepared in support of the proposed conditional I/M rulemaking for Delaware. This checklist and Technical Support Document are available at the Air, Radiation, and Toxics Division, 841 Chestnut Bldg., Philadelphia, PA 19107, telephone (215) 566–2183. By no later than one year from June 18, 1997, Delaware must submit a revised SIP that meets the following conditions for approvability, with the exception of condition in paragraph (b)(3) of this section which addresses I/M program evaluation requirements. Condition in pargraph (b)(3) of this section must be met by November 30, 1998, in keeping with the amended requirements of 40 CFR 51.353.

* * * * *

[FR Doc. 97–24947 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–21–1–7345b; FRL–5894–5]

Approval and Promulgation of State Implementation Plan: Employee Commute Options (Employer Trip Reduction) Program for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to remove the Texas Employee Commute Options (ECO) rule from the State Implementation Plan (SIP) revision submitted by the State of Texas for the purpose of establishing an ECO program (also known as the Employer Trip Reduction program). This action will relieve, if approved, the State from mandatory implementation of the ECO program in the Houston-Galveston ozone nonattainment area. The authority for this removal action is based on Public Law 104–70 and the subsequent EPA policy issued on April 23, 1996.

In the Final Rules Section of this **Federal Register**, EPA is removing the Texas ECO rule from the SIP as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in providing comments on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing and postmarked by October 20, 1997.

ADDRESSES: Comments must be submitted to Mr. J. Behnam, P. E., Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Copies of the State ECO withdrawal request are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E., AirPlanning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the Rules Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 12, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97–24844 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–201, RM–9127]

Radio Broadcasting Services; Crested Butte, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Crested Butte Broadcasting Company, requesting the allotment of Channel 293A to Crested Butte, Colorado, as that community's first local commercial FM transmission service. Coordinates used for Channel 293A at Crested Butte are 38–52–06 and 106–59–06.

DATES: Comments must be filed on or before November 3, 1997, and reply comments on or before November 18, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Nancy L. Wolf and Matthew H. Brenner, Esqs., Leventhal, Senter & Lerman, Suite 600, 2000 K Street, NW., Washington DC 20006.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–201, adopted September 3, 1997, and released September 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–24932 Filed 9–18–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–200, RM–9144]

Radio Broadcasting Services; Ashton, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mountain Tower Broadcasting requesting the allotment of Channel 224A to Ashton, Idaho, an incorporated community, as its first local aural transmission service. Coordinates used for Channel 224A at Ashton are 44–08–10 and 111–30–57.

DATES: Comments must be filed on or before November 3, 1997, and reply comments on or before November 18, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the

petitioner, as follows: Mountain Tower Broadcasting, Attn: Victor A. Michael, Jr., President, c/o Magic City Media, 1912 Capitol Avenue, Suite 300, Cheyenne, WY 82001.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–200, adopted September 3, 1997, and released September 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–24933 Filed 9–18–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–202, RM–9129]

Radio Broadcasting Services; Farmersburg, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Farmersburg Community Broadcasting, requesting the allotment of Channel 242A to Farmersburg, Indiana, as that community's first local aural transmission service. Coordinates used for Channel 242A at Farmersburg are 39–15–18 and 87–23–00.

DATES: Comments must be filed on or before November 3, 1997, and reply comments on or before November 18, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Esq., Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW., Suite 900, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–202, adopted September 3, 1997, and released September 12, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–24935 Filed 9–18–97; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies Mr. Herb Denenberg's petition requesting three agency rulemaking actions relating to carbon monoxide detection in motor vehicles. In addition, Mr. Denenberg requested that information regarding the availability of carbon monoxide detectors be published in the agency's press releases and consumer advisories. The petition requested that the agency take action on one or more of these actions.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Flanigan, Office of Safety Performance Standards, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Flanigan's telephone number is: (202) 366–4918. His facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION: By letter received by the agency on March 13, 1997, Mr. Denenberg requested that: (1) Carbon monoxide detectors be required in all motor vehicles, (2) manufacturers be required to offer them as an option in all motor vehicles, and (3) manufacturers be required to include material in owner's manuals indicating the availability and value of installing a carbon monoxide detector. In addition, Mr. Denenberg requested that information regarding the availability of carbon monoxide detectors be published in the agency's press releases and consumer advisories. The petitioner asked that the agency take action on one or more of these four requests.

Agency Analysis

To establish a new vehicle safety specification, the agency must decide on the basis of data and analyses, that there is a significant safety problem and that the safety problem would likely be reduced by adopting that specification. To support his requests, the petitioner cites data from NHTSA's Consumer Advisory of December 16, 1996. These data (from a National Center for Health Statistics study) showed 353 fatalities occurred in 1993 as a result of accidental carbon monoxide poisoning.

The petitioner states that ''many if not most of these deaths could be prevented by carbon monoxide detectors'' installed in the vehicles. The petitioner did not offer any data to support this assertion.

Of the 353 fatalities, the largest portion, 35 percent, occurred in the winter months. In the spring and fall months, which can also be cold in some parts of the country, 52 percent of the fatalities occurred. Only 13 percent of the fatalities occurred in the summer months. Further, in information obtained from the Center for Disease Control, in the years 1979 through 1992, the fatality rate (fatalities per state population per 100,000 people) for carbon monoxide deaths in stationary vehicles is highest in the northern half of the country (with fatality rates ranging from 0.29 to 0.72 in most of these states). These rates drop (to between 0.00 and 0.16) in the southern half of the country.

We believe the majority of these fatalities occur in cold weather for two reasons. First, in cold weather, people may let their vehicles warm up in a garage or enclosed area to keep themselves warm. This could allow carbon monoxide to build up in these areas to fatal or injurious levels. Second, if the area around a vehicle has not been adequately cleared of snow, it could block the exhaust pipe. This could cause carbon monoxide to build up inside the vehicle and create a hazardous situation.

The first request Mr. Denenberg made was that the agency require carbon monoxide detectors in all vehicles. As stated above, we believe carbon monoxide poisoning to be primarily a cold weather problem. For this reason, we do not think it is justifiable to require that all vehicles be equipped with these detectors. A large portion of the vehicles sold in this country will rarely, if ever, be driven in cold weather. If one assumes that 15 million vehicles are manufactured in the country each year, the total cost to the industry to equip all vehicles with a detector would be substantially more than $240 million. This is based on the estimate of $16 per detector obtained by the petitioner from the Quantum Group, a manufacturer of carbon monoxide detectors. According to the petitioner, the Quantum Group currently sells this type of detector for between $35 and $60, but it estimated a cost of $16 per detector based on the increase in production that would result from them being required on all vehicles. This cost *does not* include manufacturer installation and other costs such as manufacturer and dealer profits. The agency has found in the past that these costs generally add about 50 percent onto the original equipment cost. These additional factors would raise the initial cost to the consumer considerably, and, for a problem which would mainly affect vehicles operating in cold climates, the agency cannot justify imposing this cost burden on the industry and consumers.

An additional consumer cost that must be considered is the lifetime maintenance of the detectors. With these detectors, the sensors need to be replaced approximately every six years. This replacement should be done by experienced personnel, so the detectors would most likely have to be returned to the manufacturer for such work. Not only would this increase the cost of the requirement, but it would reduce the effectiveness in averting deaths. Some vehicle owners will undoubtedly fail to maintain the detectors properly and will end up with inoperable or otherwise less-than-effective detectors. Because the recommended maintenance on these detectors should be done every six years, only the six newest model years in the national fleet would be assured of having fully effective detectors.

Another factor which leads the agency to believe that a detector requirement would not be effective is the age of the vehicles involved in carbon monoxide fatalities. Many of these fatalities were caused by degradation of the vehicle's interior and/or exhaust system which allowed exhaust gases to enter the passenger compartment. We believe it fair to assume that, of the vehicles which have developed this type of degradation, most will be more than six years old. As stated previously, only the six newest model years in the national fleet would be assured of having fully-effective detectors. Under this assumption, by the time vehicles begin to exhibit this type of degradation, the carbon monoxide detectors may be in need of scheduled maintenance.

Mr. Denenberg's second request was to require manufacturers to offer these detectors as an option on all vehicles. As previously stated, the agency believes that it would not be cost-effective to require carbon monoxide detectors in vehicles. For the same reason, we do not believe manufacturers should be required to offer them as an option. To require them to be offered as an option would also be costly to the industry, as vehicles would have to be redesigned to incorporate the detectors. Further, if vehicle owners wish to place a detector in their vehicles, they are not precluded from doing so.

Regarding Mr. Denenberg's request that information on these detectors be placed in owner's manuals, we do not believe this will effectively reach all the affected parties. If the vehicle changes owners, it is possible that the owner's manual will not be included with the vehicle. In this case, the new owner would be oblivious to this information. To address the problem in a more universal manner and reach a larger portion of the affected parties, the agency began to issue annual consumer advisories about the hazards of carbon monoxide in the Fall of 1996.

These advisories alert drivers of all vehicles to the dangers of letting vehicles idle in enclosed spaces, the importance of maintaining the exhaust system, and that snow or other debris must be cleared from the exhaust area before starting the vehicle. Mr. Denenberg's final request was for NHTSA to include information about the availability and value of carbon monoxide detectors in these consumer advisories. Regarding this request, the agency will consider adding this information to the next consumer advisory on this subject.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the amendments requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. Accordingly, it denies Mr. Denenberg's petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: September 16, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–24966 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Reclassification of Ten Candidate Taxa

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of candidate taxa reclassification.

SUMMARY: In this document, the U.S. Fish and Wildlife Service (Service) provides explanation for a change in the status of seven animal and three plant taxa that are under review for possible addition to the Lists of Endangered and Threatened Wildlife and Plants (Lists)

under the Endangered Species Act of 1973, as amended (Act). These 10 taxa are being removed from candidate status at this time.

ADDRESSES: Questions concerning this document should be submitted to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, NW., Mail Stop 452 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: E. LaVerne Smith, Chief, Division of Endangered Species (see ADDRESSES section) (telephone: 703/358–2171).

SUPPLEMENTARY INFORMATION:

Background

Candidate taxa are those taxa for which the Service has on file sufficient information to support issuance of a proposed rule to list under the Act. The Service recently completed its annual review of all candidate taxa. The results of this review indicate that several taxa should be removed from candidate status. This notice provides specific explanations for the reclassification of seven animal and three plant taxa.

It is important to note that candidate assessment is an ongoing function and changes in status should be expected. Taxa that are removed from the candidate list may be restored to candidate status if additional information supporting such a change becomes available to the Service. Requests for such information were issued by the Service in the 1996 plant and animal candidate notice of review (61 FR 7596; February 28, 1996). A revised notice of review, requesting updated information on candidate taxa, is published concurrently in the **Federal Register** with this notice.

Findings

The Gulf Coast hog-nosed skunk (*Conepatus leuconotus texensis*) was considered to be restricted to southern Texas and northern Mexico as far west as San Luis Potosi and south to Veracruz. However, the results of a recently completed taxonomic study of the genus *Conepatus* in the United States and Mexico show no clear difference between the two previously delineated North American species in this genus, *C. leuconotus* and *C. mesoleucus,* with respect to color patterns, anatomical measurements, or mitochondrial DNA. The results indicate that most subspecies of both species, including *C. leuconotus texensis,* should be combined under *C. leuconotus leuconotus*. Evidence is lacking that hog-nosed skunks in the South Texas region are geographically disjunct from those to the north and west. In addition, information is lacking that the taxonomic entity to which these South Texas hog-nosed skunks now belong (*C. leuconotus leuconotus*) is in danger of extinction within the foreseeable future. Based on this information, acceptance of the Gulf Coast hog-nosed skunk as a candidate taxon is not warranted.

The Ramsey Canyon leopard frog (*Rana subaquavocalis*) occurs at two sites in Ramsey and Brown canyons in the Huachuca Mountains of southeastern Arizona. The species was considered threatened by changes to its habitat and genetic problems associated with small populations. A Conservation Agreement among the landowners and State and Federal agencies is currently being implemented which provides for the conservation of the Ramsey Canyon leopard frog through captive breeding and reintroduction, acquisition of habitat, and population and habitat surveys. The Ramsey Canyon population receives additional protection due to its location within The Nature Conservancy's Ramsey Canyon Preserve. Based on this information, continuation of candidate status for this species is not warranted.

The High Rock Spring tui chub (*Gila bicolor* ssp.), a small minnow, was historically known from three formerly connected spring systems in California and Nevada. This fish was extirpated from the two sites in Nevada as a result of increased pumping of groundwater adjacent to the surface pools it inhabited. In 1982, the California Department of Fish and Game issued an aquaculture permit to the landowner of the California site to rear Mozambique tilapia (*Oreochromis mossambica*). Inadequate screening of the rearing facilities allowed tilapia to escape into the spring system. By 1989, the High Rock Spring tui chub was extirpated from the site as a result of competition from and predation by the introduced tilapia. The High Rock Spring tui chub was confirmed to be extinct in 1993. Because it is considered extinct, the High Rock Spring tui chub is being removed from the list of candidate taxa.

Three pomace flies (*Drosophila*) from Hawaii are being removed from the list of candidates because they are believed to be extinct. *Drosophila alsophila* was always a rare species, known from only two localities on Hualalai volcano on the island of Hawaii where it bred in the stems of *Urera* and *Charpentiera*. *Drosophila psilotarsalis* was also always rare, known from a single locality on the island of Hawaii where adults were found only in association with *Charpentiera*. *Drosophila toxochaeta* was a rare species, known from a single locality in wet forest on the island of Molokai. These pomace flies were believed to be extant based on historical collection records, habitat assessments, and surveys in the 1980's by *Drosophila* researchers. However, recent careful efforts by *Drosophila* researchers at the University of Hawaii to recollect these species have failed, and they are now believed to be extinct.

The Marianas euploea butterfly (*Euploea eleutho*) was endemic to the Mariana Islands and was historically recorded from Guam, Rota, Saipan, and the northern islands of Alamagan and Anatahan. It was common on Guam in 1936, but has not been collected from Guam, Rota, or Saipan since 1946. Surveys in 1995 confirmed that it is extinct on these southern islands. In the 1970's, this butterfly was recorded on Alamagan and Anatahan. Members of a recent Japanese entomological expedition initially believed that they had rediscovered this species on some of the small, remote northern Mariana Islands. However, their collections proved to be a different species. The Japanese entomologists' failure to locate the Marianas euploea butterfly, despite the thoroughness of their search for butterflies, is the basis for the Service considering that this species is currently extinct throughout its range. Because it is believed to be extinct, this species is being removed from the list of candidates.

The Surf thistle (*Cirsium rhothophilum*) is a bush-like biennial or short-lived perennial member of the sunflower family that is endemic to southern California. It occurs only in the narrow strip of habitat between wind-blown beach and stabilized dunes. The species was considered to be threatened by oil production, missile facility construction, beach users, recreational vehicles, cattle, and non-native ice plants. Approximately 57 percent of the recorded locations, with 80 percent of the total number of plants, are on Vandenberg Air Force Base within designated special management areas for the western snowy plover (*Charadrius alexandrinus nivosus*), a listed threatened species. The protection and management of these western snowy plover areas by the Air Force have also protected the Surf thistle sufficiently to stabilize the population. Based on this information, continuation of candidate status for this species is not warranted.

The Merced clarkia (*Clarkia lingulata*) is an annual plant of the evening primrose family that is endemic to central California. It occurs in the understory of pine/oak foothill woodlands and is known from only two

localities in Mariposa County. Both localities are steep north-facing slopes within the Sierra National Forest and partly within a California Department of Transportation (Caltrans) right-of-way. The species was considered to be threatened by road construction and maintenance activities, power line maintenance activities, and landslides. Implementation of protection measures through a Memorandum of Understanding signed by the Forest Service, Caltrans, and Pacific Gas and Electric has reduced the level of threats to the Merced clarkia. The available information indicates that the degree of the threats to the Merced clarkia does not warrant issuance of a proposed rule nor continuation of candidate status for this species.

The San Gabriel Mountains dudleya (*Dudleya densiflora*) is a white or pink-flowered perennial of the stonecrop family that is endemic to southern California. It occurs on steep cliffs and canyon walls within chaparral, oak woodland, and riparian woodlands. This species is known from four populations within a 9 square-mile area along the southern face of the San Gabriel Mountains in Los Angeles County. The species was considered to be threatened by mining, road maintenance, and recreational activities. The San Gabriel Mountains dudleya is being removed from candidate status because about 75 percent of the subpopulations of the species occur on steep cliffs and canyon walls on U.S. Forest Service lands and are not threatened by habitat modification at this time.

Author

This notice was compiled from materials supplied by staff biologists located in the Service's regional and field offices. The materials were compiled by Martin J. Miller, Division of Endangered Species (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: September 3, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–24806 Filed 9–18–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 970829217–7217–01; I.D. 081597E]

RIN 0648–AJ79

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 18

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule and request for comments for Framework Adjustment 18 to the Northeast Multispecies Fishery Management Plan (FMP). This rule proposes to allow pelagic midwater trawling for herring and mackerel in Multispecies Closed Areas I and II, the Gulf of Maine (GOM) multispecies closure areas, and in the Nantucket Lightship Closed Area under certain conditions. The intended effect of this action is to provide greater economic opportunity for pelagic midwater trawl vessels to harvest herring and mackerel while maintaining the conservation benefits of the current multispecies management measures.

DATES: Comments must be received on or before October 6, 1997.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Andrew A. Rosenberg Ph.D., Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Copies of the framework document are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, NMFS, Fishery Policy Analyst, 508–281–9279.

SUPPLEMENTARY INFORMATION:

Background

In 1994, at the request of the New England Fishery Management Council (NEFMC), NMFS, by emergency action, closed three large areas for the duration of the emergency to all fishing gear capable of catching multispecies (59 FR 63926, December 12, 1994, and amended at 60 FR 3102, January 13, 1995). These areas, known as Closed Areas I and II, and the Nantucket Lightship Closed Area, cover approximately 4800 square miles (12432 sq km). In order to avoid a hiatus between the emergency action and implementation of Amendment 7, NMFS issued Framework Adjustment 9 (60 FR 19364, April 18, 1995) to implement the emegency measures on a permament basis while Amendment 7 was being developed to address a longterm objective of stock rebuilding. In 1996, Amendment 7 to the FMP continued the existing year-round closures and closed seasonally three additional large areas in the GOM (61 FR 27710, May 31, 1996). These areas currently remain closed to all gear capable of catching multispecies, including pelagic midwater trawls.

Recently, the NEFMC was requested by fishery participants to allow pelagic midwater trawling for herring and mackerel in the multispecies closed areas. According to the participants, the herring and mackerel fisheries capture negligible amounts of regulated multispecies due to the spatial separation of pelagic and demersal species in the water column. Because of the low value of herring and mackerel, it is important to industry that vessels have unimpeded access to these species throughout their migration to ensure that the harvesting and/or processing capacity of the vessels is maximized. Large closed areas impede access and make fishing for herring and mackerel less economically feasible. These pelagic species are very important for commercial fishing vessels in New England that participate in joint ventures or in the directed domestic fishery. Due to the prohibition on fishing in closed areas and an increased reliance on closed areas for multispecies mortality reduction, it has become increasingly difficult to conduct these pelagic fishing operations.

The NEFMC has reviewed NMFS sea sampling data from the fisheries and has determined that pelagic midwater trawls, when fished properly, can operate in closed areas with a minimal bycatch of regulated multispecies. NMFS agrees with this determination. However, allowing one type of trawl vessel while prohibiting another type could present enforcement problems. Several requirements in Framework 18 address these enforcement concerns. This proposed rule would allow pelagic midwater trawling for herring and mackerel in Closed Areas I and II, the Nantucket Lightship Closed Area, and the GOM Closed Areas under the following conditions: (1) Vessels must obtain and comply with a midwater trawl letter of authorization (as currently required under § 648.80(d)(2)

for the midwater trawl gear exemption) from the Administrator, Northeast Region, NMFS (Regional Administrator); (2) harvesting or processing vessels must carry observers if required by NMFS, and (3) if the Regional Administrator determines, on the basis of sea sampling data or other credible information, that bycatch of regulated multispecies in the closed areas for the fishery or for an individual vessel is likely to exceed, or exceeds, 1 percent of the catch (by weight), then the Regional Administrator may place restrictions and/or conditions in the letter(s) of authorization of any or all of the fishing operations; or, after consulting with the NEFMC, may suspend all midwater trawl activities in the closed areas.

Classification

This action is authorized by CFR part 648 and has been determined not to be significant for purposes of E.O. 12866.

The NEFMC prepared an initial regulatory flexibility analysis (IRFA) that describes the impact this proposed rule, if adopted, would have on small entities. This proposed action would have a significant, but positive impact on small business entities because it is expected to increase the annual gross revenues of a substantial number of small business entities by more than 5 percent. The IRFA concluded that this action could affect all of the approximately 35 pelagic midwater trawl vessels (which are small business entities) participating in the fisheries by allowing them to fish in areas currently closed to them, and thereby increasing their annual gross revenues by more than 5 percent. Ten to twelve additional vessels could enter these fisheries in the next year. However, it is unlikely more than this estimate will enter the fisheries because of the expense, which is estimated to range from $75,000 to $250,000 depending on the changes made, to convert conventional trawl vessels into competitive mid-water trawls. Because of the conversion expenses, many vessels would be precluded from entering these fisheries.

The proposed action could improve the economic competitiveness of all U.S. Atlantic herring and mackerel harvesting operations and preserve the enforceability and effectiveness of the multispecies closed areas. The IRFA indicated that it is difficult to predict the exact increase in annual gross revenues as a result of allowing fishing in the currently closed areas due to the migratory nature of herring and mackerel, but overall annual ex-vessel revenues for the fleet may potentially rise from between $255,684 to $767,051, as compared to taking no action.

The NEFMC considered but rejected requiring observers to be present whenever fish are transferred from the harvesting vessel to the processor. The NEFMC rejected this alternative because it was considered to be too costly for U.S. freezer trawlers and vessels that land herring or mackerel ashore. The NEFMC has received many comments that pelagic midwater vessels do not catch regulated groundfish species, and the NEFMC felt this view is supported by the available sea sampling data. In addition, the IRFA indicates there may be an insufficient number of trained observers to provide coverage for the non-joint venture boats in the near future. Observers already are required on processing vessels participating in joint venture operations. Under this non-preferred alternative (mandatory use of observers), the range in ex-vessel revenues was estimated to be from $217,000 to $640,000. However, observer costs would range from an estimated 8 percent to as much as 148 percent of ex-vessel revenues, making it economically unfeasible for some vessels to carry observers. Observer costs would average 55 percent of gross revenues for ton-class 3 vessels and 14 percent of gross revenues for ton-class 4 vessels based on available herring catch rate data.

No alternatives to ''minimize'' the economic impact were considered by the NEFMC because the impacts are all beneficial and thus need not be minimized. As noted above, the NEFMC rejected an alternative that would have reduced the economic benefit. A copy of this analysis is available from the NEFMC (see **ADDRESSES**).

This proposed rule contains no new collection-of-information requirements.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 12, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648–FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. Section 648.80 is amended by revising paragraphs (d)(2) and (d)(3) to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(d) * * *

(2) When fishing under this exemption in the GOM/GB and SB/JL Areas, and in any or all of the areas described in § 648.81 (a)(1),(b)(1),(c)(1),(f)(1),(g)(1),(h)(1), and (i)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20' N. lat. and in the areas described in § 648.81 (a)(1), (b)(1), (c)(1), (f)(1), (g)(1), (h)(1), and (i)(1); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42°20' N. lat.; and

* * * * *

3. Section 648.81 is amended by adding paragraph (a)(2)(iii), and by revising paragraphs (a)(2)(ii), (b)(2) introductory text, (c)(2)(i), and (f)(2)(ii) to read as follows:

§ 648.81 Closed areas.

(a) * * *

(2) * * *

(ii) Fishing with or using pelagic hook or longline gear or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies; or

(iii) Fishing with midwater trawl gear consistent with § 648.80(d), provided that the Regional Administrator shall review information pertaining to the bycatch of regulated multispecies from the closed areas specified in paragraphs (a)(1), (b)(1), (c)(1), (f)(1), (g)(1), (h)(1), and (i)(1) of this section, and if the Regional Administrator determines, on the basis of sea sampling data or other credible information, that the bycatch of regulated multispecies in the areas exceeds, or is likely to exceed, one percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in any or all such areas.

(b) * * *

(2) Paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels authorized to fish in Closed Area I under paragraph (a)(2) of this section, or that are transiting the area provided—

* * * * *

(c) * * *

(2) * * *

(i) Fishing with gear as described in paragraph (a)(2) of this section;

* * * * *

(f) * * *

(2) * * *

(ii) That are fishing with or using exempted gear as defined under this part, excluding pelagic gillnet gear capable of catching multispecies, except vessels may fish with a single pelagic gillnet, not longer than 300 ft. (91.44 m) and not greater than 6 ft (1.83 m.) deep, with a maximum mesh size of 3 inches (7.62 cm.), provided the net is fished in the upper two-thirds of the water column and is marked with the owners name and vessel identification number, and provided there is no other gear on board capable of catching multispecies finfish; or

* * * * *

[FR Doc. 97–24812 Filed 9–18–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 970908229–7229–01; I.D. 082797A]

RIN 0648–AJ55

Fisheries of the Northeastern United States; Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the provisions of proposed Amendment 10 to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP). Amendment 10 would revise some of the management measures in the summer flounder fisheries and require a number of corresponding revisions to the regulations implementing the FMP and its amendments.

DATES: Public comments must be received on or before November 3, 1997.

ADDRESSES: Comments on this proposed rule should be sent to Andrew A. Rosenberg, Ph.D., Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Amendment 10 Proposed Rule.''

Copies of Amendment 10, the environmental assessment and the regulatory impact review are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508–281–9221.

SUPPLEMENTARY INFORMATION:

Background

Proposed Amendment 10 was prepared by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. A notice of availability for the amendment was published in the **Federal Register** on September 3, 1997 (62 FR 46470), soliciting public comments on Amendment 10 through November 3, 1997. All comments received by the end of the comment period on the proposed amendment, whether specifically directed to Amendment 10 or the proposed rule, will be considered in the approval/disapproval decision on Amendment 10; comments received after that date will not be considered in the approval/disapproval decision of Amendment 10. Public comments must be received (not postmarked or otherwise transmitted) by the close of business on November 3, 1997, to be considered in the approval/disapproval decision.

Amendment 10 revises the management measures in the summer flounder (*Paralichthys dentatus*) fishery, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended. The management unit continues to be summer flounder in U.S. waters in the western Atlantic Ocean from the southern border of North Carolina, northward to the U.S./Canada border.

The regulations implementing the FMP and its amendments impose a broad spectrum of measures on the fishery to stop overfishing and increase spawning stock biomass. These measures include minimum mesh size limits in the otter trawl fishery, a moratorium on the entry of new vessels into the commercial fishery, and a total harvest limit allocated between the commercial and recreational sectors of the fishery. The harvest limit for the commercial sector is allocated as a quota, apportioned to the states based on historical landings data. All commercial landings in a state count against that state's quota.

Proposed Amendment 10 would require a number of changes to the summer flounder regulations. Amendment 10 would modify the commercial minimum mesh size limit, continue the moratorium on entry of additional commercial vessels, remove the landing requirements applicable to permit retention, modify the vessel replacement criteria, would allow any state to be granted *de minimus* status if commercial summer flounder landings during the preceding calendar year were less than 0.1 percent of the total coastwide quota, allow federally permitted charter and/or party vessels to possess fillets less than the minimum size if in possession of a permit to do so issued by their state, and prohibit transfer of summer flounder at sea. Amendment 10 also contains measures adopted by the Commission as part of its interstate management process. Defined as compliance criteria, these management measures are not part of the Federal regulatory process and are, therefore, not included in this proposed rule. Details of these measures are described in Amendment 10, which is available from the Council (see **ADDRESSES**).

In addition, the Council reevaluated in Amendment 10 the commercial quota system implemented by Amendment 2. During the public hearings for Amendment 10, the Council and Commission proposed several alternative quota allocation methods, with the status quo being the preferred alternative. After receiving and considering public comments, the Council and Commission voted to maintain the existing state-by-state commercial quota allocation system. The Council and Commission felt the current system allows the states the most flexibility in managing their quotas, by implementing state subquotas and trip limits.

After a preliminary review of Amendment 10, NMFS found that the *de minimus* status provision was not consistent with national standard 7, raised questions of consistency with national standard 1, and appears arbitrary and capricious. This measure would require an annual examination of state landings to determine if landings in that state during the preceding year for which data are available were less than 0.1 percent of the overall annual quota. If a state met this criterion, it would be granted *de minimus* status. The *de minimus* measure would impose

an administrative burden or cost to make this annual determination, without conferring any demonstrable administrative or conservation benefit. This would contravene the requirements of national standard 7. Also, it is not clear if a *de minimus* state must close its state fishery when its quota is harvested. A state's failure to close its fishery when its quota is harvested would prevent the attainment of the fishing mortality rate goals in the FMP, since vessels without Federal permits fishing exclusively in that state's waters could continue to land summer flounder. This would result in overfishing and renders the measure inconsistent with national standard 1.

If *de minimus* status does not, at the very least, require a state to impose landing constraints, the provision would encourage owners of vessels that have not traditionally landed in that state to land amounts of summer flounder much greater than they could land in their home port states. This could result in the state's *de minimus* quota being rapidly exceeded and compound the overfishing situation if a *de minimus* state is not required to close its fishery when its *de minimus* quota is harvested.

Further, the standard established to determine *de minimus* status (examination of landings data for the last year for which data are available) appears arbitrary and capricious. Landings in the intervening time period in the state under consideration for *de minimus* status could well exceed the threshold for such status. Thus, such a determination would not reflect accurately the true status of the state.

As a result of this preliminary review, NMFS proposes to disapprove the *de minimus* measure. Therefore, this measure is not included in the regulations proposed for public comment.

Issue of Concern

NMFS notes that the Council recommended that May 13, 1997, be the baseline date for measuring vessel upgrades at the time of replacement. The baseline date was not specified when the Council held public hearings on Amendment 10, although it is a necessary adjunct required for the administration of the replacement upgrade provision. In order that all potentially affected fishery participants have equal notice of the baseline date, NMFS is proposing September 19, 1997, instead of May 13, 1997, as proposed by the Council.

Proposed Measures

Minimum Mesh Requirement

The minimum mesh size for otter trawl vessels possessing 100 lb (45.4 kg) or more of summer flounder between May 1 and October 31, or 200 lb (90.8 kg) or more of summer flounder between November 1 and April 30, would be 5.5–inch (14.0–cm) diamond, or 6.0–inch (15.2–cm) square, inside measure, applied throughout the body, extension(s) and codend of the net. Under the existing regulations, this requirement applies to the codend only. The minimum mesh size requirement could be changed annually following the existing Monitoring Committee process set forth in the FMP. In future years, the minimum mesh size could be specified to apply to any portion of the entire net, including the wings, body, extension(s), or codend. The Council and Commission could recommend to the Administrator, Northeast Region, NMFS (Regional Administrator), a delayed implementation date for any modification to the minimum mesh size regulations to account for the availability of net construction materials. The delay could be for up to 6 months, and would account for localized shortages in the twine needed to meet the mesh requirements. The Council and Commission assessed the availability of net construction materials and recommended an effective date for the revised mesh requirements of 6 months after the date the final regulations are published in the **Federal Register**.

Commercial Moratorium

Amendment 10 would extend indefinitely the moratorium on the entry of additional commercial vessels into the summer flounder fishery in the exclusive economic zone. Amendment 2 to the FMP instituted the vessel moratorium in 1993, which automatically expires December 31, 1997.

Vessel Replacement Criteria

Amendment 10 would permit a vessel with a moratorium permit to be replaced by another vessel and its permit transferred to the new vessel without having to leave the fishery involuntarily (e.g., sink or burn), as is currently required. The replacement vessel could be upgraded if it met the criteria specified in the Fishery Management Plan for the Northeast Multispecies Fishery: A one-time horsepower increase that may not exceed 20 percent of the horsepower of the vessel replaced and a one-time increase of up to 10 percent in the vessel's length, gross registered tons (GRT), and/or net tons (NT), all of which must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade. Upgrades would be based on the original vessel's specifications as of the effective date of the final regulations for Amendment 10.

Expiration of the Moratorium Permit

Amendment 10 would remove the existing provision that requires a vessel with a moratorium permit to land summer flounder at least once every 52 weeks to retain the permit. This regulation was originally intended to reduce effort on the fishery by eliminating inactive permits. However, since implemented in 1993, no permits have been lost as a result of this measure and, in fact, the measure may increase effort as participants fish merely to retain their permit. Therefore, the elimination of this measure may serve to decrease fishing effort.

Transfer of Summer Flounder at Sea

Amendment 10 would prohibit vessels issued a summer flounder moratorium permit from transferring or attempting to transfer any summer flounder from one vessel to another vessel. Transfer means to begin to remove, to remove, to pass over the rail, or to otherwise take away fish from any vessel and move them to another vessel. Currently, there is no such prohibition. As such, vessels might be able to circumvent regulations such as trip limits, and Federal and/or state permit requirements by transferring fish at sea. These actions could increase effort in the summer flounder fishery.

Filleting at Sea

Amendment 10 would allow party/charter boats to fillet summer flounder at sea if in possession of a state-issued permit that allows filleting of summer flounder at sea and possession of body parts smaller than the minimum size.

Commercial Quota System

Amendment 10 would not change the existing commercial quota system. Currently, the coastwide commercial quota is allocated to each of the states from Maine to North Carolina, based on their share of the commercial landings from 1980 through 1989.

Technical Changes

In 50 CFR part 648, Fisheries of the Northeastern United States, the vessel replacement requirements for the scup, *Illex* and *Loligo* moratorium fisheries are presently specified by referencing the vessel replacement requirements for the summer flounder fishery. As a result,

any change to the regulatory text for the vessel replacement requirements for the summer flounder fishery would result in a change to the replacement provisions for those other fisheries. Since the vessel replacement measures for these other moratorium fisheries would not be changed by Amendment 10, the wording in the regulations would be revised in order to maintain their current vessel replacement criteria. That is, the replacement vessel provisions for the *Loligo* fishery would be modified to maintain the original intent, and the replacement provisions for the remaining fisheries would be revised to reference the *Loligo* provisions.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows.

The proposed rule would implement Amendment 10 by revising a number of the regulations implementing the FMP and its amendments and by adding a number of new regulations. Specifically, the proposed rule would modify the commercial minimum mesh size requirement, continue the moratorium on entry of additional commercial vessels, modify the vessel replacement criteria, remove provisions that pertain to the expiration of the moratorium permit, and prohibit transfer of summer flounder at sea. Amendment 10 examined alternate state commercial quota allocation mechanisms. However, no change was made to the existing state-by-state system.

The requirement that minimum mesh size be applied throughout the net would impact an estimated 42 percent of the participants in the summer flounder fishery (443 of the 1,063 permit holders); the other 620 are already subject to requirements for minimum mesh throughout the net because they hold northeast Multispecies vessel permits. Therefore, a substantial number of small entities (42 percent) would be impacted by this rule. However, the compliance costs associated with the measure are not significant under the Regulatory Flexibility Act. Costs were broken down into trip or variable costs (e.g., fuel, ice, food) and yearly or fixed costs (e.g., gear, insurance, engine and gear repair, electronic equipment expenses). Labor costs were not included in the analysis because labor is generally paid as a percentage of the total revenues after certain expenses are subtracted. Compliance costs are less than 1 percent of the total annual costs for offshore vessels and 1.45 percent for the smaller inshore vessels. Compliance costs reflect the cost of the gear conversion ranging from $775 for inshore vessels to $1,354 for offshore vessels versus annualized vessel costs ranging from $39,695 for vessels 5–50 in gross registered tonnage to $171,692 for vessels greater than 150 gross registered tons.

According to the Council, specific data are not available for quantitative analysis of other new measures in Amendment 10. A qualitative analysis conducted by the Council indicates that those measures would have no significant impact on a substantial number of small entities because of their implementation. The National Marine Fisheries Service (NMFS) reviewed this analysis, and since most measures proposed in Amendment 10 are administrative in nature, NMFS concurs that the measures would result in no significant economic impacts on small entities. Additionally, several provisions, such as the prohibition of transferring summer flounder at sea and the vessel replacement criteria, would make the FMP consistent with the Multispecies Fishery Management Plan, and therefore would create no additional impacts for industry participants who also participate in that fishery.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 15, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.4, paragraph (a)(3)(i)(B)(*2*) is removed, and paragraphs (a)(3)(i)(C), (a)(5)(i)(A)(*2*), (a)(5)(i)(C), (a)(5)(ii)(A)(*2*), (a)(5)(ii)(C), (a)(6)(i)(A)(*2*), (a)(6)(i)(C) are revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(3) * * *

(i) * * *

(C) *Replacement vessels.* To be eligible for a moratorium permit, the replacement vessel must meet the following criteria:

(*1*) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel that was initially issued a moratorium permit as of [INSERT EFFECTIVE DATE OF THE FINAL REGULATIONS].

(*2*) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel that was initially issued a moratorium permit as of [INSERT EFFECTIVE DATE OF THE FINAL REGULATIONS].

* * * * *

(5) * * *

(i) * * *

(A) * * *

(*2*) The vessel is replacing such a vessel and the replacement vessel meets the requirements of paragraph (a)(5)(i)(C) of this section.

* * * * *

(C) *Replacement vessels.* To be eligible for a moratorium permit, the replacement vessel must be replacing a vessel of substantially similar harvesting capacity that is judged unseaworthy by the USCG, for reasons other than lack of maintenance, or that involuntarily left the fishery during the moratorium. Both the entering and replaced vessels must be owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

* * * * *

(ii) * * *

(A) * * *

(*2*) The vessel is replacing such a vessel and meets the requirements of paragraph (a)(5)(i)(C) of this section.

* * * * *

(C) *Replacement vessels.* See paragraph (a)(5)(i)(C) of this section.

* * * * *

(6) * * *

(i) * * *

(A) * * *

(*2*) The vessel is replacing such a vessel and meets the requirements of paragraph (a)(5)(i)(C) of this section.

* * * * *

(C) *Replacement vessels.* See paragraph (a)(5)(i)(C) of this section.

* * * * *

3. In § 648.13, paragraph (d) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(d) All persons are prohibited from transferring or attempting to transfer at sea summer flounder from one vessel to another vessel.

4. In § 648.14, paragraph (j)(9) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(j) * * *

(9) Offload, remove, or otherwise transfer, or attempt to offload, remove or otherwise transfer summer flounder from one vessel to another, unless that vessel has not been issued a summer

flounder permit and fishes exclusively in state waters.

* * * * *

5. In § 648.103, paragraph (c) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(c) The minimum sizes in this section apply to whole fish or to any part of a fish found in possession, e.g., fillets, except that party and charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller that the size specified if all state requirements are met.

6. In § 648.104, paragraph (a)(1) is revised, and paragraph (f) is added to read as follows:

§ 648.104 Gear restrictions.

(a) * * * (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 or more lb (45.4 or more kg) of summer flounder from May 1 through October 31, or 200 lb or more (90.8 kg or more) of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5–inch (14.0–cm) diamond or 6.0–inch (15.2–cm) square mesh applied throughout the body, extension(s), and codend portion of the net.

* * * * *

(f) The minimum net mesh requirement may apply to any portion of the net. The minimum mesh size and the portion of the net regulated by the minimum mesh size may be adjusted pursuant to the procedures in § 648.100.

[FR Doc. 97–24922 Filed 9–18–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970829216–7216–01; I.D. 073097B]

RIN 0648-AK15

Fisheries of the Exclusive Economic Zone Off Alaska; Extension of the Interim Groundfish Observer Program through 1998

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement a regulatory amendment to extend with some minor revisions the current groundfish observer coverage requirements and implementing regulations for the North Pacific Groundfish Observer Program (Observer Program) that expire December 31, 1997. This action is necessary to assure uninterrupted observer coverage requirements through 1998. This proposed rule also provides notice of proposed changes to observer qualifications and observer training/briefing requirements, which are non-codified elements of the Observer Program.

This action is intended to accomplish the objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs).

DATES: Comments on the proposed rule must be received by October 20, 1997.

ADDRESSES: Comments should be sent to Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the 1997 Interim Groundfish Observer Program may be obtained from the Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802; telephone: 907–586–7228. Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis(RIR/IRFA) prepared for the proposed regulatory amendment also may be obtained from this address.

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

SUPPLEMENTARY INFORMATION:

Background

The U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Area in the Exclusive Economic Zone are managed by NMFS under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are implemented by regulations for the U.S. fisheries at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

In 1996, the Council adopted and NMFS implemented the Interim Groundfish Observer Program. The Interim Groundfish Observer Program superseded the North Pacific Fisheries Research Plan and extended the 1996 mandatory groundfish observer requirements through 1997, unless superseded by a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, and observer compensation and working conditions. NMFS continues to pursue a long-term solution and is developing an alternative that was supported by the Council at its June 1997 meeting. The Council is scheduled to take final action on a long-term alternative at its December 1997 meeting. Given that this alternative cannot be in place by January 1, 1998, the current interim program must be extended to assure uninterrupted observer coverage requirements.

At its June 1997 meeting, the Council unanimously requested NMFS to extend through 1998 the current interim program, with minor revisions recommended by NMFS. In addition, the Council recommended an adjustment to the existing observer conflict-of-interest standard that prohibits a person from serving as an observer if that person was employed in a North Pacific fishery during the previous 12-month period. The Council recommended a less restrictive standard that would prohibit an observer from working on any vessel or at any shoreside processor owned or operated by a person who previously employed the observer during the previous 12-month period. Public testimony at the Council meeting indicated that the current conflict-of-interest standard may be too restrictive given that the interim observer program does not address the issue of an adequate observer compensation package. Until the observers are more adequately compensated, they may need to engage in non-observer employment in North Pacific fisheries.

Proposed Regulatory Changes For The 1998 Interim Groundfish Observer Program

A description of the regulatory provisions of the Interim Groundfish Observer Program was provided in the preambles to the proposed and final rules implementing this program (61 FR 40380, August 2, 1996; 61 FR 56425, November 1, 1996). Only minor changes from the 1997 regulations are being proposed for 1998. They are described and justified below.

1. Extend the effective period of 50 CFR 679.50 through December 31, 1998. The 1-year extension is intended to encompass the period of time necessary for NMFS to develop a long-term program that addresses concerns about

observer data integrity and observer compensation and working conditions.

2. Revise the conflict-of-interest regulation at § 679.50(h)(2)(i)(A)(*4*) to indicate that individuals may not serve as observers on any vessel or at any shoreside processor owned or operated by a person who previously employed the observer, for a period of 12 consecutive months after being employed by that person. This revision is less restrictive than the current regulation.

3. Expand the prohibition at § 679.7(g)(1) to include sexual harassment and bribery as unlawful interferences with an observer. The proposed amendment would make the regulations consistent with section 307(1)(L) of the Magnuson-Stevens Act. NMFS notes that situations could occur in which a person's (e.g., vessel owner/operator, shoreside processor required to have observer coverage) offer of employment in a North Pacific fishery to an observer carrying out observer duties could constitute a bribe. Bribes and sexual harassment are prohibited under section 307(1)(L) of the Magnuson-Stevens Act and can be prosecuted as criminal offenses, punishable by fine and/or imprisonment.

4. Revise the 30–percent observer coverage requirement regulation at § 679.50(c)(vi) and (vii) to clarify that required coverage is specific to the gear type. This means that observer coverage obtained for a vessel using hook-and-line gear cannot be used to comply with observer coverage requirements for the same vessel when it is used to fish with pot gear.

5. Clarify the regulation at § 679.50(i)(2)(xiv)(G) to alleviate confusion on what information observer contractors currently are required to submit to NMFS. The proposed clarification specifies that an observer contractor must submit completed and unaltered copies of signed and valid contracts with specific entities requiring observer services or with specific observers to the Observer Program Office upon request. Required copies of contracts must be submitted by mail or fax. Types of signed and valid contracts include the contracts an observer contractor has with: (a) vessels required to have 30–percent observer coverage, (b) vessels required to have 100–percent observer coverage, (c) shoreside processors required to have 30–percent observer coverage, (d) shoreside processors required to have 100–percent observer coverage, or (e) observers (to include contracts for the various compensation or salary levels of observers, the levels being based on observer experience).

6. Correct the regulation at § 679.50(j)(7)(iv) that referenced the wrong paragraph. The 1997 Interim Groundfish Observer Program regulations at § 679.50(j)(7)(iv) stated that ''[t]he appeals officer must base the decision on the administrative records complied under paragraphs (j)(5) or (i)(7) of this section, as appropriate.'' The correct references are to paragraphs (j)(5) or (j)(6). This proposed revision replaces ''(i)(7)'' with ''(j)(6)''.

Non-codified Elements Of The Observer Program

Three elements of the 1997 Observer Program were not codified in regulation: (1) Observer qualifications, (2) observer training/briefing requirements, and (3) NMFS's selection criteria for observer contractors. These elements were published in the **Federal Register** (61 FR 40380, August 2, 1996) and are available upon request. Although they were not codified, they are viewed as a part of the rule and NMFS will publish a notification in the **Federal Register** and provide an opportunity for public comment prior to changing any of these elements. NMFS proposes making minor revisions to two of the elements as follows:

1. Revise item ''B'' of the ''NMFS Observer Qualifications—Education and Experience Standards'' to require observers to have taken at least one course that used extensively dichotomous keys. During training, observers spend approximately 15 hours of class time in fish identification lectures and laboratories. Much of this time is spent identifying fish to species using dichotomous keys. Observers with previous course work using dichotomous keys are better able to apply that training.

2. Revise the ''NMFS Observer Training/Briefing Requirements'' to require all prior observers to complete a 4-day briefing prior to their first deployment in any calendar year. One-day briefings would be required prior to subsequent deployments within a calendar year. Additional briefing time is required to fully prepare observers to use the new observer electronic reporting package (ATLAS), to review any other regulatory or programmatic changes on an annual basis, and to engage in an annual review of species identification, enabling observers to complete more efficiently that aspect of their duties.

The observer qualifications, as proposed to be revised, are set forth below. NMFS' selection criteria for observer contractors would remain unchanged.

A. Prospective observers must have a bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences.

B. Candidates must have a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course. Candidates must also have successfully completed at least one undergraduate course in mathematics and one in statistics worth a combined total of at least 5 semester hours. In addition, all applicants are required to have computer skills that enable them to work competently with standard database software and computer hardware.

C. Prospective observers are also required to complete successfully any screening test(s) administered by NMFS. These tests would measure basic mathematics, algebra, and computer skills as well as other abilities necessary for successful job performance.

D. If a sufficient number of candidates meeting these educational prerequisites is not available, the observer contractor may seek approval from NMFS to substitute individuals with either a senior standing in an acceptable major, or with an Associate of Arts (A.A.) degree in fisheries, wildlife science, or an equivalent.

E. If a sufficient number of individuals meeting the above qualifications is not available, the observer contractor may seek approval from NMFS to hire individuals with other relevant experience or training.

F. To qualify for certification, all prospective observers must undergo safety and cold water survival training that requires the prospective observers to demonstrate their ability to properly put on an immersion suit in a specified time period, enter the water, travel approximately 50 m to a ladder, and climb out of the water.

The additional mathematics, statistics, and computer skills requirements reflect the increased responsibilities of observers and are similar to the observer qualifications that would have been required under the Research Plan, had it been fully implemented. The NMFS observer training/briefing requirements are set forth below.

A. Observers who have completed a deployment must be recertified prior to another deployment. All observers will be required to complete a 4-day briefing prior to their first deployment in any calendar year. One-day briefings will be required prior to subsequent deployments within a calendar year.

Certification following 1– or 4-day briefings will expire after 1 month if deployment is delayed. Observers who have not been deployed for a period of 18 months will be required to complete a 3-week training course.

B. If an observer is not deployed within 1 month after completion of training, the individual must complete a 1-day briefing. If the observer is not deployed within 3 months after training, the individual must complete a 4-day briefing. If the observer is not deployed within 6 months after training, the individual must retake the full training course.

C. Observers may be required to attend an additional 4-day briefing based upon an evaluation of data collected during their most recent deployment.

Classification

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

The proposed changes occurring through this regulatory action are within the scope of issues thoroughly analyzed for the implementation of the 1997 Interim Groundfish Observer Program (61 FR 56425, November 1, 1996). Therefore, the EA/RIR/FRFA prepared for the Interim Groundfish Observer Program and the preambles to the proposed and final rules implementing that program (61 FR 40380, August 2, 1996; 61 FR 56425, November 1 1996) are incorporated by reference into the analysis prepared for this action. This action is a necessary adjustment to the rules governing the Interim Groundfish Observer Program and will provide the same benefits as listed in the EA/RIR/FRFA for the Interim Groundfish Observer Program, dated August 27, 1996. A copy of this analysis is available from NMFS (see **ADDRESSES**). The changes caused by this action are consistent with the intent and purpose of the Interim Groundfish Observer Program.

NMFS prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. Based on the analysis, it was determined that this proposed rule could have a significant economic impact on a substantial number of small entities. A copy of this analysis is available from the Council (see **ADDRESSES**). Observer costs borne by vessels and processors are based on whether an observer is aboard a vessel and on overall coverage needs. Higher costs are borne by those vessels and shoreside processors that require higher levels of coverage. Most of the catcher vessels participating in the groundfish fisheries off Alaska and required to carry observers (i.e., vessels 60 ft LOA and longer) meet the definition of a small entity under the RFA. In 1995, about 270 catcher vessels carried observers. These catcher vessels would not be further economically impacted by observer coverage levels because the proposed rule would not implement any changes in observer coverage levels.

Under the proposed rule, an observer conflict-of-interest regulation would be relaxed, thereby potentially creating increased employment opportunities for observers. Five observer contractors are likely to be affected by this proposed rule. All are considered small entities, and none are likely to experience significant economic impacts. Given that observers are contracted employees of observer contractors, this proposed change could increase the economic benefits realized by observer contractors.

Although the proposed number of observer briefing days required in a 12-month period would increase from 2 to 4 under the proposed rule, the number of observer briefing days required for subsequent deployments within a calendar year would decrease from 2 to 1. The net change in number of observer briefing days is anticipated to be minimal. The briefing day costs (lodging, per diem) are approximately $135–200 per day and are dependent on the briefing location (Alaska or Washington). The cost is borne by either the observer or the observer contractor and is dependent upon the specific contractual arrangements between these entities. The briefing day costs are typically passed on from the observer or the observer contractor to the vessel or processor that is required to have the observer coverage. In 1996, 384 observers (employed by five observer contractors) were briefed for the North Pacific groundfish fisheries.

The RFA requires that the IRFA describe significant alternatives to the proposed rule that accomplish the stated objectives of the applicable statutes and that minimize any significant impact on small entities. Consistent with the stated statutory objectives, the IRFA must discuss significant alternatives to the proposed rule such as (1) establishing different reporting requirements for small entities that take into account the resources available to small entities; (2) consolidation or simplification of reporting requirements; (3) the use of performance rather than design standards; and (4) allowing exemptions from coverage for small entities. Alternatives that addressed modifying reporting requirements for small entities or the use of performance rather than design standards for small entities were not considered by the Council or in this analysis. Such alternatives are not relevant to this proposed action and would not mitigate the impacts on small entities. Allowing exemptions for small entities from this proposed action would not be appropriate because the objective to assure uninterrupted observer coverage requirements through 1998 could not be achieved if small entities were exempted.

The EA/RIR/FRFA prepared for the Interim Groundfish Observer Program (61 FR 56425, November 1, 1996) included the North Pacific Fisheries Research Plan (Research Plan) as an alternative. However, the Research Plan is no longer a viable alternative to the proposed interim observer program. The political and economic concerns that led the Council to repeal the Research Plan still exist. Furthermore, fees collected in 1995 were refunded in early 1996 and if the Research Plan was pursued as the preferred alternative, start-up funding would have to be collected again. Regulations implementing the existing observer program will expire at the end of 1997. It is not feasible to implement a fee-based observer program by the end of this year, which would be necessary to provide observer coverage for the 1998 groundfish fisheries. The preferred alternative for an interim observer program is the only option that could be implemented by 1998 so that the groundfish fisheries could commence without interruption.

This proposed rule contains a revised collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This collection-of-information requirement has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0318. The estimated current burden for submission of observer contract information is 15 minutes.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including rather the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject

to the requirements of the PRA, unless that collection- of-information displays a currently valid OMB control number.

Since the repeal of the Research Plan and at the direction of the Council, NMFS has been developing a long-term alternative program structure to address the problems identified with the current observer program structure. The Council is scheduled to take final action at its December 1997 meeting.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 15, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.7, paragraph (g)(1) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(g) * * *

(1) Forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with an observer.

* * * * *

3. In § 679.50, the section heading, paragraphs (c)(1)(vi) and (vii), (h)(2)(i)(A)(*4*), (i)(1)(iii), introductory text of (i)(2)(xiv), (i)(2)(xiv)(G), and (j)(7)(iv) are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 1998.

* * * * *

(c) * * *

(1) * * *

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

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

* * * * *

(h) * * *

(2) * * *

(i) * * *

(A) * * *

(*4*) May not serve as observers on any vessel or at any shoreside processor owned or operated by a person who previously employed the observer, for a period of 12 consecutive months after being employed by that person.

* * * * *

(i) * * *

(1) * * *

(iii) *Term*. Observer contractors will be certified through December 31, 1998. Observer contractors can be decertified or suspended by NMFS under paragraph (j) of this section.

(2) * * *

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

* * * * *

(G) A completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) an observer contractor has with those entities requiring observer services under paragraphs (c) and (d) of this section and with observers. Completed and unaltered copies of signed and valid contracts with specific entities requiring observer services or with specific observers must be submitted to the Observer Program Office upon request. Types of signed and valid contracts include the contracts an observer contractor has with:

(*1*) Vessels required to have observer coverage as specified at paragraphs (c)(1)(i) and (iv) of this section,

(*2*) Vessels required to have observer coverage as specified at paragraphs (c)(1)(ii), (v), and (vii) of this section,

(*3*) Shoreside processors required to have observer coverage as specified at paragraph (d)(1)(i) of this section,

(*4*) Shoreside processors required to have observer coverage as specified at paragraph (d)(1)(ii) of this section,

(*5*) Observers (to include contracts for the various compensation or salary levels of observers, the levels being based on observer experience).

Required copies of contracts must be submitted by mail or faxed to: NMFS Observer Program Office, 7600 Sandpoint Way Northeast, Seattle, WA 98115–0070; fax number 206–526–4066.

* * * * *

(j) * * *

(7) * * *

(iv) If the appeals officer grants review based on the written petition, he or she may request further written explanation from observers, observer contractors, or the decertifying officer or suspending officer. The appeals officer will then render a written decision to affirm, modify, or terminate the suspension or decertification or return the matter to the suspending or decertifying official for further findings. The appeals officer must base the decision on the administrative records compiled under paragraphs (j)(5) or (j)(6) of this section, as appropriate. The appeals officer will serve the decision on observers or observer contractors and any affiliates involved, personally or by certified mail, return receipt requested, at the last known residence or place of business.

* * * * *

[FR Doc. 97–25011 Filed 9–18–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 182

Friday, September 19, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Determination of Total Amounts and Quota Period for Tariff-Rate Quotas for Raw Cane Sugar and Certain Imported Sugars, Syrups, and Molasses

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice establishes the aggregate quantity of 1,800,000 metric tons, raw value, or raw cane sugar that may be entered under subheading 1701.11.10 during fiscal year (FY) 1998, with 600,000 metric tons subject to possible cancellation. This notice in addition establishes the aggregate quantity of 50,000 metric tons (raw value basis) for certain sugars, syrups and molasses that may be entered under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the Harmonized Tariff Schedule of the United States (HTS) during FY 1998.

EFFECTIVE DATE: September 17, 1997.

ADDRESSES: Inquiries may be mailed or delivered to the Import Policy and Programs Division Director, Foreign Agricultural Service, Room 5531, South Building, U.S. Department of Agriculture, Washington, D.C. 20250–1000.

FOR FURTHER INFORMATION CONTACT: Stephen Hammond (Division Director, Import Policy and Programs Division), 202–720–2916.

SUPPLEMENTARY INFORMATION: Paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS provides in pertinent part as follows:

> The aggregate quantity of raw cane sugar entered, or withdrawn from warehouse for consumption, under subheading 1701.11.10, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than, 1,117,195 metric tons, as shall be established by the Secretary of Agriculture * * *, and the aggregate quantity of sugars, syrups and molasses entered, or withdrawn from warehouse for consumption, under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10 and 2106.90.44, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), less than 22,000 metric tons, as shall be established by the Secretary. With either the aggregate quantity for raw cane sugar or the aggregate quantity for syrups, sugars and molasses other than raw cane sugar, the Secretary may reserve a quota quantity for the importation of specialty sugars as defined by the United States Trade Representative.

These provisions of paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS authorize the Secretary of Agriculture to establish the total amounts (expressed in terms of raw value) for imports of raw cane sugar and certain other sugars, syrups, and molasses that may be entered under the subheadings of the HTS subject to the lower tier of duties of the tariff-rate quotas for entry during the fiscal year beginning October 1.

USDA issued a press release on July 9, 1997, soliciting comment regarding the FY 1998 TRQ administrative approach. Approximately 40 comments were received. All but three of the comments were either neutral or supportive of the current administrative approach, although many suggested changes that would lead to higher or lower prices in the U.S. domestic market. Some suggested a change in the trigger level. Those suggestions ranged from a level of 13.5 percent to 17 percent, with the producers supporting a lower trigger level and the refiners and manufacturers supporting the higher end of the trigger level suggestions. One of the comments suggested abolishment of he TRQ, and two other comments suggested that USDA return to an ad hoc method of determining the TRQ.

After carefully considering those comments, USDA will use a 15.5 percent trigger for the allocation or cancellation of 600,000 metric tons, 200,000 tons in January, March, and May.

Allocaitons of the quota amounts among supplying countries and areas will be made by the United States Trade Representative.

Notice

Notice is hereby given that I have determined, in accordance with paragraph (a) of additional U.S. note 5 to chapter 17 of the HTS, that an aggregate quantity of up to 1,800,000 metric tons, raw value, of raw cane sugar described in subheading 1701.11.10 of the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 1997, through September 30, 1998. Of this quantity, 1,200,000 metric tons will be immediately available, to be allocated by the United States Trade Representative, and the remaining 600,000 metric tons will be held in reserve.

If the stocks-to-use ratio published in the January 1998 World Agricultural Supply and Demand Estimates (WASDE) is equal to, or less than, 15.5 percent (rounded to the nearest tenth), an additional 200,000 metric tons of the reserved quantity for raw cane sugar will be available for allocation. If the stocks-to-use ratio published in the January 1998 WASDE is greater than 15.5 percent, 200,000 metric tons of the reserved quantity for raw cane sugar will be automatically canceled without further notice.

If the stocks-to-use ratio published in the March 1998 WASDE is equal to, or less than, 15.5 percent, an additional 200,000 metric tons of the reserved quantity for raw cane sugar will be available for allocation. If the stocks-to-use ratio published in the March 1998 WASDE is greater than 15.5 percent, 200,000 metric tons of the reserved quantity for raw cane sugar will be automatically canceled without further notice.

If the stocks-to-use ratio published in the May 1998 WASDE is equal to, or less than, 15.5 percent, an additional 200,000 metric tons of the reserved quantity for raw cane sugar will be available for allocation. If the stocks-to-use ratio published in the May 1998 WASDE is greater than 15.5 percent, 200,000 metric tons of the reserved quantity for raw cane sugar will be automatically canceled without further notice.

I have further determined that an aggregate quantity of up to 50,000 metric tons, raw value, of certain sugars, syrups, and molasses described in subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 1997 through September 30, 1998. I have further determined that out of this quantity of 50,000 metric tons,

the quantity of 4,656 metric tons, raw value, is reserved for the importation of specialty sugars. These quota amounts may be allocated among supplying countries and areas by the United States Trade Representative.

I will issue Certificates of Quota Eligibility (CQEs) to allow the Philippines, Brazil, and the Dominican Republic to ship up to 25 percent of each country's allocation at the low-tier tariff during each quarter of FY 1998. Australia, Guatemala, Argentina, Peru, Panama, El Salvador, Columbia, South Africa, and Nicaragua will be allowed to ship up to 50 percent of their initial allocations in the first six months of FY 1998. Unentered allocations, during any quarter or six month period, may be entered in any subsequent period. For all other countries, CQEs corresponding to each country's allocation may be entered at the low-tier tariff at any time during the fiscal year. Should country allocations result from the January, March, and May blocks, they may be entered subsequent to their allocation by USTR.

Mexico's North American Free Trade Agreement (NAFTA) access to the U.S. market is established at 25,000 metric tons raw value (27,558 short tons raw value). That access will be for either raw or refined sugar, but total access under the refined sugar allocation and the raw-sugar allocation is not to exceed 25,000 metric tons. Mexico's NAFTA access for either raw or refined sugar is established in Annex 703.2.

Signed at Washington, DC on September 16, 1997.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 97–25071 Filed 9–17–97; 12:46 pm]

BILLING CODE 3410–10–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: October 20, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 6, July 18, 25 and August 1, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 31065, 38518, 40049 and 41339) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Bottle, Oil Sample
8125–01–082–9697

Services

Food Service Attendant, U.S. Coast Guard Activities New York, Fort Wadsworth, Staten Island, New York
Janitorial/Grounds Maintenance, Naval Air Station North Island, San Diego Aviation Branch Facility, Building 1480, San Diego, California
Laundry Service, Transient Personnel Unit, Bachelor Enlisted Quarters & Bachelor Officer Quarters Naval Station, San Diego, California
Order Processing Service, McGuire Air Force Base, New Jersey

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Wrench, Pipe
5120–00–277–1461
5120–00–277–1486
5120–00–277–1485

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–24987 Filed 9–18–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List

commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 20, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities have been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Paper, Tabulating Machine
7530–00–249–4847
7530–00–057–9487
7530–00–731–5363
NPA: Tarrant County Association for the Blind, Fort Worth, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–24988 Filed 9–18–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southeast Region Logbook Family of Forms.

Agency Form Number: None.

OMB Approval Number: 0648–0016.

Type of Request: Revision of a currently approved collection.

Burden: 21,257 hours.

Number of Respondents: 7,469 (multiple responses).

Avg Hours Per Response: 2 to 15 minutes, depending upon the logbook involved.

Needs and Uses: Under the authority of the Magnuson Fishery Conservation and Management Act, Regional Fishery Management Councils develop fishery management plans (FMPs) to conserve and manage marine resources. One of the management measures taken to oversee regulated fisheries is to require fishermen to maintain logbooks on their catch. There are 14 logbook programs associated with this clearance request. The catch and effort data are needed for scientific analyses that support critical conservation and management decisions that are made by national and international fishery management agencies.

Affected Public: Businesses or other for-profit organizations; individuals.

Frequency: On occasion, every trip.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: September 11, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer.

[FR Doc. 97–24879 Filed 9–18–97; 8:45 am]

BILLING CODE: 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Permit Family of Forms.

Agency Form Number: None.

OMB Approval Number: 0648–0202.

Type of Request: Revision of a currently approved collection.

Burden: 34,662 hours.

Number of Respondents: 44,202.

Avg. Hours Per Response: Varies depending on the requirement but ranges between 1 minute and 5 hours.

Needs and Uses: Under the Magnuson-Stevens Fishery Conservation and Management and the Atlantic Tunas Convention Act, the Secretary of Commerce has responsibility for the conservation and management of marine fishery resources. Participants in the marine fishing industry, including vessel owners, operators and fish dealers, who wish to participate in controlled Northeast Regional fisheries must apply for and obtain permits. Observer and call-in requirements are also included in this information collection request. Without this information, the fisheries in the Northeast Region could not be managed.

Affected Public: Businesses or other for-profit organizations, individuals, federal government, state, local or tribal government.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: September 11, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer.

[FR Doc. 97–24880 Filed 9–18–97; 8:45 am]

BILLING CODE: 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Program Dynamics—1998

ACTION: Proposed collection; Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 18, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael McMahon, Bureau of the Census, FOB 3, Room 3387, Washington, DC 20233–8400, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Survey of Program Dynamics (SPD) is a household-based survey designed as a data collection vehicle that can provide the basis for an overall evaluation of how well welfare reforms are achieving the aims of the Administration and the Congress, and meeting the needs of the American people.

The SPD will be a large, longitudinal, nationally-representative study that measures participation in welfare programs, including both programs that are being reformed and those that remain unchanged. The SPD will also measure other important social, economic, demographic, and family changes that will allow analysis of the effectiveness of the welfare reforms.

With the August 22, 1996 signing of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub L. 104–193), the Census Bureau is required to conduct the SPD, using as the sample the households from the 1992 and 1993 Survey of Income and Program Participation (SIPP). The information obtained will be used to evaluate the impact of this law on a sample of previous welfare recipients and future recipients of assistance under new state programs funded under this law as well as assess the impact on other low-income families. Issues of particular attention include welfare dependency, the length of welfare spells, the causes of repeat welfare spells, educational enrollment and work training, health care utilization, out-of-wedlock births, and the status of children.

The first interview for the SPD was a bridge survey conducted in the spring of 1997. The bridge survey will provide a link to baseline data for the period prior to the implementation of the welfare reform activities.

II. Method of Data Collection

The SPD is a longitudinal study of welfare-related activities, with the sample respondents originally selected from 1992 and 1993 SIPP panels. Interviews were conducted in a bridge survey in 1997. Data collection will be conducted from 1998 to 2001. Data will be collected using a Computer-Assisted Personal Interview (CAPI) automated questionnaire instrument, from a nationally representative sample of the noninstitutionalized resident population living in the U.S. for all persons, families, and households. Persons who are at least 15 years of age at the time of the interview will be eligible to be in the survey. A separate interview will be obtained for each adolescent member, ages 12 to 17, of our sample households. The adolescent interview will be administered by audio-cassette, while the adolescent records the answers in a paper answer booklet.

A small sample of households will be selected for reinterview. The reinterview process assures that all households were properly contacted, and that the data are valid.

III. Data

OMB Number: 0607–0838.

Form Number: CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Household Respondents: 42,000.

Estimated Number of Adolescent Respondents: 7,800.

Estimated Number of Reinterview Respondents: 1,500.

Estimated Time Per Response: 30 minutes per respondent (60 minutes per household), 30 minutes per adolescent aged 12–17 years, 10 minutes per reinterview.

Estimated Total Annual Burden Hours: 25,150.

Estimated Total Annual Costs: No costs to the respondents other than their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 United States Code, Section 182 and Public Law 104–193, Section 414 (signed 8/22/96) Title 42 United States Code, Section 614).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and or included in the request of OMB approval of this information collection; they also will become a matter of public record.

Dated: September 15, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

FR Doc. 97–24886 Filed 9–18–97; 8:45 a.m.)

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On September 2, 1997 CINSA, S.A. de C.V. and Esmaltaciones de Norte America, S.A. de C.V. filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade

Agreement. Panel review was requested of the final antidumping duty administrative review made by the International Trade Administration, in the antidumping investigation respecting Porcelain-on-Steel Cookware from Mexico. This determination was published in the **Federal Register**, 62, 42,496 on August 7, 1997. The NAFTA Secretariat has assigned Case Number USA–97–1904–07 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on September 2, 1996, requesting panel review of the final antidumping duty administrative review described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 2, 1997);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a notice of appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a notice of appearance is October 17, 1997); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: September 15, 1997.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 97–24906 Filed 9–18–97; 8:45 am]

BILLING CODE 3510–GT–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Temporary Amendment to the Requirements for Participating in the Special Access Progam for Caribbean Basin Countries

September 15, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending amendment of requirements for participation in the Special Access Program for a temporary period.

EFFECTIVE DATE: September 23, 1997.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

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).

A notice and letter to the Commissioner of Customs published in the **Federal Register** on September 20, 1996 (61 FR 49439) announced the temporary amendment to the foreign origin exception for findings and trimmings under the Special Access Program. By date of export, the foreign origin exception for findings and trimmings, including elastic strips of less than one inch in width, under the Special Access Program were temporarily amended to include non-U.S. formed, U.S. cut interlinings for the period September 23, 1996 through September 22, 1997 for men's and boys' suit jackets and suit-type jackets in Categories 433, 443, 633 and 643. In the aggregate, such interlinings, findings and trimmings must not exceed 25 percent of the cost of the components of the assembled article. This amendment is being extended for a six-month period beginning on September 23, 1997 and extending through March 22, 1998 for men's and boys' suit jackets and suit-type jackets in Categories 433, 443, 633 and 643 entered under the Special Access Program (9802.00.8015) provided they are cut in the United States and are of a type described below:

(1) A chest type plate, ''hymo'' piece or ''sleeve header'' of woven or welf-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of men's or boys' tailored suit jackets and suit-type jackets;

(2) A weft-inserted warp knit fabric which contains and exhibits properties of elasticity and resilience which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of men's or boys' tailored suit jackets and suit-type jackets.

(3) A woven fabric which contains and exhibits properties of resiliency which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of men's or boys' tailored suit jackets and suit-type jackets.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 15, 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 September 16, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns the foreign origin exception for findings and trimmings under the Special Access Program.

Effective on September 23, 1997, by date of export, you are directed to extend, for the six-month period September 23, 1997 through March 22, 1998, the amendment to treat non-U.S. formed, U.S.-cut interlinings, further described below, for men's and boys' wool and man-made fiber suit jackets and suit-type jackets in Categories 433, 443, 633 and 643 as qualifying for the exception for findings and trimmings, including elastic strips less than one inch in width, created under the Special Access Program established effective September 1, 1986 (see 51 FR 21208). In the aggregate, such interlinings, findings and trimmings must not exceed 25 percent of the cost of the components of the assembled article.

The amendment implemented by this directive shall be of a temporary nature. The amendment will terminate on March 22, 1998, by date of export.

As described above, non-U.S. formed, U.S.-cut interlinings may be used in imports of men's or boys' suit jackets and suit-type

jackets entered under the Special Access Program (9802.00.8015) provided they are cut in the United States and of a type described below:

(1) A chest plate, ''hymo'' piece or ''sleeve header'' of woven or weft-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of men's or boys' tailored suit jackets and suit-type jackets;

(2) A weft-inserted warp knit fabric which contains and exhibits properties of elasticity and resilience which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of men's or boys' tailored suit jackets and suit-type jackets.

(3) A woven fabric which contains and exhibits properties of resiliency which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of men's or boys' tailored suit jackets and suit-type jackets.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–24869 Filed 9–18–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Consultations with the Government of Thailand

September 15, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

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.

On August 28, 1997, under the terms of Article 6 of the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Uruguay Round Agreements Act, the Government of the United States requested consultations with the Government of Thailand with respect to yarn, 85% or more by weight artificial staple fiber, Category 603, produced or manufactured in Thailand.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Thailand, the Government of the United States reserves its right to establish a twelve-month limit of not less than 1,664,653 kilograms for the entry and withdrawal from warehouse for consumption of yarn of 85% or more artificial staple fiber in Category 603, produced or manufactured in Thailand.

A summary statement of serious damage, the actual threat of serious damage or the exacerbation of serious damage concerning Category 603 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 603 or to comment on domestic production or availability of products included in Category 603 is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Thailand.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the implementation of an agreement is not a waiver in any respect of the exemption contained in 5 U.S.C.553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

The United States remains committed to finding a solution concerning Category 603. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

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).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Summary of Statement in Support of Request for Consultations Under Article 6 of the ATC—Thailand

Category 603—Yarn, 85 Percent or more by Weight Artificial Staple Fiber

August 1997

The USG has determined that the increase in imports of yarn for sale, 85 percent or more by weight artificial staple fiber, Category 603, has caused serious damage, or actual threat thereof, to the industry in the United States producing like and/or directly competitive yarn for sale.

Imports of the subject yarn from all sources increased by 15.9 percent in 1996 over 1995, a net increase of nearly 2.0 million kilograms. Domestic orders fell by 19.5 percent and domestic production declined 7.7 percent in 1996 as inventories increased by 17.4 percent. Increasing low-valued imports forced domestic spinners to cut their prices and margins to remain price competitive. Mills cut prices in 1996 and continued to lose orders to imports with unfilled orders dropping 19.5 percent in 1996 below the 1995 level. During the first quarter of 1997 domestic industry orders fell 26.3 percent, as inventories increased 22.3 percent and production fell 20 percent from the same period last year.

Capacity utilization declined as production fell, causing severe margin pressure as fixed costs had to be allocated over fewer sales, which cut gross margins. Compounded with the pressure to lower prices, mills' profitability evaporated. Seventy-eight percent of the companies reported declining profitability in 1996 on the product in question. Two mills fell victim to the margin squeeze and shut down. Production worker employment in the defined industry lost a total of 403 jobs in 1996. More jobs were lost in 1997, as another firm exited the business, resulting in a net loss of 619 jobs from 1995 to the first quarter of 1997.

The USG concluded that the increase in imports from 1995 to 1996 is the direct cause of serious damage to the industry as reflected in the industry's declining production, the substantial increase in inventories, the industry's deteriorating financial performance, and the significant fall in unfilled orders, man-hours, and employment.

The USG has also determined that serious damage to this industry is directly attributable to a sharp and substantial increase in imports of the subject yarn from Thailand. Imports from Thailand have increased significantly, both absolutely and relative to domestic production and world imports, thereby increasing Thailand's share of U.S. imports and the U.S. market. Thailand's low-valued imports adversely affected U.S. domestic prices.U.S. imports of the subject yarn from Thailand rose to 1,279,683 kilograms in 1996, an increase of 22.3 percent above the 1,046,174 kilograms imported during 1995. In the first quarter of 1997, imports from Thailand surged to 610,843 kilograms, 85.8 percent above the 328,698 kilograms imported in the first quarter of 1996. Imports from Thailand for the year ending June 1997 reached 1,557,205 kilograms, 39.7 percent above the 1,114,926 kilograms imported during the same period a year earlier.

The USG further determined that increases in imports of the subject yarn from all sources constitute the actual threat of serious damage or the exacerbation of serious damage to the defined domestic industry producing a like and/or directly competitive product, and that, based on sharp and substantial increases in imports of the subject product from Thailand, such threat was attributable to Thailand.

[FR Doc. 97–24868 Filed 9–18–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The C2 Advisory Group Meeting in support of the HQ USAF Scientific Advisory Board will meet at Norfolk, VA on October 29–30, 1997, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings.

The meeting will be closed to the public in accordance with section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–24905 Filed 9–18–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Scientific Advisory Board

AGENCY: Armed Forces Institute of Pathology (AFIP), DOD.

ACTION: Notice of meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act, Pub. L. (92–463) announcement is made of the following open meeting:

Name of Committee: Scientific Advisory Board (SAB).

Dates of Meeting: 13–14 November 1997.

Place: Armed Forces Institute of Pathology, Building 54, 14th St & Alaska Ave., NW, Washington, DC 20306–6000.

Time: 8:00 a.m.–4:30 p.m. (13 November 1997); 8:00 a.m.–12:00 p.m. (14 November 1997).

FOR FURTHER INFORMATION CONTACT: Mr. Ridgely Rabold, Center for Advanced Pathology (CAP), AFIP, Building 54, Washington, DC 20306–6000, phone (202) 782–2553.

SUPPLEMENTARY INFORMATION:

General function of the board: The Scientific Advisory Board provides scientific and professional advice and guidance on programs, policies, and procedures of the AFIP.

Agenda: The Board will hear status reports from the AFIP Deputy Directors, Center for Advanced Pathology Director, the National Museum of Health and Medicine, and each of the pathology departments. Board Members will visit several of the pathology departments.

Open board discussions: Reports will be given on all visited departments. The reports will consist of findings, recommended areas of further research, and suggested solutions. New trends and/or technologies will be discussed and goals established. The meeting is open to the public.

Mary V. Yonts,

Alternate Army Federal Liaison Officer.

[FR Doc. 97–24899 Filed 9–18–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by October 1, 1997. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before November 18, 1997.

ADDRESSES: Written comments regarding the emergency review 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 request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708-9346.

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 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 Deputy Chief Information Officer, Office of the Chief

Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 15, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Applications for Assistance (sections 8002 and 8003) and State Certification Requests (section 8009)—Impact Aid.

Abstract: A local educational agency must submit an application to the Department to receive Impact Aid payments under sections 8002 or 8003 of the Elementary and Secondary Education Act (ESEA), and a State requesting certification under section 8009 of the ESEA must submit data for the Secretary to determine whether the State has a qualified equalization plan and may take Impact Aid payments into consideration in allocating State aid.

Additional Information: This application has been revised as a result of an amendment to Title VIII of the Elementary and Secondary Education Act. Section 3(a) of the Impact Aid Technical Amendments of 1996 (P.L. 104–195) added section 8003(a)(4) to the Impact Aid law. This amendment authorizes the Impact Aid program to consider United States military dependents living off base (''military b'' children) as if they were living on base (''military a'' children) when base housing is undergoing renovation. This provision will result in increased payments for applicants with qualifying children. Therefore, the Department is seeking approval for the new Table 9 to be added to the previously approved Impact Aid application for FY 1999.

An emergency clearance has been requested by October 1, 1997 for the following reasons: (1) If not approved in time, it would cause public harm because it will result in payments being delayed to all section 8003 applicants; and (2) section 8005 of the Impact Aid law requires the Secretary to establish a deadline for the submission of Impact Aid applicants. Late applications would result in reduced payment or no payment at all. The Secretary established a deadline of January 31 through regulations (34 CFR Section 222.3(a)). It is necessary to receive an emergency clearance of Table 9 so that applicants have sufficient time to comply with the application deadline.

Frequency: Annually.

Affected Public: Individuals or households; Federal Government; State, Local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 925,698.
Burden Hours: 943,318.

[FR Doc. 97–24887 Filed 9–18–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare a High-Level Waste and Facilities Disposition Environmental Impact Statement, Idaho Falls, ID

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Energy (DOE) intends to prepare an Environmental Impact Statement (EIS) to evaluate alternatives for managing the high-level waste and associated radioactive wastes and facilities at the Idaho National Engineering and Environmental Laboratory (INEEL). Under the terms of a 1995 Settlement Agreement with the State of Idaho, which has been incorporated into a court order, DOE agreed to treat high-level radioactive wastes currently stored at the Idaho Chemical Processing Plant (ICPP) at INEEL and remove these wastes from Idaho. The proposed EIS, titled the High-Level Waste and Facilities Disposition Environmental Impact Statement, will assist the Department in making the decisions necessary for management of these radioactive wastes in a manner that will comply with applicable laws and regulations, and protect the environment and the health and safety of the workers and the public in a cost-effective manner.

This EIS will be tiered from two Environmental Impact Statements: (1) the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs EIS (SNF & INEL EIS, issued in April 1995), and (2) the DOE Waste Management Programmatic Environmental Impact Statement (WM PEIS, issued in May 1997). As a result, this EIS will make use of previously developed information and analyses.

The DOE's proposed action is to treat high-activity calcine and sodium-bearing liquid radioactive wastes in a new facility using a radionuclide partitioning technology to separate high-level waste from low-level waste. The proposed action would also include closure of 11 underground storage tanks, the New Waste Calcining Facility, and associated laboratories and support buildings at the ICPP.

This EIS will consider reasonable alternatives for treatment of the high-activity calcine and the sodium-bearing wastes, and for dispositioning of facilities associated with those wastes. Alternatives ranging from grouting wastes in existing high-level waste facilities at the ICPP Tank Farm to the complete removal and disposal of these wastes will be considered. Alternatives involving the separation of only the transuranic constituents from the wastes, separation of and removal of hazardous wastes, and full actinide and metal recovery will also be considered.

DOE will conduct public scoping workshops on this proposed EIS on October 16, in Idaho Falls, ID and on October 23, 1997, in Boise, ID.

DATES: DOE announces two public workshops and welcomes public discussion on the scope of the EIS, including the alternatives the Department is considering. This public scoping period begins with the publication of this notice in the **Federal Register** and will continue until November 24, 1997. DOE invites other Federal agencies, Native American tribes, State and local governments and the general public to comment on the scope of this EIS.

Two public workshops will be held during this scoping period:

1. October 16, 1997, 7:00–9:30 p.m. at Shilo Inn, 780 Lindsay Blvd., Idaho Falls, ID.

2. October 23, 1997, 6:00–8:30 p.m. Boise Centre on the Grove, Boise, ID.

These workshops will provide the public with information about the proposed project, and an opportunity to suggest reasonable alternatives that the Department should consider. Written comments may be submitted to the DOE at these workshops, sent by facsimile to (208) 526–5678, or mailed to the EIS Document Manager, Mr. T. L. Wichmann, at the address listed below.

To ensure consideration, DOE must receive scoping comments by November 24, 1997, although DOE will consider comments received after November 24, 1997, to the extent practicable.

ADDRESSES: To request information about this EIS, or to be placed on the EIS document distribution list, please call the 24-hour toll-free information line at 1–888–918–5100. Written comments on this EIS should be sent to: Thomas L. Wichmann, High-Level Waste and Facilities Disposition EIS, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, MS 1108, Idaho Falls, ID 83402, Facsimile: (208) 526–5678.

For general information about the DOE National Environmental Policy Act (NEPA) process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, Phone: (202) 586–4600, Messages: (800) 472–2756, Facsimile: (202) 586–7031.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Agency Action

The Department of Energy must decide how to treat, store, and dispose of high-level radioactive waste that has been generated by spent fuel and irradiated target reprocessing operations at the INEEL. Most of the high-level waste at the ICPP resulted from reprocessing spent nuclear fuel to recover enriched uranium from naval reactor fuel, and from reprocessing miscellaneous government and ''special case'' commercial nuclear fuel materials. This waste typically contains highly radioactive, short-lived fission products as well as long-lived radioactive isotopes. High-level waste at the ICPP is ''mixed waste'' because in addition to radioactive substances, it contains hazardous chemicals and toxic heavy metals that are regulated under the Resource Conservation and Recovery Act (RCRA) or constituents that exhibit hazardous characteristics (e.g., corrosivity) as defined under RCRA. To protect the environment and public health, the highly radioactive and long-lived radioactive portions of this waste must be stabilized and isolated from the human environment (as in a geologic repository), after the chemically hazardous constituents have been appropriately treated.

The INEEL reprocessed spent nuclear fuel at the ICPP from 1952 to 1990, resulting in liquid radioactive waste that is stored at the ICPP Tank Farm. The Tank Farm consists of eleven 300,000-gallon underground stainless steel tanks surrounded by concrete vaults. Since 1963, this liquid radioactive waste has been undergoing conversion into a dry, stable, granular powder called calcine, using the waste calcining facility at the ICPP. Calcined waste would require additional treatment to be suitable for disposal in a geologic repository. The calcine material is presently stored in above- and below-ground bins at the ICPP, referred to as the ''calcine bin sets.''

Radioactive liquid waste resulting from the cleanup of extraction plant solvent and decontamination processes at the ICPP also is stored in the Tank Farm. This waste contains large quantities of sodium and potassium nitrates with transuranic radioactive isotopes (i.e., isotopes having atomic numbers greater than uranium) that have long decay times. This waste, although not produced from spent nuclear fuel reprocessing, historically has been managed as high-level waste because some of its physical and chemical properties are similar to those of high-level waste. Additional waste testing and characterization may result in its reclassification as mixed transuranic waste or mixed low-level waste.

In October 1995, the State of Idaho, the Department of the Navy, and the Department of Energy settled the cases of *Public Service Co. of Colorado* v. *Batt*, No. CV 91–0035–S–EJL (D. Id.) and *United States* v. *Batt*, No. CV–91–0065–S–EJL (D.Id.). Certain conditions of the Idaho Settlement Agreement/Court Order obligate the Department to:

- Complete the process of calcining all remaining non-sodium bearing liquid high-level waste by June 30, 1998;
- Commence negotiating with the State of Idaho by December 1999 a plan and schedule for the treatment of calcined waste;
- Complete the calcination of sodium-bearing liquid high-level wastes by December 2012; and
- Treat all high-level waste currently at the INEEL so that it is ready to be moved out of Idaho by a target date of 2035.

As part of its proposed management strategy, DOE proposes to use radionuclide partitioning for radioactive liquid and calcine waste treatment, grouting for immobilizing the resulting low-level waste stream, and glass vitrification for immobilizing the resultant high-level waste stream. The EIS will analyze the proposed action and reasonable waste management alternatives to meet the requirements of the Settlement Agreement/Court Order and other applicable requirements.

The EIS Schedule

The Settlement Agreement/Court Order mandates that the ICPP high-level radioactive waste be prepared for removal from the State of Idaho by a target date of 2035. Although the Settlement Agreement/Court Order in this regard requires only that DOE issue a Record of Decision (ROD) no later than December 31, 2009, based on an EIS that analyzes alternatives for treating calcined wastes, DOE plans to complete a more inclusive EIS and to issue a ROD by September 1999. DOE is pursuing this more aggressive schedule so that it can better ensure meeting its commitments effectively and in a timely manner.

Proposed Action

The INEEL Tank Farm currently stores 3,800 cubic meters of calcined high-level waste in the bin sets, and approximately 1.7 million gallons of high-level and sodium bearing liquid wastes. The wastes contain hazardous constituents that are regulated under RCRA. These wastes also contain transuranic radionuclides. DOE proposes to treat these wastes by separating, for disposal in a geologic repository, the high-level radioactive constituents from those constituents that could be classified as low-level waste. Hazardous wastes would also be separated from these materials and further treated as required by the RCRA land disposal restrictions. The low-level radioactive waste would be disposed of on or off the INEEL, depending on decisions to be made based on the WM PEIS.

Under the Proposed Action, the Tank Farm, bin sets, associated support buildings, structures, laboratories and the New Waste Calcining Facility would be decontaminated and decommisioned according to a cost-effective, legally compliant, and environmentally sound approach. This EIS will examine a reasonable range of alternatives, such as various methods of separating radioactive materials, using different

materials for encapsulating wastes, options for Tank Farm decontamination and decommissioning, and options for treatment of waste residues left in tanks and calcine bins. DOE would especially appreciate suggestions on alternatives that should be examined.

Preliminary Alternatives

No Action

The Council on Environmental Quality NEPA Regulations (40 CFR parts 1500–1508), and the DOE NEPA Regulations (10 CFR part 1021) require analysis of a no-action alternative. Under the no-action alternative, DOE would continue current high-level radioactive waste management operations at the ICPP until all residual waste that can be removed from the tanks using existing waste transfer equipment is calcined, but actions to prepare the waste for disposal would not be taken. Once operations are completed, all high-level waste treatment and storage facilities at the ICPP would be placed in a stand-by operational condition. The calcined high-level waste would be stored in the existing bin sets, and residual waste (i.e., the approximately 30,000–40,000 gallons of liquid and solid tank wastes that would remain when the tanks have been emptied using existing waste transfer equipment) would remain in the Tank Farm indefinitely.

Non-Separation

Under the Non-Separation alternative, DOE will analyze options for treating the liquid and calcine high-level waste to forms that are suitable for permanent disposal in-place at the INEEL, or outside of the State of Idaho in a geologic repository. The calcine would be pre-treated as necessary, and immobilized in a glass, glass-ceramic, or cementatious form, which would be encapsulated in cylinders or cast into shapes suitable for placement into transportation and disposal containers for disposal outside of the State of Idaho. Under this alternative the residual liquid high-level waste remaining in the Tank Farm would be solidified or grouted, and the tanks would be closed in accordance with RCRA requirements. As described under the Proposed Action, the ICPP Tank Farm, bin sets, associated support buildings, structures, laboratories and the New Waste Calcining Facility would be decontaminated and decommissioned in a cost-effective, legally compliant, and environmentally sound manner.

Related NEPA Decisions and Reviews

This EIS will use and supplement as necessary, the information and analysis contained in: (1) the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Environmental Impact Statement (DOE/EIS–0203–F); and (2) the DOE Waste Management Programmatic Environmental Impact Statement (DOE/EIS–0200–F).

Volume 2 of the SNF & INEL EIS, issued in April 1995, is a site-wide EIS for the INEEL. Among other matters, Volume 2 analyzed the potential environmental impacts associated with ongoing high-level waste treatment, storage and management operations at the INEEL. In a ROD based on this EIS (60 FR 28680), the Department decided to resume operation of the New Waste Calcining Facility, to convert the high-level liquid and sodium-bearing liquid waste to calcine prior to further treatment. The Department also decided to construct a facility to treat the calcined high-level waste (and any remaining liquid waste) in accordance with RCRA requirements and on a schedule to be negotiated with the State of Idaho under the Federal Facility Compliance Act.

The DOE WM PEIS, issued May 1997, is a DOE complex-wide study examining the environmental impacts associated with managing five types of radioactive and hazardous wastes generated by past, present, and reasonably foreseeable future activities at a variety of sites located around the United States. The five types of waste examined by the WM PEIS are low-level mixed waste, low-level waste, transuranic waste, hazardous waste, and high-level waste. The WM PEIS characterizes and identifies volumes of high-level waste at DOE facilities nationwide, including the INEEL, and uses/updates information presented in the SNF & INEL EIS. The preferred alternative in the WM PEIS for high-level waste storage is for each of the four sites (one of which is INEEL) with immobilized high-level waste canisters to store its own immobilized waste onsite until shipment to a geologic repository for disposal. A high-level waste WM PEIS Record of Decision has not yet been issued.

In addition to the programmatic EISs described above, other related NEPA analyses and documents that will be considered in the analyses of this EIS include:

- The Advanced Mixed Waste Treatment Project (AMWTP) EIS—this EIS will analyze the possible environmental impacts of thermal treatment of transuranic and mixed transuranic waste. The AMWTP is potentially relevant to the proposed High-Level Waste and Facilities Disposition EIS because a small portion of the inventory of radioactive waste at the ICPP is being considered for treatment at the proposed AMWTP. A notice of intent to prepare this EIS will be issued shortly.
- The Waste Isolation Pilot Plant Disposal Phase Supplemental Environmental Impact Statement (SEIS II)—the SEIS II analyzes the treatment and storage of transuranic waste and disposal of such waste at the Waste Isolation Pilot Plant in Carlsbad, New Mexico. The Draft SEIS II was issued in November 1996; the Final SEIS II is in preparation. Some radioactive waste at ICPP may be affected by decisions based on the SEIS II.
- The Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain Environmental Impact Statement—this EIS will analyze the potential environmental impacts associated with the disposal of high-level waste and spent nuclear fuel in a potential geologic repository at Yucca Mountain in Nevada. The draft EIS is scheduled to be issued in July 1999. A Final EIS, scheduled for August 2000, would accompany any DOE recommendation to the President whether to develop Yucca Mountain as a geologic disposal site. INEEL's high-level waste could be eligible for disposal at Yucca Mountain.

Preliminary Identification of EIS Issues

- Potential environmental impacts on the Snake River Plain Aquifer.
- Effects of emissions and discharges from the treatment of liquid and calcined high-level waste.
- Effects of the storage of encapsulated high-level waste at the INEEL.
- Potential effects on the public and workers from exposure to radiological and hazardous wastes during normal operations and reasonably foreseeable accidents.
- Potential effects on air, soil, and water quality from normal operations and reasonably foreseeable accidents.
- Potential effects on members of the public, including minority and low income populations from normal operations and reasonably foreseeable accidents.
- Impacts on cultural and historic resources.
- Pollution prevention, waste minimization, and energy and water use

reduction technologies to eliminate or significantly reduce use of energy, water, and hazardous substances, and to minimize environmental impacts.

- External regulation of DOE operations and possible privatization of high-level waste treatment.
- Potential use of the constituents contained in high-level waste.
- Compliance with applicable Federal, State, and local requirements and the Settlement Agreement/Court Order.
- Cumulative environmental impacts of all past, present and reasonably foreseeable future operations at the INEEL.
- The potential irreversible and irretrievable commitment of resources, including the ultimate use of INEEL lands and land occupied by the ICPP.
- Potential environmental impacts, including long term risks to people, associated with Tank Farm facility closure and on-site waste disposal.

Issued in Washington, D.C. on September 15, 1997.

Peter N. Brush,

Principal Deputy Assistant Secretary for Environment, Safety and Health.

[FR Doc. 97–24951 Filed 9–18–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–1–120–000]

Carnegie Interstate Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

September 15, 1997.

Take notice that on September 10, 1997, Carnegie Interstate Pipeline Company (CIPCO), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, with an effective date of October 1, 1997:

Fourteenth Revised Sheet No. 7

CIPCO states that the above tariff sheet has been revised to reflect a modification to the Annual Charge Adjustment fee, in accordance with the Commission's most recent Annual Charge billing to CIPCO. The Annual Charge Unit Surcharge authorized by the Commission for fiscal year 1998 is $0.0022 per Mcf, or $0.0021 per Dth when converted to CIPCO's measurement basis.

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 18 CFR 385.214 and 285.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24876 Filed 9–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–14–003]

Central Hudson Gas & Electric Corporation; Notice of Filing

September 15, 1997.

Take notice that on August 22, 1997, Central Hudson Gas & Electric Corporation, tendered for filing an amendment in the above referenced docket.

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 September 25, 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. 97–24877 Filed 9–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–744–000]

CNG Transmission Corporation; Texas Gas Transmission Corporation; Notice of Application

September 15, 1997.

Take notice that on September 10, 1997, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302–2450 and Texas Gas Transmission Corporation (Texas Gas), Post Office Box 20008, Owensboro, Kentucky 42304, filed a joint abbreviated application in Docket No. CP97–744–000, pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a natural gas exchange service between CNG and Texas Gas all as more fully set forth in the application on file with the Federal Energy Regulatory Commission (Commission) and open to public inspection.

CNG and Texas Gas propose to abandon a natural gas exchange service which was authorized in Docket No. CP72–183 that was provided under CNG's Rate Schedule X–11 in its FPC Gas Tariff, Original Volume No. 2 and Texas Gas's Rate Schedule X–43 in its FPC Gas Tariff, Original Volume No. 2. CNG and Texas Gas state that the exchange service expired by its own terms; therefore, it is no longer required or appropriate.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 6, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the

Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNG and Texas Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary,

[FR Doc. 97–24871 Filed 9–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–521–000]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

September 15, 1997.

Take notice that on September 11, 1997, Garden Banks Gas Pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 106, to become effective October 11, 1997.

GBGP states that the purpose of this filing is to reflect a change in the time period from one month to twenty-eight days from the time the first release period has ended after which pre-arranged capacity releases for terms of 31 days or less and at less than the maximum tariff rate can be re-released to the same replacement shipper at less than the maximum tariff rate, in conformance with section 284.243(h)(2) of the Commission's Regulations.

Any person desiring to be heard or to protest this 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 18 CFR 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions and 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24874 Filed 9–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–739–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

September 15, 1997.

Take notice that on September 9, 1997, Northern Natural Gas Company (Northern), 111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP97–739–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install and operate a new delivery point in Douglas County, Minnesota, to accommodate interruptible natural gas deliveries to Minnegasco, a Division of NorAm Energy Corporation. Northern makes such request under its blanket certificate issued in Docket No. CP82–140–000 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.

Northern proposes to identify the new delivery point as Alexandria #2 TBS, and states that the new delivery point will be located in the same plant yard as Northern's existing Alexandria #1 TBS. Northern asserts that Minnegasco has requested the proposed delivery point to accommodate service for peak shaving pad gas requirements. Northern states its intent to deliver up to 120 MMBtu of natural gas on a peak day and 840 MMBtu annually, to Minnegasco under currently effective service agreement(s). It is stated that the end-use of the gas will be for commercial, industrial and residential purposes.

Northern estimates the cost of the proposed facilities to be $12,000 and states that such facility cost will be reimbursed.

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 § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed 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. 97–24870 Filed 9–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–754–000]

Samedan Oil Corporation Complainant, vs. Venice Gathering System, L.L.C. Respondent; Notice of an Emergency Request for Order Prohibiting Unlawful Abandonment and Motion for Shortened Response Time

September 15, 1997.

Take notice that on September 12, 1997, Samedan Oil Corporation (Samedan), Post Office Box 909, Ardmore, Oklahoma 73401, filed with the Commission in Docket No. CP97–754–000 an emergency request for an order prohibiting unlawful abandonment of natural gas transportation service and a motion for shortened response time, pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, against Venice Gathering System, L.L.C. (VGS), alleging violations of the Natural Gas Act, Commission rules, regulations, orders, and actions interfering with interstate commerce. Samedan's emergency request is being construed as a complaint under Section 385.206 of the Commission's Regulations.

Samedan requests that the Commission issue an emergency order prior to October 1, 1997, directing VGS to continue its transportation of up to 75,000 Dekatherm equivalents of natural gas for Samedan from South Timbalier Block 163, offshore Louisiana, on VGS' pipeline system on and after October 1, 1997, and until VGS receives authorization to abandon such service under Section 7(b) of the Natural Gas Act. Samedan states that unless the Commission provides the requested relief prior to October 1, 1997, VGS' affiliate, Chevron U.S.A. (Chevron) would be allowed to increase its capacity on VGS' pipeline by 75,000 Dth at Samedan's expense.

Samedan alleges that VGS' unlawful abandonment originated when VGS terminated Samedan's existing gathering agreement for 75,000 Dth of transportation service per day effective October 1, 1997. The Commission determined on April 1, 1997, that the Venice system is a jurisdictional pipeline in its order in *Venice Gathering System*, 79 FERC ¶61,037 (1997). Samedan also alleges that VGS has taken the position that it does not have an obligation under the Natural Gas Act to continue serving Samedan after October 1, 1997. Samedan states that VGS claims that as of October 1, 1997, all of Samedan's capacity on the lateral over which it ships its gas will be reallocated to other shippers, principally VGS' affiliate, Chevron, under an open-season held June 16-20, 1997, for the stated purpose of soliciting shipper interest in building new, incremental capacity on the lateral.

Samedan further alleges that VGS has never applied for or obtained authorization to abandon service to Samedan, and despite Samedan's express and continued demands, VGS has refused to acknowledge a continuing obligation under the Natural Gas Act to transport Samedan' gas on or October 1, 1997. Samedan, therefore, alleges that VGS' actions constitute an unlawful abandonment in violation of section 7(b) of the Natural Gas Act.

Any person desiring to be heard or to make a protest with reference to Samedan's complaint should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions should be filed on or before September 22, 1997. VGS is directed to file its answer to this complaint no later than the close of business September 19, 1997. Any person desiring 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. 97–24928 Filed 9–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–522–000]

Shell Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 15, 1997.

Take notice that on September 11, 1997, Shell Gas Pipeline Company (SGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 106, to become effective October 11, 1997.

SGPC states that the purpose of this filing is to reflect a change in the time period from one month to twenty-eight days from the time the first release period has ended after which pre-arranged capacity releases for terms of 31 days or less and at less than the maximum tariff rate can be re-released to the same replacement shipper at less than the maximum tariff rate, in conformance with section 284.243(h)(2) of the Federal Energy Regulatory Commission's Regulations.

Any person desiring to be heard or to protest this 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 18 CFR 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions and 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24875 Filed 9–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–428–011]

Tuscarora Gas Transmission Company; Notice of Compliance Filing

September 15, 1997.

Take notice that on September 10, 1997, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective August 26, 1997:

First Revised Sheet No. 84
Sub First Revised Sheet No. 85

Tuscarora asserts that the purpose of this filing is to clarify that the maximum term an Existing Shipper can be required to match under the right-of-first refusal provision is five years.

Tuscarora states that copies of this filing were mailed to all customers of Tuscarora, interested state regulatory agencies and the service list in Docket No. RP97–428–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NW., Washington DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24873 Filed 9–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4331–000, et al.]

American Electric Power Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

September 15, 1997.

Take notice that the following filings have been made with the Commission:

1. American Electric Power Service Corporation

[Docket No. ER97–4331–000]

Take notice that on August 20, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric Tariff First Revised Volume No. 2. AEPSC requests waiver of notice to permit the service agreements to be made effective for service billed on and after July 21, 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: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. NORSTAR Energy Limited Partnership

[Docket No. ER97–4332–000]

Take notice that on August 21, 1997, NORSTAR Energy Limited Partnership (''NORSTAR''), tendered for filing a notice of cancellation of NORSTAR's FERC Electric Rate Schedule No. 1 to be effective immediately.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corporation

[Docket No. ER97–4333–000]

Take notice that on August 21, 1997, pursuant to the Commission's Order of July 31, 1997 in this docket, Florida Power Corporation filed a Service Agreement for Firm Point-to-Point Transmission Service with itself under its Open Access tariff.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company [Docket No. ER97–4334–000]

Take notice that on August 21, 1997, Arizona Public Service Company (''APS'') in its capacity as Operating Agent for the Navajo Generating Station tendered for filing Amendment No. 4 to the Navajo Co-Tenancy Agreement, APS–FERC Rate Schedule No. 229.

A copy of this filing has been served on all parties on the Service List.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. GEÑSYS Energy

[Docket No. ER97–4335–000]

Take notice that on August 25, 1997, GEÑSYS Energy (''GEÑSYS'') a cooperative association wholly owned by Dairyland Power Cooperative and Cooperative Power Association tendered for filing a rate schedule enabling GEÑSYS to make wholesale sales of capacity and energy at market-based rates as more fully described in its application. GEÑSYS requests an effective date of October 1, 1997.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. South Carolina Electric & Gas Company

[Docket No. ER97–4336–000]

Take notice that on August 25, 1997, South Carolina Electric & Gas Company (''SCE&G'') submitted service agreements establishing The Energy Authority, Inc. (''TEA'') as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon TEA and the South Carolina Public Service Commission.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power Company

[Docket No. ER97–4337–000]

Take notice that on August 25, 1997, Duke Power Company (''Duke''), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Aquila Power Corporation ((''Transmission Customer''), dated as of July 24, 1997 (''TSA''). Duke states that the TSA sets out the transmission arrangements under which Duke will provide the Transmission Customer firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of July 24, 1997.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Power Company

[Docket No. ER97–4338–000]

Take notice that on August 25, 1997, Duke Power Company (''Duke''), tendered for filing a Market Rate Service Agreement between Duke and Scana Energy Marketing, Inc., dated as of July 24, 1997. Duke requests that the Service Agreement be made effective as of July 24, 1997.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. South Carolina Electric & Gas Company

[Docket No. ER97–4339–000]

Take notice that on August 25, 1997, South Carolina Electric & Gas Company (''SCE&G'') submitted a service agreement establishing The Energy Authority, Inc. (''TEA'') as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon TEA, and the South Carolina Public Service Commission.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Power and Light Company

[Docket No. ER97–4340–000]

Take notice that on August 25, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing Form Of Service Agreement for Firm Point-to-Point Transmission Service and Form Of Service Agreement for Non-Firm Point-to-Point Transmission Service establishing NP Energy Inc. as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of August 19, 1997, and; accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. UtiliCorp United Inc.

[Docket No. ER97–4341–000]

Take notice that on August 25, 1997, UtiliCorp United Inc. (''UtiliCorp'') filed a service agreement with Sunflower Electric Power Corporation for service under its Firm point-to-point open access service tariff for its operating division WestPlains Energy-Kansas.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Company

[Docket No. ER97–4342–000]

Take notice that on August 25, 1997, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Vitol Gas and Electric, LLC.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow

the Service Agreements to become effective August 15, 1997.

A copy of this filing was caused to be served upon Vitol Gas and Electric, LLC as noted in the filing letter.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Idaho Power Company

[Docket No. ER97–4343–000]

Take notice that on August 25, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff, between Idaho Power Company and Kansas City Power & Light Company, LG&E Power Marketing, Inc., and Avista Energy.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Idaho Power Company

[Docket No. ER97–4344–000]

Take notice that on August 25, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Letter Agreement for Firm Capacity and Energy Exchange under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and the City of Anaheim, California.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. OGE Energy Resources, Inc.

[Docket No. ER97–4345–000]

Take notice that on August 25, 1997, OGE Energy Resources, Inc. (''OERI'') petitioned the Commission for acceptance of OERI Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

OERI intends to engage in wholesale electric power and energy purchases and sales as a marketer. OERI is not in the business of generating or transmitting electric power. OERI is a wholly-owned subsidiary of OGE Energy Corp., which has a subsidiary, Oklahoma Gas and Electric Company, that generates and transmits electric power.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Moulton Niguel Water District

[Docket No. ER97–4346–000]

Take notice that on August 25, 1997, Moulton Niguel Water District (''MNWD'') petitioned the Commission for acceptance of MNWD Rate Schedule FERC No. 1, the granting of certain blanket approvals, including authority to sell electricity at market-based rates, and the waiver of certain Commission regulations.

MNWD intends to engage in wholesale power and energy purchases and sales as a marketer. MNWD is not in the business of generating or transmitting electric power. MNWD is a California water district.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Northeast Energy Services, Inc.

[Docket No. ER97–4347–000]

Take notice that on August 26, 1997, Northeast Energy Services, Inc. (''NORESCO''), tendered for filing pursuant to Part 35 of the Commission's Regulations and § 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than October 24, 1997.

NORESCO intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where NORESCO sells electric energy it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. NORESCO is not in the business of generating, transmitting, or distributing electric power.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Northeast Utilities Service Company

[Docket No. ER97–4348–000]

Take notice that on August 26, 1997, Northeast Utilities Service Company (''NUSCO''), tendered for filing, a Service Agreement with the American Electric Power Service Corporation under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the American Electric Power Service Corporation.

NUSCO requests that the Service Agreement become effective August 19, 1997.

Comment date: September 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Delmarva Power & Light Company

[Docket No. ER97–4349–000]

Take notice that on August 26, 1997, Delmarva Power & Light Company, tendered for filing executed umbrella service agreements with AIG Trading Corporation, American Municipal Power-Ohio, Inc., MidCon Power Services, Inc., NP Energy Inc., and Williams Energy Services Company under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96–2571–000. Delmarva requests that the Commission make the agreements with AIG Trading Corporation, American Municipal Power-Ohio, Inc., MidCon Power Services, Inc., NP Energy Inc., and Williams Energy Services Company effective as of their respective execution dates.

Comment date: September 29, 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. 97–24927 Filed 9–18–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4322–000, et al.]

Golden Spread Electric Cooperative, Inc., et al.; Electric Rate and Corporate Regulation Filings

September 12, 1997.

Take notice that the following filings have been made with the Commission:

1. Golden Spread Electric Cooperative, Inc.

[Docket No. ER97–4322–000]

Take notice that on August 21, 1997, and amended on August 22, 1997, Golden Spread Electric Cooperative, Inc. tendered for filing proposed changes in Exhibit B to its FERC Rate Schedules Nos. 12–22 with the Federal Energy Regulatory Commission pursuant to 35.13 of the Commission's Regulations. This filing seeks acceptance of Exhibit B to Golden Spread's Wholesale Power Contracts, which will be a revenue neutral change.

The rate schedule change is intended to revise Golden Spread's current rates contained in Schedule A in order to accommodate changes in Golden Spread's power supply arrangements. Golden Spread's power supply, due to the construction of the Mustang Station and the conversion to partial requirements status from the current Southwestern Public Service Company (SPS) full requirements status, will be significantly more diverse. The current rate formula contained in Schedule A will not allow Golden Spread to accurately track and recover the costs related to these changes in its power supply to the Members. The rate schedules contained in Exhibit B herein will allow these costs to be accurately tracked and recovered once the Mustang Station begins commercial operation, which is estimated to be the fourth quarter of 1998.

Copies of this filing were served upon Golden Spread's jurisdictional customers and the Public Utility Commission of Texas.

Comment date: September 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER97–4321–000]

Take notice that on August 22, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with Western Resources, Inc. and Williams Energy Services Company under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: September 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Central Maine Power Company

[Docket No. ER97–4323–000]

Take notice that on August 22, 1997, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Constellation Power Source. Service will be provided pursuant to CMP's Power Sales Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 2, as supplemented.

Comment date: September 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Central Maine Power Company

[Docket No. ER97–4324–000]

Take notice that on August 22, 1997, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Tractebel Energy Marketing. Service will be provided pursuant to CMP's Power Sales Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 2, as supplemented.

Comment date: September 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Central Maine Power Company

[Docket No. ER97–4325–000]

Take notice that on August 22, 1997, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Williams Energy Service Company. Service will be provided pursuant to CMP's Power Sales Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 2, as supplemented.

Comment date: September 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Central Maine Power Company

[Docket No. ER97–4326–000]

Take notice that on August 22, 1997, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Entergy Power Marketing. Service will be provided pursuant to CMP's Power Sales Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 2, as supplemented.

Comment date: September 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Central Maine Power Company

[Docket No. ER97–4327–000]

Take notice that on August 22, 1997, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Northeast Energy Services, Inc. Service will be provided pursuant to CMP's Power Sales Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 2, as supplemented.

Comment date: September 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Central Maine Power Company

[Docket No. ER97–4328–000]

Take notice that on August 22, 1997, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Orange and Rockland Utilities Inc. Service will be provided pursuant to CMP's Power Sales Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 2, as supplemented.

Comment date: September 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER97–4329–000]

Take notice that on August 22, 1997, Florida Power Corporation tendered for filing a service agreement providing for short-term service to The Cincinnati Gas & Electric Company (CG&E), PSI Energy, Inc. (PSI), (collectively Cinergy Operating Companies) and Cinergy Services, Inc. (Cinergy Services), pursuant to Florida Power's Market-Based Wholesale Power Sales Tariff (MR–1) FERC Electric Tariff, Original Volume No. 8. Florida Power requests that the Commission waive its notice of filing requirements and allow the Service Agreement to become effective on August 23, 1997.

Comment date: September 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corporation

[Docket No. ER97–4330–000]

Take notice that on August 22, 1997, New York State Electric & Gas Corporation (NYSEG), filed a modification to an agreement dated February 4, 1986 (the Agreement) under which NYSEG provides transmission service for certain out-of-state customers of NYPA, including Allegheny Electric Cooperative, Inc. (Allegheny), and American Municipal Power-Ohio, Inc.(AMP-Ohio),(NYSEG's FERC Rate Schedule Nos. 36 and 84).

NYSEG requests that the herein proposed amendment which is being filed as a supplement to Rate Schedule FERC Nos. 36 and 84 be allowed to become effective on September 1, 1997. Accordingly, pursuant to 35.11 of the Commission's Rules of Practice and Procedure, 18 CFR 35.11, NYSEG

requests waiver of the Commission's 60-day notice requirement.

Waiver is appropriate pursuant to the Commission's policy set forth in Central Hudson Gas & Electric Corp., 60 FERC ¶ 61,106 reh'g denied, 61 FERC ¶ 61,089 (1992). In Central Hudson, the Commission stated that it would generally waive the 60-day prior notice requirement ''for filings that reduce rates and charges—such as rate decreases * * *'' Id., 60 FERC at 61,338. Accordingly, as a rate decrease, this filing falls squarely within the standard for waiver enumerated in Central Hudson.

Comment date: September 26, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24926 Filed 9–18–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM95–9–003]

Open Access Same-Time Information System and Standards of Conduct; Notice of Extension of Time for Filing Report on OASIS Phase II Requirements

September 15, 1997.

On September 12, 1997, the OASIS How Working Group (How Group) filed a letter requesting that the Commission extend the due date for submittal of a report on OASIS Phase II requirements. The How Group requests that the report, previously due on or before September 19, 1997, now be due on or before October 31, 1997.[1]

The How Group explains that an extension until October 31, 1997 is required because: (1) The Commercial Practices Working Group has joined the effort to co-author the report, thus necessitating greater coordination efforts; and (2) it hopes to elicit additional public and industry input on the draft report, through surveys, comments and workshops, in the intervening time.

After consideration of the How Group's letter, the requested extension of time, for filing the OASIS Phase II report, is hereby granted.

Lois D. Cashell,

Secretary.

[FR Doc. 97–24872 Filed 9–18–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Transmission and Ancillary Services Rates, Loveland Area Projects, Notice of Proposed Rate Adjustments

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rate adjustments.

SUMMARY: The Western Area Power Administration (Western) is proposing transmission service and ancillary service rate adjustments (proposed rates) for the Loveland Area Projects (LAP). This action is necessary because the existing transmission rate (1993) is no longer sufficient to recover annual costs (including interest expense) and capital requirements.

The Proposed Rates are scheduled to go into effect April 1, 1998. Western requests approval of a rate methodology for each service. Once approved, the rates will be adjusted on or about October 1 each year by updating the revenue requirement and load data to the most currently available. This **Federal Register** notice initiates the formal process for the proposed rates.

The current firm transmission rate for LAP expires January 31, 1999, but will be superseded by this rate adjustment for new and existing transmission service. Heretofore, there have been no rates for the six ancillary services defined by Federal Energy Regulatory Commission (FERC) Order 888. Please refer to Table 1 for a summary of the Proposed Rates and their methodology.

DATES: The consultation and comment period will begin on the date of publication of this **Federal Register** notice and will end December 18, 1997. Written comments should be received by Western by the end of the comment period to be assured consideration. Western will present a detailed explanation of the proposed rate at the public information forum which will be held at the following date and time:

1. October 23, 1997—1 p.m. MDT, Denver, CO.

Western will receive written and oral comments at the public comment forum which will be held at the following date and time:

2. November 18, 1997—1 p.m. MST, Denver, CO.

ADDRESSES: Western's public information forum will be held at the following place:

1. Fairfield Inn, 6851 Tower Road, Denver, CO 80249, (303) 576–9640

Western's public comment forum will be held at the following place:

2. Fairfield Inn, 6851 Tower Road, Denver, CO 80249, (303) 576–9640

Written comments are to be sent to: Regional Manager, Rocky Mountain Region (RMR), Western Area Power Administration, P.O. Box 3700, Loveland, Colorado 80539–3003 or faxed to the Regional Manager at (970) 490–7213.

FOR FURTHER INFORMATION CONTACT: Daniel T. Payton, Rates Manager, RMR, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, (970) 490–7442, or e-mail (dpayton@wapa.gov).

SUPPLEMENTARY INFORMATION:

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- B. Network Transmission Service
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II. Proposed Rates for Ancillary Services
- A. Proposed Rate for Scheduling, System Control, and Dispatch Service
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- E. Proposed Rate for Operating Reserves: Spinning, Supplemental, and Emergency Use

III. Table 1—Summary of LAP Proposed Service Rates

IV. Authorities

[1] This report originally was due on or before August 4, 1997. The due date was extended to September 19, 1997, in a notice issued on July 11, 1997.

I. Proposed Rates for LAP Transmission

The RMR will offer network, firm point-to-point, and non-firm point-to-point transmission service to all Transmission Customers. The proposed rates will be applicable to existing and future transmission service. As demonstrated in the rate methodology, Western will be taking transmission service on the same basis as other Transmission Customers. The cost of transmission service for serving Western's Contract Rates of Delivery will continue to be included in the LAP firm power rate, consistent with existing contracts. These contracts will expire in the year 2024.

The RMR proposes to implement the LAP transmission rates in three steps:

Step 1—April 1, 1998

The first step will be: the existing rate ($1.88/kW-Month) plus one-third of the difference between the existing transmission rate ($1.88/kW–Mo) and the proposed rate. The revenue requirement for the first step is based on FY 1996 financial data; the load is based on 1995 data.

Step 2—October 1, 1998

The second step will be: the existing rate ($1.88/kW-Month) plus two-thirds of the difference between the existing rate and the recalculated rate based on financial and load data for FY 1997 (October 1, 1996, to September 30, 1997).

Step 3—October 1, 1999

The third step will be: the recalculated rate based on financial and load data for FY 1998 (October 1, 1997, to September 30, 1998).

The transmission rates will be recalculated and revised every year effective October 1, based on the methodologies presented in the following sections. Western will provide notice of changes in rates no later than July 1 of each year.

I.A. Proposed Revenue Requirement for Transmission Service

An annual fixed charge methodology was used to determine the revenue requirement to be recovered from network, firm, and non-firm transmission service. The annual transmission costs included are operation and maintenance expenses, administrative and general expenses, interest expense, and depreciation expense.

I.B. Network Transmission Service

The monthly charge for network transmission service is the product of the Transmission Customer's load-ratio share times one-twelfth of the annual transmission revenue requirement. The current revenue requirement is $43,554,579.

The customer's load-ratio share is the ratio of a network customer's network load to Western's LAP transmission system total load, calculated on a rolling 12-month basis (12 coincident peak (12-cp)). The network customer's monthly network load is its hourly load coincident with Western's LAP transmission system monthly transmission system peak. The LAP transmission system total load is the monthly system peak minus the coincidental peak usage of all firm point-to-point transmission service customers, plus the reserved capacity for all firm point-to-point transmission service customers. The 12-cp for the LAP transmission system is 1,118,245 kW, based on 1995 data.

I.C. Firm Point-to-Point Transmission Service

The rate for firm point-to-point transmission service is the annual revenue requirement for transmission divided by the 12-cp monthly peak of the LAP transmission system. The current estimate is $3.25/kW-Month ($43,554,579 / 1,118,245 kW / 12 months). Western may discount these rates to promote short-term firm sales.

I.D. Non-Firm Point-to-Point Transmission Service

Non-firm transmission service is available for periods ranging from 1 hour to 1 month. The rate for non-firm transmission service may be discounted based upon market conditions, but never higher than the firm point-to-point rate, converted to energy equivalent at 100% load factor. The current maximum rate is 4.45 mills/kWh ($3.25/kW-Month/730 hours).

II. Proposed Rates for Ancillary Services

Western will provide ancillary services, subject to availability, as described in Table 1 of this notice. The proposed rates are designed to recover only the costs incurred for the service(s). The ancillary services, as defined by FERC, are control area-based rates.

It is anticipated that in June 1998, the Western Area Lower Missouri (WALM) control area will be merged with a portion of the existing Western Area Upper Colorado (WAUC) control area operated by Western's Colorado River Storage Project Customer Service Center, to form the Western Area Colorado Missouri (WACM) control area which will be operated by Western's RMR. The following ancillary service rate calculations are for the WACM control area, effective June 1998.

An annual fixed charge methodology was used to determine the revenue requirement to be recovered by each ancillary service. The annual generation costs included are operation and maintenance expenses, administrative and general expenses, interest expense, and depreciation expense.

II.A. Proposed Rate for Scheduling, System Control, and Dispatch Service

Scheduling, system control, and dispatch costs are calculated as an annual cost of all personnel and other related costs involved in providing the service for RMR customers. That cost is divided by the number of schedules per year to derive a rate per schedule per day.

The rate for the WACM control area is $25.71 per schedule per day and will be in effect in June 1998.

II.B. Proposed Rate for Reactive Supply and Voltage Control From Generation Sources

RMR's Reactive Supply and Voltage Response Service costs are calculated as an annual cost of Bureau of Reclamation generation plant investment for both LAP and Salt Lake City Area-Integrated Projects (SLCA–IP), and applying to that cost the percentage of the generation resource required to provide reactive support in the control area to yield an annual cost. That annual cost is then divided by the 12-cp average of the total load that requires VAR support in the control area, yielding a rate for the combined WACM control area effective June 1998 of $0.12/kW-Month (or .27 mills/kWh for non-firm service, based on a 60 percent annual load factor).

II.C. Proposed Rate for Regulation and Frequency Response Service

Western's Regulation and Frequency Response Service rate is determined by considering the annual revenue requirement of Bureau of Reclamation regulating plants for both LAP and SLCA–IP, and dividing that by the load requiring regulation in the WACM control area (exclusive of those known loads that provide their own automatic generation control). The resulting rate for the WACM control area effective June 1998 is $0.15/kW-Month (or .34 mills/kWh for non-firm service, based on 60 percent annual load factor).

II.D. Proposed Rate for Energy Imbalance Service

The Energy Imbalance Service rate will be applied against deviations outside a 3 percent bandwidth (± 1.5

percent deviations), with a 2 MW deviation minimum.

Negative excursions (under deliveries) greater than 1.5 percent and occurring more than five times per month will be assessed a penalty charge of 100 mills/kWh; e.g., the sixth time an under delivery occurs within a month, the 100 mills/kWh charge will be applied.

Any positive excursion (over delivery) will be credited to the customer for 50 percent of the market value of the over delivery within 30 days.

II.E. Proposed Rate for Operating Reserves: Spinning, Supplemental, and Emergency Use

It is unlikely that reserves will be available from WACM resources on a long-term basis.

If Western has Spinning or Supplemental Reserves available for short-term sale from WACM resources, Western will charge the LAP or the SLCA–IP firm power capacity rate in effect at the time of the sale. The current LAP firm power capacity rate is $2.85/kW-Month. The proposed SLCA–IP firm power capacity rate is $3.48/kW-Month.

If Spinning or Supplemental Reserves are unavailable from WACM resources, Western may obtain the reserves on the open market for the customer and pass through the cost of those reserves, plus a cost for administration.

When reserves are called on for Emergency Use, Western will assess a charge for energy used, at the greater of 30 mills/kWh or the prevailing market energy rate in the Region.

The Transmission Customer will be responsible for the transmission service to get these reserves to their destination.

III. Table 1—Summary of LAP Proposed Service Rates

Service	Rate calculation or basis	Proposed rate
Network Transmission	Customer's Load Ratio Share *1/12* Annual Transmission Revenue Requirement ($43,554,579).	Based upon customer load share.
Firm Point-to-Point Transmission	Total Annual Revenue Requirement/12 CP/12 months ($43,554,579/1,118,245 kW/12).	$3.25/kW-month.
Non Firm Point-to-Point Transmission.	Firm point-to-point rate/730 hours per month ($3.25/kW-Month/730)	Maximum of 4.45 mills/kWh.
Scheduling, System Control, and Dispatch.	Annual cost of personnel and related costs/number of schedules per year.	
	Before consolidation into WACM: $1,098,873/33,800 schedules	Before: $32.51/schedule/day.
	After consolidation into WACM: $1,223,140/47,580 schedules	After: $25.71/schedule/day.
Reactive Supply and Voltage Control from Generation Sources.	Total Annual Revenue Requirement for Generation *Percentage of Resource Capacity Used for Reactive Power = Annual Revenue Requirement for Reactive Power/Load in Control Area Requiring Reactive Power/12 months.	
	Before consolidation into WACM: $51,456,799 *2.82%=$1,448,509; then, $1,448,509/1,383,432 kW/12.	Before: $0.09/kW-Month.
	After consolidation into WACM: $73,299,264 *2.82%=$2,063,374; then $2,063,374/1,407,918 kW/12.	After: $0.12/kW-Month.
Regulation and Frequency Response.	Total Annual Revenue Requirement for Regulation/Load in Control Area Requiring Regulation/12/Months.	
	Before consolidation into WACM: $1,746,658/1,353,712 kW/12	Before: $0.11/kW-Month.
	After consolidation into WACM: $2,531,065/1,407,918 kW/12	After: $0.15/kW-Month.
Energy Imbalance	Charge for Energy Imbalance will be applied to deviations outside a 3 percent bandwidth.	As described.
	Negative deviations above 1.5 percent, occurring more than five times per month, will be assessed 100 mills/kWh, with a 2 MW minimum deviation.	
	Any Positive deviations above 1.5 percent will be credited to customer at 50 percent of average monthly non-firm market price in WACM control area.	
Spinning/Supplemental/Emergency Use Reserves.	Anticipate no long-term surplus reserves available for sale	Spinning/Supplemental Reserves will be charged the Current Firm Power Capacity Rates:
	If available from a WACM resource on short-term basis, Spinning/Supplemental reserves would be assessed the LAP or SLCA–IP firm power capacity rate in effect at the time the request is made.	LAP: $2.85kW Month.
	Spinning/Supplemental reserves are unavailable from a WACM resource, Western would offer to purchase and pass-through cost of the reserves, plus a cost for administration.	SLCA–IP: $3.48/kW-Month (Proposed).
	Emergency Use reserves will be charged the greater of 30 mills/kWh or the prevailing market energy rate in the Region.	Emergency Use will be charged > of 30 mills/kWh or prevailing market.

IV. Authorities

Transmission and ancillary services rates for the LAP are being established pursuant to the Department of Energy (DOE) Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s) and other acts specifically applicable to the projects involved.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of DOE delegated: (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to

confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the FERC. Existing DOE procedures for public participation in power rate adjustments are found at 10 CFR part 903.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance the initiation of the LAP transmission rate and ancillary service rate adjustments are related to non-regulatory services provided by Western at particular rates. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the LAP transmission rates and ancillary services are of limited applicability, no flexibility analysis is required.

Environmental Compliance

Western will conduct an environmental evaluation of the proposed rates and develop the appropriate level of environmental documentation pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500 through 1508); and the DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by Office of Management and Budget is required.

Availability of Information

All brochures, studies, comments, letters, memoranda, or other documents made or kept by Western for developing the proposed rates, will be made available for inspection and copying at the RMR Office, located at 5555 East Crossroads Boulevard, Loveland, Colorado, 80537, during normal business hours.

Dated: Sepember 11, 1997.

Michael S. Hacskaylo,

Acting Administrator.

[FR Doc. 97–24950 Filed 9–18–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5484–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed September 08, 1997 Through September 12, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970357, Draft EIS, FHW, WV, Elkins Bypass Project, Relocation of US–33 between Aggregates and Canfield, Constructions, Funding NPDES Permit and COE Section 404 Permit, Randolph County, WV, Due: November 20, 1997, Contact: David A. Leighow (304) 347–5268.

EIS No. 970358, Final Supplement, AFS, ID, Katka Peak Timber Sale and Road Construction, Implementation, New Information from Interior Columbia Basin Ecosystem Management Project, to implement Ecosystem Restoration Treatment, Bonners Ferry Ranger District, Idaho Panhandle National Forests, Boundary County, ID, Due: October 20, 1997, Contact: Barry Wynsma (208) 262–5561.

EIS No. 970359, Final EIS, BLM, WY, Greybull Valley Irrigation District Dam and Reservoir Project, Issuance of Right-of-Way Permit and COE Section 404 Permit, Park County, WY, Due: October 20, 1997, Contact: Don Ogaard (307) 347–5160.

EIS No. 970360, Draft EIS, USN, FL, SC, VA, NC, Cecil Field Naval Air Station, Realignment of F/A–18 Aircraft and Operational Functions, to Other East Coast Installations; NAS Oceana, VA; MCAS Beaufort, SC and MCAS Cherry Point, NC, Implementation, COE Section 404 Permit, FL, SC, NC and VA, Due: November 18, 1997, Contact: J. Daniel Cecchini (757) 322–4891.

EIS No. 970361, Final EIS, FRC, MA, NH, VT, ME, Portland Natural Gas Transmission System Project (PNGTS) and (PNGTS)/Maritimes & Northeast Pipeline L.L.C., Phase II Joint Facilities Project, Construction and Operation, COE Section 10 and 404 Permits, MA, York and Cumberland Counties, ME, Coos County, NH and Essex County, VT, Due: October 20, 1997, Contact: Paul McKee (202) 208–1088.

EIS No. 970362, Final EIS, GSA, CO, Denver Federal Center Master Site Plan, Implementation, City of Lakewood, Jefferson County, CO, Due: October 24, 1997, Contact: Lisa Morpurgo (303) 236–7231 ext 250.

EIS No. 970363, Final EIS, FRC, WA, Nooksack River Basin Hydroelectric Projects, Seven Projects—(FERC No. 4628) (FERC No. 4738) (FERC No. 4270) (FERC No. 4282) (FERC No. 9231) (FERC No. 4312) and (FERC No. 3721) Construction and Operation, Licensing, Whatcom County, WA, Due: October 20, 1997, Contact: Tom Dean (202) 219–2778.

EIS No. 970364, Draft EIS, SFW, MN, IA, Northern Tallgrass Prairie Habitat Preservation Area (HPA), Preserve, Restore and Manage, several counties, MN and several counties, IA, Due: November 06, 1997, Contact: Jane West (612) 725–3306.

Amended Notices

EIS No. 970247, Draft EIS, SFW, ID, MT, Grizzly Bear (Ursus arctos horribilus) Recovery Plan in the Bitterroot Ecosystem, Implementation, Endangered Species Act, Proposed Special Rule 10(j) Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area, Rocky Mountain, Blaine, Camas, Boise, Clearwater, Custer, Elmore, Idaho, Lemhi, Shoshone, Due: November 03, 1997, Contact: Dr. Christopher Servheen (406) 243–4903. Published FR 07–11–97—Review Period Extended.

EIS No. 970266, Draft EIS, BLM, CA, Fourmile Hill Geothermal Development Project, Construction, Operation and Maintenance, 49.9 megawatt (MW) Geothermal Power Plant, Federal Geothermal Leases CA–21924 and CA–21926, Glass Mountain Known Geothermal Resource Area, Klamath and Modoc National Forests, Siskiyou and Modoc Counties, CA, Due: September 30, 1997, Contact: Randall Sharp (916) 233–5811. Published FR 07–11–97—Review Period extended.

EIS No. 970356, Final EIS, FHW, VA, DC, MD, Woodrow Wilson Bridge Improvement, I–95 from the Telegraph Road/Capital Beltway Interchange in Alexandria, VA to the MD–210/Capital Beltway Interchange in Oxon Hill, MD, Funding, Section 10 and 404 Permits and CGD Bridge Permit, Fairfax County, VA; Prince George's County, MD, and DC , Due: October 20, 1997, Contact: David C. Lawton (410) 962–0077. Published

FR—09–12–97—Review Period Extended.

Dated: September 16, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–24979 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5484–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 18, 1997 Through August 22, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 04, 1997 (62 FR 16154).

Draft EISs

ERP No. D–AFS–J65269–MT Rating EC2, Poorman Project, Implementation, Harvesting and Road Construction, Helena National Forest, Lincoln Ranger District, Lewis and Clark County MT.

Summary: EPA expressed environmental concerns about inadequate analysis and disclosure of potential adverse impacts to air quality and wetlands, and identified the need for a project water monitoring program, and for TMDL development for Poorman Creek. Additional information is needed to fully assess and mitigate all potential environmental impacts of the management actions.

ERP No. D–AFS–J65271–MT Rating EC2, Jericho Salvage Timber Sale, Implementation, Salvage Treatments and Temporary Road Construction, Helena National Forest, Helena Ranger District, Powell County, MT.

Summary: EPA expressed environmental concerns about sediment transport to area streams and the proposed reduction of streamside buffer zone widths below INFISH recommended widths. EPA also expressed concerns about the limited range of alternatives analyzed in the draft EIS, and about insufficient analysis and disclosure of potential adverse impacts to air quality and wetlands; and identified the need for a project water monitoring program, and for TMDL development for Telegraph Creek. Additional information is needed to fully assess and mitigate all potential environmental impacts of the management actions.

ERP No. D–AFS–J65274–MT Rating EC2, Beaver Creek Ecosystem Management Project and Associate Timber Sale, Implementation, Little and Big Beaver Creek Drainage, Kootenai National Forest, Cabinet Ranger District, Sanders County, MT.

Summary: EPA expressed environmental concerns about potential adverse water quality, fisheries, wetlands, and wildlife impacts, and the lack of analysis and disclosure of the monitoring plan to evaluate impacts to aquatic and air resources. Additional information is needed to fully assess and mitigate all potential environmental impacts of the management actions.

ERP No. D–AFS–L65291–ID Rating EC2, Paradise Integrated Resource Management Project, Implementation, To Commercial Thin and Timber Salvage Harvest Boise National Forest, Mountain Home Ranger District, Elmore County, ID.

Summary: EPA expressed environmental concerns on the potential impacts to water quality, impacts to the Rainbow Roadless Area, the need for information to support modeling methodologies, the lack of grazing impact evaluation and monitoring needs.

Final EISs

ERP No. F–AFS–J65266–MT, Tansy Ragwort Control Project, Implementation, Little Wolf Fire Area, Flathead National Forest, Tally Lake Ranger District, Flathead County, MT.

Summary: EPA supported control of the tansy ragwort weed infestation, and expressed lack of objections.

ERP No. F–AFS–K61141–CA, Snowcreek Golf Course Expansion, Construction and Operation, Special Use Permit, Inyo National Forest System Lands, Mono County, CA.

Summary: EPA expressed environmental concerns about the approval of a special use permit to expand a golf course onto Forest Service land may result in impacts to wetlands in violation of the Clean Water Act, and requested that the Forest Service delay issuing the special use permit pending the completion of a federally-acceptable jurisdiction delineation of ''waters of the United States.''

ERP No. F–AFS–K65197–CA, Canyons Analysis Area, Implementation, Tahoe National Forest, Trucker Ranger District, Sierra and Nevada Counties, CA.

Summary: EPA expressed environmental concerns regarding to construction of 1 mile OHV trail without appropriate NEPA analysis, and requested that the Forest Service modify the Canyons Record of Decision to eliminate this new construction or prepare an addendum to the Canyons Final EIS disclosing the impacts associated with this construction.

ERP No. F–AFS–K65270–CA, Damon Fire Salvage and Restoration Project, Implementation, Modoc National Forest, Modoc County, CA.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65137–AK, Tongass Land Management Plan, Implementation, Tongass National Forest, AK.

Summary: EPA provided no formal written comments. EPA had no objection to the preferred alternative as described in the EIS.

ERP No. F–AFS–L65282–OR, Robinson-Scott Landscape Management Project, Timber Harvest and other Vegetation Management, Willamette National Forest, McKenzie Ranger District, Lane and Linn Counties, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FTA–G54005–LA, Canal Streetcar Line Reintroduction, Canal

Street from the Mississippi River to the Cemeteries, with a Spur Line to City Park, Funding, City of New Orleans, Orleans Parish, LA.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

Other

ERP No. LF–AFS–L61187–WA, Legislative EIS—Upper White Salmon River Wild and Scenic River Study, Possible Designation, National Wild and Scenic Rivers System, Gifford Pinchot National Forest, Yakima Indian Nation, Klickitat County, WA.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

Dated: September 16, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–24980 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30440; FRL–5743–5]

BioSafe Systems Inc.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register the pesticide product ZeroTol, containing an active ingredient involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by October 20, 1997.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30440] and the (File Symbol 70299–R) to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Anne Ball, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703–308–8717); e-mail: ball.anne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from BioSafe Systems Inc., 45 E. Woodthrush Trail, Medford, NJ 08055, to register the pesticide product ZeroTol, an algaecide/fungicide (EPA File Symbol 70299–R) to include a new use for the control of horticultural disease in commerical greenhouses, garden centers, florists, landscapes, nurseries, and interiorscapes. ZeroTol contains the active ingredient hydrogen dioxide at 24.00 percent, an active ingredient involving a changed pattern of the product pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30440] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30440]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Written comments filed pursuant to this notice, will be available in the Public Information and Records Integrity Branch, Information Resources and Services Division at the address provided, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703-305-5805) to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: August 29, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–24941 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30392B; FRL–5742–7]

Kaken Pharmaceutical Co., Ltd.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products STOPIT Wettable Powder Turf Fungicide and Polyoxin D Zinc Salt Technical, containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and various support documents are available from the EPA home page at the Federal Register-Environmental Documents

entry for this document under ''Rules and Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of September 27, 1995 (60 FR 49838; FRL–4971–4), which announced that Kaken Pharmaceutical Co., Ltd. Agrochemical and Animal Health Products Division, of Japan, represented by Stewart Pesticide Registration Associates, Inc., Suite 603, 1901 North Moore St., Arlington, VA 22209, had submitted applications to register the pesticide products STOPIT Wettable Powder Turf Fungicide and Polyoxin D Zinc Salt Technical (EPA File Symbols 68173–E and 68173–R), containing the new active ingredient polyoxin D zinc salt (1:1), zinc 5-[[2-amino-5-O-(aminocarbonyl)-2-deoxy-L-xylonoyl]amino]-1-(5-carboxy-3,4-dihydro-2,4-dioxo-1 (2*H*)-pyrimidinyl)-1,5-dideoxy-β-D-allofuranuronate at 2.5 and 23.8 percent respectively, an active ingredient not included in any previously registered products.

The applications were approved on August 20, 1997, as STOPIT Wettable Powder Turf Fungicide for use on turf of golf courses, home lawns, parks, and commercial and institutional grounds (EPA Registration Number 68173–2) and Polyoxin D Zinc Salt Technical for formulation into fungicidal end-use products (EPA Registration Number 68173–1).

The Agency has considered all required data on risks associated with the proposed use of polyoxin D zinc salt (1:1), zinc 5-[[2-amino-5-O-(aminocarbonyl)-2-deoxy-L-xylonoyl]amino]-1-(5-carboxy-3,4-dihydro-2,4-dioxo-1 (2*H*)-pyrimidinyl)-1,5-dideoxy-β-D-allofuranuronate, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of polyoxin D zinc salt (1:1), zinc 5-[[2-amino-5-O-(aminocarbonyl)-2-deoxy-L-xylonoyl]amino]-1-(5-carboxy-3,4-dihydro-2,4-dioxo-1 (2*H*)-pyrimidinyl)-1,5-dideoxy-β-D-allofuranuronate when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in an EPA Pesticide Fact Sheet on Polyoxin D zinc salt.

A copy of this fact sheet, which provides a summary description of the pesticides, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: September 9, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–24938 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–759; FRL–5739–9]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition (PP 7F4826), submitted by Plant Genetic Systems (America), Inc., proposing the establishment of a regulation for an exemption from the requirement of a tolerance for residues of plant-pesticides *Bacillus thuringiensis* subsp. *tolworthi* Cry9C and the genetic material necessary for the production of this protein in or on all raw agricultural commodities.

DATES: Comments, identified by the docket control number PF–759, must be received on or before October 20, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7506C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Michael Mendelsohn, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8715; e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–759] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–759] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 29, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Plant Genetic Systems (America), Inc.

PP 7F4826

EPA has received a pesticide petition (PP 7F4826) from Plant Genetic Systems (America), Inc., proposing the establishment of a regulation for an exemption from the requirement of a tolerance for residues of plant-pesticides *Bacillus thuringiensis* subsp. *tolworthi* Cry9C and the genetic material necessary for the production of this protein in or on all raw agricultural commodities.

A. Bacillus thuringiensis subsp. *tolworthi* Cry9C protein uses

Corn plants have been protected from lepidopteran insect pests such as European corn borer [*Ostrinia nubilalis* (Huber)], by expressing a Cry9C protein. The Cry9C protein expressed by the corn plants corresponds to the insecticidal moiety of the Cry9C crystal protein of a *Bacillus thuringiensis* subsp. *tolworthi* strain. The Cry9C protein poses no foreseeable risks to non-target organisms, including mammals, birds and non-target insects. Transgenic corn plants, expressing Cry9C protein, represents an excellent addition to growers' options for insect control that reduces or eliminates the need for chemical inputs and fits well within an integrated pest management program.

B. Product Identity/Chemistry

The Cry9C gene, was isolated from the *B.t. tolworthi* strain, truncated and modified before it was stably inserted into corn plants. The tryptic core of the microbially produced Cry9C delta-endotoxin is similar to the Cry9C protein found in event CBH351. The Cry9C protein was produced and purified from a bacterial host, for the purposes of mammalian toxicity studies. Product analysis that compared the Cry9C protein from the two sources included: SDS-PAGE, Western blots, *N*-terminal amino acid sequencing, glycosylation tests (for possible post-translational modifications) and insect bioassays.

No analytical method is included since this petition requests an exemption from the requirement of a tolerance.

C. Mammalian Toxicological Profile

Bacillus thuringiensis proteins have insecticidal properties and have been used commercially for more than 30 years. This long history of safe use is the primary reason that *Bt* proteins have been chosen as the basis for the first insecticidal plants produced by biotechnology. *Bt* mode-of-action can be divided into a series of critical steps: ingestion by the insect, specific binding to brush border membrane receptors, membrane insertion, and pore formation. *Bt* proteins do not bind or cause any other effects to mammalian gut membranes thereby displaying human safety properties. The Cry9C protein mode-of-action is apparently similar to that of the well known Cry1A proteins. Although *Bt* strains have been used for decades as sprayable microbial products, no confirmed cases of allergic reactions have been documented, despite dermal, oral and inhalation exposures. A reference to this is made by the EPA in a **Federal Register** notice, dated August 16, 1995 [60 FR 42443].

In addition to the safe history of *Bt* proteins outlined above, several other studies were performed to provide evidence for mammalian safety of the Cry9C protein. An acute toxicological study was performed with mice, which demonstrated that the Cry9C protein had an LD_{50} > 6,500 mg/kg. A test for in vitro digestibility under simulated gastric conditions showed that the Cry9C protein found in bacteria and the protein produced in plants was stable for 4 hours when exposed to simulated gastric juice. An amino acid sequence homology search performed using three different data banks (against 135,867 sequences) only found homology to other related *Bt* proteins. All other proteins in the data bank have no major stretches of sequence homology, indicating that the sequence homology is not significant. Therefore, no homology with any known allergen or protein toxin could be demonstrated.

The Cry9C protein or metabolites of the protein are not expected to interact with the immune system, the endocrine system or to have any carcinogenic activity since the protein sequence does not match any known allergens, hormones or since proteins, in general, are not known to be carcinogenic.

All living organisms contain DNA and there are no examples of nucleic acids causing any toxicological effects from dietary consumption. The genetic material necessary for the production of the Cry9C protein in plants includes the genetic construct that encodes the Cry9C protein and all other necessary genetic elements for it's expression. These elements include: a promotor, polylinker sequences, leader sequences and terminators and none of which are expected to cause any toxicological effects.

Taken together, the data supports the lack of mammalian toxicological effects for the plant-pesticide *Bacillus thuringiensis* subsp. *tolworthi* Cry9C protein and the genetic material necessary for the production of this protein in or on all raw plant agricultural commodities.

D. Aggregate Exposure

Since the Cry9C protein is expressed in plant tissues, dermal or inhalation will be negligible to non-existent. Drinking water is unlikely to be contaminated with Cry9C protein due to the rapid degradation of plant materials in the soil. Processed plant products may allow for low levels of exposure to the Cry9C protein, but the lack of mammalian toxicity and the lack of sequence homology to known toxins or allergens, has already been demonstrated.

E. Cumulative Exposure

The unique mode-of-action of *Bt* proteins in general, coupled with the lack of mammalian toxicity for the Cry9C protein provides no basis for the expectation of cumulative exposure with other compounds.

F. Safety Determination

Bt microbial pesticides containing Cry proteins have been applied for more than 30 years to food and feed crops consumed by the U.S. population. There have been no human safety problems attributed to Cry proteins. The extensive mammalian toxicity studies performed to support the safety of *Bacillus thuringiensis* - containing pesticides clearly demonstrate that the tested isolates are not toxic or pathogenic (McClintock, *et al.*, 1995, *Pestic. Sci.* 45:95-105). The lack of mammalian toxicity or allergenic properties of the Cry9C protein provides support for our request of an exemption from the requirement of a tolerance set forth in this petition. Non-dietary exposure of infants, children or the US population in general, to the Cry9C protein expressed in plant materials, are not expected due to the uses of this product within agricultural settings.

G. Existing Tolerances

No tolerances or tolerance exemptions have been granted for the *Bacillus thuringiensis* subsp. *tolworthi* Cry9C and the genetic material necessary for the production of this protein in or on all raw agricultural commodities.

[FR Doc. 97–24940 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5895–2]

Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty to Arizona Public Service Company and Opportunity To Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment and proposed Consent Agreement for alleged violations of the Clean Water Act. EPA is also providing notice of the opportunity to comment on the proposed penalty assessment.

Under section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance.

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures through which the public may comment on a proposed Class II penalty or participate in a Class II penalty proceeding are set forth in the Consolidated Rules. The deadline for submitting public comment of a proposed Class II order is thirty days after publication of this document.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the matter of Arizona Public Service Company, P.O. Box 52034, Phoenix, AZ; EPA Docket No. CWA–IX–FY97–16; filed on September 11, 1997, with Mr. Steven Armsey, Regional Hearing Clerk, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1389, proposed penalty of $42,000 for unpermitted discharges in August 1994, January 1997, February 1997 and March 1997 into the Gila River from their water reclamation supply system pipeline. EPA and Arizona Public Service Company have agreed to a proposed Consent Agreement in which Arizona Public Service Company shall pay a civil penalty of $42,000.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the Respondent is available as part of this administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will take no final action in these proceedings prior to thirty (30) days after the date of publication of this document.

Dated: September 11, 1997.

John Ong,

Acting Director, Water Division.

[FR Doc. 97–24946 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5895–4]

EPA's Final Decision To Withdraw Phase I Total Maximum Daily Loads (TMDLs) for Copper in certain New Jersey Waters of New York-New Jersey Harbor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has determined that certain New Jersey waters of the New York-New Jersey Harbor are not water quality-limited for copper, and therefore, Phase I copper TMDLs are not required for these water segments. The New Jersey Harbor waters for which Phase I Copper TMDLS are being withdrawn are defined as Newark Bay, Hackensack River below the Oradell Dam, Passaic River below the Dundee Dam, Raritan River below the Fieldsville Dam, and Raritan Bay. EPA is hereby issuing public notice of its final decision to withdraw the Phase I TMDLs for copper established by EPA on January 24, 1996.

DATES: September 19, 1997.

ADDRESSES: Copies of the responsiveness summary and relevant supporting documents may be obtained by writing to Mr. Steven Wood, Fate & Effects Team, U.S. Environmental

Protection Agency Region II, 290 Broadway, 24th Floor, New York, New York 10006–1866, wood.steven@epamail.epa.gov, or by calling (212) 637–3866.

The administrative record containing background technical information is on file and may be inspected at the U.S. EPA, Region II office between the hours of 8 a.m. and 5:30 p.m., Monday through Friday, except holidays. Arrangements to examine the administrative record may be made by contacting Mr. Steven Wood.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Wood, telephone (212) 637-3866.

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Notice of Draft Decision
III. Final Determination

I. Background

A TMDL, or total maximum daily load, is the maximum amount of the pollutant that a waterbody can assimilate and still meet ambient water quality standards. TMDLs are established for water quality-limited segments, which are defined as ''any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of technology-based effluent limitations * * *'' (40 CFR 130.2(i)).

On January 24, 1996, EPA established certain phased TMDLs, including waste load allocations (WLAs) and load allocations (LAs) for copper. (61 FR 1930). Phased TMDLs were developed for copper because of the limited ambient data and uncertainty in the model calibration for the New Jersey Harbor waters. The Phase I TMDLs established in January 1996 required additional data collection in the New Jersey Harbor waters before the establishment, as necessary, of revised Phase II TMDLs. Phase II TMDLs were to be established only if the additional data and/or modeling indicated that it was necessary to reduce point and/or nonpoint sources of copper below Phase I levels. The New Jersey Harbor waters affected by this action are Newark Bay, Hackensack River below the Oradell Dam, Passaic River below the Dundee Dam, Raritan River below the Fieldville Dam and Raritan Bay.

The New Jersey Harbor Dischargers Group (NJHDG), in cooperation with the State of New Jersey and EPA, agreed to undertake the required additional monitoring and modeling. The first phase of the monitoring was designed to enhance the existing ambient database and to confirm whether copper exceeded or potentially exceeded applicable water quality standards in the above defined New Jersey Harbor waters. Based on the results of this data collection effort, it was determined that copper does not exceed the appropriate water quality criteria, and therefore the Phase I copper TMDLs are being withdrawn, for the waters mentioned above.

For the Arthur Kill and Kill Van Kull, the Phase I copper TMDLs are not being withdrawn by today's action. The copper TMDLs for these waters remain in effect. Additional monitoring and modeling is currently ongoing for these two waters, and EPA expects to review these data and take appropriate action. Such action may include, without limitation, withdrawing the Phase I copper TMDLs, establishing Phase II copper TMDLs or taking no action to revise the Phase I copper TMDLs. In order to clarify EPA's position in this matter, EPA will, following review of the data, publish notice in the **Federal Register** of the results of its review and what further action, if any, it intends to take on the Arthur Kill and Kill Van Kull copper TMDLs.

II. Public Notice of Draft Decision

EPA's proposed withdrawal was public noticed in the **Federal Register** dated January 10, 1997 (62 FR 1454). A 30-day comment period followed, during which EPA received five comment letters. All comments have been addressed in a responsiveness summary which may be obtained by writing or calling Mr. Steven Wood as referenced above.

III. Final Decision

EPA is noticing its final decision to withdraw the Phase I copper TMDLs from the following New Jersey Harbor waters:

—Hackensack River below the Oradell Dam,

—Passaic River below the Dundee Dam,

—Raritan River below the Fieldville Dam,

—Newark Bay, and

—Raritan Bay.

This action has no effect on the TMDLs for other pollutants established for these waters.

Dated: August 28, 1997.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–24944 Filed 9–18–97; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the October 9, 1997 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a meeting at 9:00 a.m. on Wednesday, October 22, 1997. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: September 16, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–25114 Filed 9–17–97; 2:24 pm]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on September 10, 1997 (62 FR 47667) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for September 11, 1997. This notice is to amend the agenda by adding an item to the open session of that meeting.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. The agenda for September 11, 1997, is amended by adding the following item:

Open Session

B. Report

—FCSBA's Quarterly Report

Dated: September 16, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–25115 Filed 9–17–97; 2:35 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–1672]

Auction of 800 MHZ Specialized Mobile Radio Service Licenses; Auction Notice and Filing Requirements for 525 Licenses in the Upper 200 Channels Scheduled for October 28, 1997

Released August 6, 1997.

1. Introduction

Licenses to Be Auctioned: 525 licenses in the upper 200 channels of the 800 MHz Specialized Mobile Radio Service (''SMR''). The auction will consist of 3 licenses in each of 175 Economic Areas (''EAs''); frequency block A is allocated 20 channels; frequency block B is allocated 60 channels; and frequency block C is allocated 120 channels. Each frequency block encompasses the following spectrum and channel numbers:

Spectrum block	Channel Nos.	Frequencies (Base and Mobile)
A	401–420	861.0–861.5 MHz. 816.0–816.5 MHz.
B	421–480	861.5–863.0 MHz. 816.5–818.0 MHz.
C	481–600	863.0–866.0 MHz. 818.0–821.0 MHz.

A detailed listing of the EAs, with their FCC market number, market location, license number, population, and upfront payment, as well as a service area map, are provided in Attachment A.

Note: As indicated below, not all 200 SMR channels in Spectrum Blocks A, B and C are available for auction in the Canadian and Mexican border areas. Some frequencies are subject to international assignment and coordination. For further information, see paragraphs 23–26 of the *Memorandum Opinion and Order on Reconsideration,* FCC 97–224, 62 FR 41225 (July 31, 1997) and Appendix C to the *Second Report & Order,* FCC 97–223, 62 FR 41190 (July 31, 1997).

CANADIAN BORDER AREA

Spectrum block	Available channels regions 1, 4, 5 and 6	Available channels region 2	Available channels region 3	Available channels regions 7 and 8
A	None ...	None ...	4	12
B	18	None ...	44	32
C	72	55	72	48

MEXICAN BORDER AREA

Spectrum block	Available offset channels
A	3
B	12
C	18

Auction Date: The auction will begin on October 28, 1997. The precise schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all licenses.

Auction Title: This is the sixteenth spectrum auction the FCC has scheduled, and will be referred to as ''Auction No. 16, 800 MHz SMR—Upper 200 Channels.''

Bidding Methodology: Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

Pre-Auction Dates:

- An Auction Seminar will be conducted at a location and date to be announced.
- Short-Form Application (FCC Form 175)—September 29, 1997, 5:30 p.m. ET
- Upfront Payments: (Only Wire Transfer Accepted)—October 14, 1997, 6:00 p.m. ET
- Orders for Remote Bidding Software—October 15, 1997, 5:30 p.m. ET
- Mock Auction—October 23, 1997

Telephone Contacts:

- FCC National Call Center—888–CALL–FCC (888–225–5322) (General Auction Information and Seminar Registration, press option #2 at the prompt)
- FCC Technical Support Hotline—202–414–1250

List of Attachments:

- Attachment A: List of Licenses Offered
- Attachment B: Guidelines for Completion of FCC Forms 159 and 175 and Exhibits
- Attachment C: Electronic Filing of FCC Form 175
- Attachment D: Summary Listing of FCC Documents Addressing Application of the Anti-Collusion Rules

Release of Further Information: The Commission plans to release public notices with further information regarding Auction 16 in the following order:

- Due diligence
- Software ordering information and bidders seminar registration
- Instructions for on-line monitoring, bid tracking tool, outstanding auction event issues (including round schedules and bid increment calculations)

Background: In December 1995, the Commission restructured the licensing framework that governs the 800 MHz SMR service. Site- and frequency-specific licensing was replaced with a geography-based system similar to those used in other Commercial Mobile Radio Services (''CMRS''). The geographic areas for the licenses were created based on Economic Areas developed by the Bureau of Economic Analysis of the U.S. Department of Commerce.

Service and operational requirements for the 800 MHz SMR service are contained in part 90 of the Commission's Rules, 47 CFR part 90.

Potential bidders are reminded that there are a substantial number of incumbent licensees already licensed and operating in the 800 MHz SMR service on frequencies that will be subject to the upcoming auction. Such incumbents must be protected from

harmful interference in accordance with the Commission's rules by geographic area licensees. These limitations may restrict the ability of geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license area. Potential bidders are solely responsible for investigating and evaluating the degree to which incumbents are licensed and operating in areas where potential bidders may seek EA licenses. Some information regarding the licensing of such incumbents is available in the Commission's licensing database. This information is available for inspection in the Wireless Telecommunications Bureau's Public Reference Rooms. These facilities are located at 2025 M Street, NW, Room 5608, Washington, DC and 1270 Fairfield Road, Gettysburg, PA. Paper files are available for inspection in the Public Reference Room of the Wireless Telecommunications Bureau's Gettysburg, PA offices only. Any telephone inquiries regarding licensing of incumbents should be directed to the National Call Center at (888) CALL–FCC or (888) 225–5322. The licensing database, which includes information regarding incumbent licensees in the 800 MHz upper SMR band, is available for on-line review at http://www.fcc.gov/wtb/databases.html. Additionally, the Land Mobile database may be queried on-line on the World Wide Web at: http://gullfoss.fcc.gov/cgi-bin/wtb—pt—rad/ptradsrch.sh. This software permits queries of 800 SMR data for the upper 200 channels utilizing latitude/longitude and a specified radius. However, the Commission makes no representations or guarantees regarding the accuracy of information provided by incumbent licensees and incorporated into the database.

Potential bidders should also be aware that there are pending before the Commission certain applications, waiver requests, petitions to deny, petitions for reconsideration, and applications for review that relate to specific incumbent 800 MHz SMR licenses or applications. Resolution of these pending matters could have an impact on the availability of spectrum to EA licensees in this auction. In addition, some of these matters may not have reached final resolution by the time of the auction. Potential bidders are solely responsible for investigating and evaluating the degree to which such pending matters may affect spectrum availability in areas where potential bidders may seek EA licenses. In the near future, the Commission will release a Public Notice listing pending matters that relate to licenses or applications that affect 800 MHz upper band spectrum. The Commission will also make available for public inspection the pleadings and related filings in those matters.

Participation: Those wishing to participate in the auction must submit an FCC Form 175 short-form application. The FCC Form 175 must be completed and filed in accordance with the Commission's rules and the instructions provided. This form must be received at the Commission no later than 5:30 p.m. ET on September 29, 1997. See Attachments B and C for detailed information on how to complete and electronically file the required FCC Form 175 information.

Applicants will be required to submit an upfront payment and an FCC Remittance Advice (FCC Form 159). The upfront payment must be made in U.S. dollars by wire transfer. Payments must be received at Mellon Bank in Pittsburgh, Pennsylvania, no later than October 14, 1997 at 6:00 p.m. ET. No other form of payment will be accepted.

Prohibition of Collusion: To ensure the competitiveness of the auction process, the FCC's rules prohibit applicants for the same geographic areas from communicating with each other during the auction about bids, bidding strategies or settlements. This prohibition begins with the filing of short-form applications, and ends when winning bidders submit their initial down payment. The prohibition does not apply where applicants enter into a bidding agreement before filing their short-form applications, and disclose the existence of the agreement in the short-form application. See 47 CFR 1.2105(c). See also the Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules in Attachment D to this Public Notice.

Relevant Authority: Prospective bidders should familiarize themselves thoroughly with the FCC's rules relating to the 800 MHz SMR service contained in title 47, part 90 of the Code of Federal Regulations (''CFR''), and rules relating to application and auction procedures, contained in title 47, part 1, subpart Q.

Also, prospective bidders should be familiar with the procedures, terms, and rules contained in the Commission's docket Amendment of part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144. The latest releases in this docket, the *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making,* FCC 95–501, 61 FR 6138 (February 16, 1996), the *Second Report and Order,* FCC 97–223, 62 FR 41190 (July 31, 1997) and *Memorandum Opinion and Order on Reconsideration,* FCC 97–224, 62 FR 41225 (July 31, 1997) are posted on the Commission's World Wide Web site, http://www.fcc.gov.

The terms contained in the FCC's rules, documents in the 800 MHz SMR proceeding and this Public Notice are not negotiable. Prospective bidders should review these auction documents thoroughly prior to the auction to make certain that they understand all of the provisions and are willing to be bound by all of the terms before participating in the auction.

Potential bidders should be aware that petitions for reconsideration of the FCC's actions in the *Second Report and Order* and *Memorandum Opinion and Order on Reconsideration* may be filed and that the terms adopted therein are therefore subject to change upon reconsideration or appeal.

The Commission may amend or supplement the information contained in this Public Notice at any time. The FCC will issue public notices to convey new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all FCC rules and with all public notices pertaining to this auction. Copies of FCC documents, including public notices, may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc., at 202–857–3800. Additionally, many documents can be retrieved from the FCC Internet node via anonymous ftp@ftp.fcc.gov or the FCC World Wide Web site at http://www.fcc.gov. Bidders should also note that a separate Auction's web page is available on the Commission's web site at http://www.fcc.gov/auctions.html.

Minimum Bids: At present, there is no minimum opening bid on any of the licenses in this auction. Also, there is no minimum bid increment for a license until a license has received an initial bid. Recently adopted legislation, however, may require minimum bids or reserve prices in this auction. If minimum bids or reserve prices are established, notification will be provided prior to the start of the auction.

Bidder Alerts: All applicants must certify under penalty of perjury on their FCC Form 175 applications that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any Commission licenses. Prospective bidders are

reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the auction of the upper 200 channels in the 800 MHz SMR service to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following: (1) The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial. (2) The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts. (3) The amount of the minimum investment is less than $25,000. (4) The sales representative makes verbal representations that: (a) The IRS, FTC, SEC, FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. (5) In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

Information about deceptive telemarketing investment schemes is available from the Federal Trade Commission (FTC) at 202–326–2222 and from the Securities and Exchange Commission (SEC) at 202–942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at 800–876–7060. Consumers who have concerns about specific 800 MHz SMR investment proposals may also call the FCC National Call Center at 888–CALL–FCC (888–225–5322).

2. Bidder Eligibility and Small Business Provisions

A. General Eligibility Criteria

Any entity, other than those precluded by foreign ownership restrictions set forth in § 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold an 800 MHz SMR license. Prospective bidders should note that the Commission's rules limit the total CMRS spectrum (*i.e.*, broadband PCS, cellular and SMR services) in which a party may have an attributable interest in any geographic area at any given time to 45 MHz. See 47 CFR 20.3–20.9. SMR licensees will be permitted to partition their service areas into smaller geographic service areas and to disaggregate their spectrum into smaller blocks. See 47 CFR 90.911.

B. Special Financial Provisions for Qualifying Small Businesses

Qualifying small business applicants are eligible for bidding credits. See 47 CFR 90.910. This auction does not offer installment payments for small business applicants.

(1) Definitions of Small Businesses

The Commission defined the small business definitions for the 800 MHz SMR as (1) a ''small business,''which is defined as an entity with average gross revenues that do not exceed $15 million for the preceding three years or (2) a ''very small business,'' which is defined as an entity with average gross revenues that do not exceed $3 million for the preceding three years.

Gross revenues include all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (e.g., cost of goods sold), as evidenced by audited financial statements for the relevant number of most recently completed calendar years, or, if audited financial statements were not prepared on a calendar-year basis, for the most recently completed fiscal years preceding the filing of the applicant's short-form application (FCC Form 175). If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. When an applicant does not otherwise use audited financial statements, its gross revenues may be certified by its chief financial officer or its equivalent. See 47 CFR 90.912–13.

In determining whether an entity qualifies as a small business at either threshold, gross revenues of all ''controlling'' principals will be attributed to the prospective small business applicant, as well as the gross revenues of affiliates of the applicant. However, personal net worth is not included in the determination of eligibility for bidding as a small business. The term ''control'' includes both *de jure* and *de facto* control of the applicant. Typically, *de jure* control is evidenced by ownership of 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. An entity must demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant: (1) The entity constitutes or appoints more than 50 percent of the board of directors or partnership management committee; (2) the entity has authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensees; and (3) the entity plays an integral role in all major management decisions. The definition of ''affiliate'' is set forth at § 90.912(d) of the Commission's Rules.

(2) Bidding Credits

The size of a bidding credit depends on the annual gross revenues of the bidder and its affiliates, as averaged over the preceding three years: One, a bidder with average gross annual revenues not exceeding $15 million (a ''small business'') receives a 25-percent discount on its winning bids for 800 MHz SMR licenses. Two, a bidder with average gross annual revenues not exceeding $3 million (a ''very small business'') receives a 35-percent discount on its winning bids for 800 MHz SMR licenses. These bidding credits are not cumulative.

(3) Application Showing

Applicants should note that as part of their FCC Form 175 filing they will be required to file supporting documentation to establish that they satisfy the eligibility requirements to bid as a small business or very small business in this auction, and that they are subject to audits to confirm their eligibility.

(4) Unjust Enrichment

Winning bidders in the auction for licenses in the upper 200 channels of the 800 MHz SMR service should note that unjust enrichment provisions apply to winning bidders who use bidding credits and subsequently assign or

transfer control of their licenses to an entity that does not qualify for the special financial provisions. See 47 CFR § 90.910(b). Likewise, unjust enrichment provisions apply to any licensee that received a bidding credit and subsequently partitions a portion of its license or disaggregates a portion of its spectrum to an entity that would not have qualified for such a bidding credit.

3. Pre-Auction Procedures

A. Short-Form Application (FCC Form 175)—Due September 29, 1997

In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be received at the Commission by 5:30 p.m. ET on September 29, 1997. Late applications will not be accepted.

There is no application fee required when filing a FCC Form 175. However, to be eligible to bid, an applicant will have to submit an upfront payment. See part 3.C below.

(1) Filing Options

Auction applicants are strongly encouraged to file their applications electronically in order to take full advantage of the greater efficiencies and convenience of electronic filing, bidding and access to bidding data. For example, electronic filing enables the applicant to: (a) receive interactive feedback while completing the application, and (b) receive immediate acknowledgement that the FCC Form 175 has been submitted for filing. In addition, only those applicants who file electronically will have the option of bidding electronically. However, manual filing (via hard copy) is also permitted. Please note that manual filers will not be permitted to bid electronically and *must bid telephonically*, unless the FCC Form 175 is amended electronically prior to the resubmission date for incomplete or deficient applicants. Applicants who file electronically may make amendments to their applications up until the filing deadline. The following is a brief description of each filing method.

(a) Electronic Filing. Applicants wishing to file electronically may generally do so on a 24-hour basis beginning September 2, 1997. All the information required to file the FCC Form 175 electronically (*i.e.*, software and help files) will be available over both the Internet and the FCC's Bulletin Board System (''BBS''). Information about downloading, installing, and running the FCC Form 175 application software is included in Attachment C to this Public Notice.

(b) Manual Filing. Auction applicants will be permitted to file their FCC Form 175 applications in hard copy. Where any manually filed FCC Form 175 and 175–S exceeds five pages in length, the FCC additionally requires that all attachments be submitted on a 3.5–inch diskette, or the entire application be filed in a microfiche version. Manual filers must use a 1997 version of FCC Form 175 and the October 1995 edition of the 175–S (if applicable). Earlier versions of this form will not be accepted for filing. Copies of FCC Forms 175 and 175–S can be obtained by calling 202–418–FORM.

Manual applications may be submitted by hand delivery (including private ''overnight'' courier), or by U.S. mail (certified mail with return receipt recommended). They must be addressed to: FCC Form 175 Filing, Auction No. 16, Federal Communications Commission, Auctions Division, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

Note: Manual applications delivered to any other locations will not be accepted.

(2) Completion of the FCC Form 175

Applicants should carefully review 47 CFR 1.2105 and 90.906, and must complete all items on the FCC Form 175 (and 175–S, if applicable). Instructions for completing the FCC Form 175 are in Attachment B of this Public Notice.

Failure to sign a manually filed FCC Form 175 or failure to submit the required ownership information (for both electronic and manual filers) will result in dismissal of the application and loss of the ability to participate in the auction. Only original signatures will be accepted for manually filed applications.

(3) Electronic Review of FCC Form 175

The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 applications. In other words, applicants who file electronically may review their own completed FCC Form 175s. Applicants also have access to view other applicants' completed FCC Form 175s, after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. There is a fee of $2.30 per minute for accessing this system. See Attachment C for details.

B. Application Processing and Minor Corrections

After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) Those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

As described more fully in our rules, after the September 29, 1997 short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official or change control of the applicant). See 47 CFR 1.2105.

C. Upfront Payments—Due October 14, 1997

In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice (FCC Form 159). All upfront payments must be received by wire transfer at Mellon Bank in Pittsburgh, Pennsylvania, by 6:00 p.m. E.T. on October 14, 1997.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer. No other form of payment will be accepted.
- Upfront payments for Auction 16 go to a different lockbox number from the one used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the October 14, 1997 deadline will result in dismissal of the application and disqualification from participation in the auction.

(1) Wire Transfers

For this auction, the FCC requires applicants to make their upfront payments by wire transfer, which experience has shown provides the greatest reliability and efficiency. Wire transfer payments must be received by 6:00 p.m. ET on October 14, 1997. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/AC—9116878
OBI Field: (Skip one space between each information item)

''AUCTIONPAY''
FCC ACCOUNT NO. (same as FCC Form 159, Block 1)
PAYMENT TYPE CODE (enter ''AW8U'')
FCC CODE (same as FCC Form 159, Block 17A: ''16'')
PAYOR NAME (same as FCC Form 159, Block 3)
LOCKBOX NO. 358400

Note: The BNF and Lockbox No. are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

Applicants must fax a completed FCC Form 159 to Mellon Bank at 412–236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event #16''.

(2) FCC Form 159

Each upfront payment must be accompanied by a completed FCC Remittance Advice (FCC Form 159). Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments.

(3) Amount of Upfront Payment

We have applied a uniform discount factor to the upfront payments associated with each license across the board, discounting the $0.02 per bidding unit to take into account the large amount of incumbency that exists in the upper 800 MHz SMR channels. This incumbency factor has been applied equally across all channel blocks and geographic areas and has not been adjusted for different levels of incumbencies in each individual block or area. The upfront payment amounts listed in Attachment A reflect these calculations.

The amount of the upfront payment required to bid on a particular license in Auction No. 16 is listed in Attachment A to this Public Notice. Upfront payments will be translated into bidding units to define the bidder's maximum bidding eligibility for the licenses for which it has applied.

Thus, an applicant does not have to make an upfront payment to cover all licenses for which it has applied. Rather, the total upfront payment defines the maximum amount of bidding units the applicant will be permitted to bid on (including standing high bids) in any single round of bidding. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on its FCC Form 175, or else the applicant will not be eligible to participate in the auction.

In calculating the upfront payment amount, an applicant should determine the maximum number of bidding units it may wish to be active on in any single round, and submit an upfront payment covering that number of bidding units. (See part 4.A(2) for a discussion of activity and bidding units.)

Note: An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment. As explained in parts 4.A(2) and 4.A(4) below, bidders will be required to remain active in each round of the auction on a specified percentage of bidding units reflected in their upfront payment in order to retain their current eligibility.

(4) Refunds

The FCC plans to use wire transfers for all Auction 16 refunds. To avoid delays in processing refunds, applicants should include wire transfer instructions with any refund request they file; they may also provide this information in advance by faxing it to the FCC Billings and Collections Branch, ATTN: Regina Dorsey or Linwood Jenkins, at 202–418–2843. (Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number before it can disburse refunds.) Eligibility for refunds is discussed later in part 5.D.

D. Auction Registration

No later than five business days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and who have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings only will be sent to the contact person at the applicant address listed in the FCC Form 175.

Applicants who do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant who has not received both mailings within three business days after the release of the qualified bidders public notice should contact the FCC National Call Center at 888–CALL–FCC (888–225–5322, press option #2 at the prompt). Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

Qualified bidders should note that lost login codes, passwords or bidder identification numbers can only be replaced by appearing in person at the FCC Auction Headquarters located at 2 Massachusetts Avenue, N.E., Washington, D.C. 20002. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes.

E. Remote Electronic Bidding Software

Qualified bidders who file or amend the FCC Form 175 electronically are allowed to bid electronically, but must purchase remote electronic bidding software for $175.00, including shipping and handling, by October 15, 1997. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction 16.) Bidders who order remote bidding software by the ordering deadline will receive it with the registration mailings. A software order form will appear in a subsequent public notice.

F. Mock Auction

All applicants whose FCC Form 175s have been accepted for filing will be eligible to participate in a mock auction beginning October 23, 1997. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Due to different bidding procedures in this auction from previous Commission auctions, participation by all bidders is strongly recommended. Details will be announced by public notice.

4. Auction Event

The first round of the auction will begin at 10:00 am ET on October 28, 1997.

A. Auction Structure

(1) Simultaneous Multiple Round Auction

The 525 EA licenses in the upper 200 channels of the 800 MHz SMR service will be awarded through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction.

(2) Maximum Eligibility and Activity Rules

As explained in part 3.B(3) above, the amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a percentage of their maximum eligibility during each round of the auction. Details of the specific percentages for each stage are set forth under *Auction Stages* in part 4.A(4) below. A bidder that does not satisfy the activity rule will either lose bidding eligibility or use an activity rule waiver, as explained by *Activity Rule Waivers and Reducing Eligibility* in part 4.A(3) below.

A bidder is considered active on a license in the current round if it either is the high bidder at the end of the previous bidding period and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (see *Minimum Acceptable Bids* in part 4.B(2) below). A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility and increases as the auction progresses, as set forth under *Auction Stages* in parts 4.A(4) and 4.A(5) below.

(3) Activity Rule Waivers and Reducing Eligibility

Each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

A bidder with insufficient activity who wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in *Auction Stages,* part 4.A(4) below. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

(4) Auction Stages

The auction is composed of three stages, which are each defined by an increasing activity rule. Below are the proposed activity levels for each stage of the auction. The FCC reserves the discretion to alter the activity percentages before and during the auction.

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty-fortyninths (50/49).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders who have standing high bids and do not plan to submit new bids. In past auctions, some bidders inadvertently lost bidding eligibility or used an activity rule waiver because they did not reverify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

(5) Stage Transitions

The auction will start in Stage One. Under our general guidelines it will advance to the next stage (*i.e.,* from Stage One to Stage Two, and from Stage Two to Stage Three) when in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However, the FCC retains the discretion to accelerate the auction by announcement. This determination will be based on a variety of measures of bidder activity including, but not limited to, the auction activity level, the percentages of licenses (measured in terms of bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

(6) Auction Stopping Rules

Barring extraordinary circumstances, bidding will remain open on all licenses until bidding stops on every license. Thus, the auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid.

The FCC retains the discretion, however, to keep an auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

Further, in its discretion, the FCC reserves the right to declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The FCC intends to exercise

this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity.

(7) Auction Delay, Suspension or Cancellation

By public notice or by announcement during the auction, the FCC may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the FCC, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the FCC to delay or suspend the auction.

B. Bidding Procedures

(1) Round Structure

The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and will be included in the registration mailings. The round structure for each bidding round contains a single bidding period followed by the release of the round results. Participants should note that the round structure for this auction is the same structure as was used in the recent Wireless Communications Service auction. This format is different from the round structure used in previous Commission auctions.

The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the performance and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

(2) Minimum Acceptable Bids

There will be no minimum opening bid and no minimum bid increment for a license until the license has received an initial bid. For further discussion, see pages five and six above. Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. The Commission will release the specific methodology for calculating this increment before the start of the auction.

(3) High Bids

Each bid will be date-and time-stamped when it is entered into the computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which bids are received by the Commission, starting with the earliest bid.

(4) Bidding

Durng a bidding period, a bidder may submit bids for as many licenses as it is eligible, as well as withdraw high bids from previous bidding periods, remove bids placed in the same bidding period, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding period, and will not have a separate period to withdraw bids. If a bidder enters multiple bids for a license in the same round, the system takes the last bid entered as that bidder's bid for the round. A bidder's maximum eligibility in the first round of the auction is determined by: (a) The licenses applied for on FCC Form 175 and (b) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

The bidding software requires each bidder to login to the FCC Auction System during the bidding period using the FCC Account Number, Bidder Identification Number, and confidential security codes provided in the registration materials. Bidders are encouraged to download and print bid confirmations after they submit their bids.

(5) Bid Withdrawal and Bid Removal

(a) Procedures. Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively 'unsubmit' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Note that removing a bid will affect a bidder's eligibility for the round in which it is removed.

Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 90.905. The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in *Bidding,* part 4.B(4) above. To prevent strategic delays to the close of the auction, the FCC retains the discretion to limit the number of times that a bidder may re-bid on a license from which it has withdrawn a high bid. Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The FCC will serve as a ''place holder'' on the license until a new acceptable bid is submitted on that license.

(b) Calculation. Generally, a bidder who withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of (1) the difference between the net withdrawn bid and the subsequent net winning bid, or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that license. See 47 CFR 90.905. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

(6) Round Results

The bids placed during a bidding period are not published until the conclusion of that bidding period. After a bidding period closes, the FCC will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

Reports reflecting bidders' identities and bidder identification numbers for Auction 16 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against whom they are bidding.

(7) Auction Announcements

The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

(8) Other Matters

As noted in part 3.B above, after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Filers should make these changes on-line, and submit a letter to Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, NW., Room 5322, Washington, DC, 20554 (and mail a separate copy to Alice Elder, Auctions Division), briefly summarizing the changes. Questions about other changes should be directed to the FCC Auctions Division at 202–418–0660.

5. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

After bidding has ended, the FCC will issue a public notice declaring the auction closed (''auction closing notice''), identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

Within ten business days after release of the public notice announcing the close of the auction, each winning bidder must submit sufficient funds to bring the total amount of money on deposit with the government (upfront payment less any withdrawal payments) to 20 percent of its high bids, unless it is an eligible small or very small business who elected to bid using bidding credits, then it must submit sufficient funds to bring the total amount of money on deposit with the government (upfront payment less any withdrawal payments) to 20 percent of its net winning bids (actual bids less any applicable bidding credits). See 47 CFR 90.907. In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under § 90.905 of the Commission's Rules, as discussed in part 4.B(5) above. Upfront payments are applied first to satisfy any outstanding bid withdrawal payments before being applied toward down payments. 47 CFR 1.2104(g)(2).

B. Long-Form Application

Within ten business days after release of the auction closing notice, winning bidders must submit a properly completed long-form application and required exhibits for each 800 MHz SMR license won through the auction. Winning small business or very small business bidders must include an exhibit demonstrating their eligibility for the small business provisions. See 47 CFR 1.2107 (c)–(d). Further filing instructions will be provided to auction winners at the close of the auction.

C. Application Processing and Grant; Final Payments

Once a high bidder has submitted its down payment and filed an acceptable long-form application, the FCC will release a public notice announcing acceptance of the long-form application. Unless otherwise announced, parties will have thirty days following the public notice to file petitions to deny. Oppositions to petitions to deny are due within ten days after the filing of the petition to deny. Replies to oppositions may be filed within five days after the time for filing the oppositions has expired. See 47 CFR 1.45, 1.2105(b) and (c). If the Commission dismisses or denies all petitions to deny, the Commission will announce by public notice that it is prepared to award a license, and the winning bidder will then have ten business days to submit the balance of its winning bid. If this payment is made, the license will be granted.

Winning bidders will receive further instructions and detailed payment information after the auction closes.

D. Refund of Remaining Upfront Payment Balance

All applicants who submitted upfront payments but were not winning bidders for any 800 MHz SMR license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

Bidders who drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders who reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders who have exhausted all their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request, along with a Taxpayer Identification Number (''TIN'') and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Billings and Collections Branch, Attn: Regina Dorsey or Linwood Jenkins, 1919 M Street, NW., Room 452, Washington, DC 20554.

Bidders can also fax their request to the Billings and Collections Branch at (202) 418–2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Regina Dorsey or Linwood Jenkins at 202–418–1995.

E. Default and Disqualification

Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in § 90.905 of the Commission's Rules. In the event that the amount of those payments cannot be determined (*i.e.*, until the license has been reauctioned), the FCC can require a ''deposit'' of at least three (3) percent of the defaulted bid amount. See In Re C. H. PCS, Inc., BTA No. B347 Frequency Block C, Order, DA 96–1825 (released November 4, 1996). See also Wireless Telecommunications Bureau Will Strictly Enforce Default Payment Rules, Public Notice, DA 96–41 (April 4, 1996). Under certain circumstances the FCC can also reauction the license to existing or new applicants, or offer it to the other highest bidders (in descending order) at their final bids. See 47 CFR 90.905. In addition, if a default or disqualification involves gross misconduct, misrepresentation or bad faith by an applicant, the FCC may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. See 47 CFR 1.2107(d).

F. Service and Construction Requirements

EA-based licensees in the upper 200 channels of the 800 MHz SMR service are subject to a five-year construction deadline. See 47 CFR 90.685.

News Media Contact: Audrey Spivack (202) 418–0654

Wireless Telecommunications Bureau Contacts:
Internet address: http://www.fcc.gov/wtb
Auctions and Industry Analysis Division:
Legal Questions (auctions rules)—Alice Elder (202) 418–0660
General Information—Kathy Garland (888) 225–5322 (press option #2 at the prompt) and Ruby Hough (202) 418–0660
Commercial Wireless Division:
Legal Questions (service rules)—Wilbert Nixon (202) 418–0620
Licensing Questions—Eric Smith and Linda Spence (888) 225–5322 (press option #2 at the prompt)

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

Attachment A—List of Licenses Offered

The attached table lists the 525 licenses to be auctioned in the upper 200 channels of the 800 MHz SMR service. The licenses consist of three licenses in each of 175 Economic Area (''EAs''). More information regarding EAs is available on the Commission's Office of Engineering and Technology's Internet web page at: http://www.fcc.gov/oet/info/maps/bea/

Attachment B— Guidelines for Completion of FCC Forms 159 and 175 and Exhibits

A. FCC Form 175

Because of the significance of the Form 175 application to the auction, bidders should especially note the following:

Paper form version: Manual filers must use a 1997 edition of the FCC Form 175 and the October 1995 edition of the 175–S (if applicable). Earlier versions of the FCC Form 175 will not be accepted. Copies of the FCC Form 175 can be obtained by calling the Commission's Forms Distribution Center at 1–800–418–3676 (outside Washington, D.C.) or 202–418–3676 (in the Washington area). Copies of the FCC Form 175 can also be obtained via Fax-On-Demand at 202–418–0177. If applicants have any questions concerning availability of the FCC Form 175, they should call the FCC Records Management Branch at 202–418–0210.

Items 2–5: Give a street address (not a Post Office box number) for the applicant, suitable for mail or private parcel delivery. The FCC will send all registration materials and other written communications to the applicant at this address.

Item 6: The 800 MHz SMR auction will be the sixteenth auction conducted by the FCC. For ''Auction No.'' in item 6 of the FCC Form 175, enter ''16.''

Item 7: Applicants must create a ten-digit FCC Account Number, which the Commission will use to identify and track applicants:

- A bidder that has a taxpayer identification number (TIN) must create this FCC account number by using its TIN, plus the prefix of ''0'' (*i.e.*, 0123456789). A TIN is either the Employer Identification Number (EIN) in the case of a business, or the Social Security Number (SSN) in the case of an individual.
- If—and only if—an applicant does not have a taxpayer identification number, the applicant should use its ten-digit area code and telephone number (*i.e.*, 2025551234) on an interim basis. However, the FCC must have a TIN before it will be able to issue a license or refund upfront payments.

Each applicant must include its FCC Account Number when submitting amendments, additional information, or other correspondence or inquiries regarding its application, and must include this same number on each FCC Form 159 (FCC Remittance Advice) accompanying required auction deposits or payments.

Item 8: Applicants must indicate their legal classification. The July 1997 version of FCC Form 175 requires the applicant to classify itself as an individual, partnership, trust, corporation, government entity, limited liability company (LLC) or association. In the event an applicant that classifies itself as a government entity, LLC or association uses an earlier version of the form (which does not include these specific classifications), it should check the box labelled ''other'' and specify its classification in the blank space provided.

Items 9 and 10: A box does not need to be checked in Item 9 unless small business status is selected in Item 10. Applicants should be aware that they will be committed to their election choices. (Applicants are also requested to indicate their status as a rural telephone company, minority-owned business or women-owned business as well, so the FCC can monitor its performance in promoting economic opportunities for these designated entities.) Be advised that this is the sole opportunity applicants have to elect small business status and bidding credit level (if applicable), and there is no opportunity to change the election(s) made once the short-form filing deadline passes.

- Small or very small business applicants eligible for bidding credits should check that gross revenues do not exceed the maximum dollar amount specified in the FCC rules governing the auctionable service in Item 9.
- Small or very small business applicants should enter the applicable bidding credit in Item 10: either 25 or 35 percent. Applicants should be aware that this is the sole opportunity that they will have to elect the appropriate bidding credit.
- Applicants should leave the Installment Payment Plan Type blank, as none is available for this auction.

Item 11: For each license on which they seek bidding eligibility, applicants must identify the market number in the Market No. column, and the frequency block or blocks in the Frequency Block/Channel No. set of columns. The market number for each EA is listed in Attachment A; frequency blocks are A, B, and C. Applicants that wish to bid on all EAs in a given frequency block or blocks should check the ''ALL'' box in the Market No. column and list the frequency block or blocks desired in the Frequency Block/Channel No. headings. If filing manually, the FCC Form 175 provides space to list only five markets, applicants should use one or more FCC Form 175–S to list any additional markets.

Applicants should identify all licenses they want to be eligible to bid on in the auction in Item 11. Be advised that there is no opportunity to change this list once the short-form filing deadline passes. The FCC auction system will not accept bids on licenses an applicant has not applied for on its FCC Form 175.

Item 12: Applicants must list the name(s) of the person(s) (no more than three) authorized to represent them at the auction. Only those individuals listed on the FCC Form 175 will be authorized to place or withdraw bids for the applicant during the auction.

Certifications: Applicants should carefully read the list of certifications on the FCC Form 175. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the auction. Submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures,

ineligibility to participate in future auctions, and/or criminal prosecution.

Contact person: If the Commission wishes to communicate with the applicant by telephone or fax, those communications will be directed to the contact person identified on the FCC Form 175. Space is provided for both a telephone number, fax number, and e-mail address. All written communication and registration information will be directed to the applicant's contact person at the address specified on the FCC Form 175. Applicants must provide a street address; no P.O. Box addresses may be used.

Signature: Manually filed FCC Form 175s must bear an original signature. Absence of an original signature will result in dismissal of the application and disqualification from participating in the auction. (Applicants filing electronically should type the name of the certifying official in the signature block.)

Paper or Diskette Copies: For this auction the FCC will accept, in lieu of paper copies, a 3.5-inch diskette which contains ASCII text (.TXT) files of all exhibit documentation attached to the FCC Form 175. (Applicants that use a word processing program to prepare these files must be sure to save the files in the ASCII format before submitting the diskette, and verify that the ASCII files contain all exhibit information.)

Completeness: Applicants must submit all information required by the FCC Form 175 and by applicable rules, including a certifying signature on manual filings. Failure to submit required information by the resubmission date will result in dismissal of the application and inability to participate in the auction. See 47 CFR 1.2105(b).

Continuing Accuracy: Each applicant is responsible for the continuing accuracy and completeness of information furnished in the FCC Form 175 and its exhibits. See 47 CFR § 1.65. It is the FCC's position that ten business days from a reportable change is a reasonable period of time in which applicants must amend their FCC Form 175s. Applicants are reminded that Certification 6 on the FCC Form 175 includes consent to be audited.

B. Exhibits and Attachments

In addition to the FCC Form 175 itself, applicants must submit additional information required by the FCC's rules. Although we do not require a particular format for this information, we have developed the following guidelines that will facilitate the processing of short-form applications. We encourage applicants filing both electronically and manually to submit this information using the following format. All exhibits must be in ASCII text (.TXT).

Exhibit A—Applicant Identity and Ownership Information: 47 CFR 1.2105(2)(ii) requires each applicant to fully disclose the real party or parties-in-interest in an exhibit to its FCC Form 175 application. The information should provide the name, citizenship and address of all partners, if the applicant is a partnership; or a responsible officer or director, if the applicant is a corporation; of the trustee, if the applicant is a trust; or, if the applicant is none of the foregoing, list the name, address and citizenship of a principal or other responsible person.

Exhibit B—Agreements with Other Parties/Joint Bidding Arrangements: Applicants must attach an exhibit identifying all parties with whom they have entered into any agreements, arrangements or understandings which relate in any way to the licenses being auctioned, including any relating to the post-auction market structure. See 47 CFR 1.2105(a)(2)(viii).

Be aware that pursuant to Certification (4) on the FCC Form 175, the applicant certifies that it will not enter into any explicit or implicit agreements or understandings of any kind with parties not identified in the application regarding bid amounts, bidding strategies or the particular licenses the applicant will or will not bid. See 47 CFR 1.2105(a)(2)(ix). To prevent collusion, the Commission's rules generally prohibit communication during the course of the auction among applicants for the same license areas when such communications concern bids, bidding strategies, or settlements. 47 CFR 1.2105(c).

Exhibit C—Status as a Small or Very Small Business Applicant: Applicants claiming status as a small or very small business must attach an exhibit regarding this status.

- Small or very small business applicants must state the average gross revenues for the preceding three years for the applicant (including affiliates), as prescribed by 47 CFR 90.913. Certification that the average gross revenues for the preceding three years do not exceed the required limit is not sufficient.

Exhibit D—Information Requested of Designated Entities: Applicants owned by minorities or women as defined in 47 CFR 1.2110(b), or who are rural telephone companies, may attach an exhibit regarding this status. This information, in conjunction with the information in Item 10, will assist the Commission in monitoring the participation of these ''designated entities'' in its auctions.

Exhibit E—Miscellaneous Information: Applicants wishing to submit additional information should include it in Exhibit E.

Applicants are reminded that all information required in connection with applications to participate in spectrum auctions is necessary to determine the applicants' qualifications, and as such will be available for public inspection. Required proprietary information may be redacted, or confidentiality may be requested, following the procedures set out in 47 CFR 0.459. Any such requests must be submitted in writing to Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, NW., Room 5322, Washington, DC 20554 (with a separate copy mailed to Alice Elder, Auctions Division), in which case the applicant must indicate in Exhibit E that it has filed a confidentiality request. Because the required information bears on applicants' qualifications, the FCC envisions that confidentiality requests will not be routinely granted.

Waivers: Applicants requesting waiver of any rules must submit a statement of reasons sufficient to justify the waiver sought.

Auction Specific Instructions: FCC Remittance Advice, FCC Form 159 Upfront Payments

The following information supplements the standard instructions for FCC Form 159, and is provided to help ensure its correct completion for upfront payments for the 800 MHz Specialized Mobile Radio Service (SMR) auction (Auction 16). Applicants need to complete FCC Form 159 carefully, since:

Mistakes may affect their bidding eligibility, and

Lack of consistency between information in FCC Form 159, FCC Form 175, FCC Form 600, and correspondence about an application may cause processing delays.

Therefore appropriate cross-references between the FCC Form 159 Remittance Advice and the FCC Form 175 Short Form Application are described below.

Block No.	Required information
(RESERVED)	In the upper left hand corner of the form is a rectangle with ''(RESERVED)'' in the middle. Enter the number ''358400'' somewhere in this rectangle.
1	FCC Account Number—Same as FCC Form 175, block 7. Note: It is critical that this number exactly match the applicant's account number shown on FCC Form 175.
2	Total Amount Paid—Enter the total amount of the upfront payment associated with the FCC Form 159.
3	Payor Name—Enter the name of the person or company making the payment. If the applicant itself is the payor, this entry would be the same as FCC Form 175, block 1.
4–8	Street Address, City, State, ZIP Code—Enter the street mailing address (not Post Office box number) where mail should be sent to the payor. If the applicant is the payor, these entries would be the same as FCC Form 175, blocks 2 through 5.
9	Daytime Telephone Number—Enter the telephone number of a person knowledgeable about this upfront payment.
10	Country Code—For addresses outside the United States, enter the appropriate postal country code (available from the Mailing Requirements Department of the U.S. Postal Service).
14A	Payment Type Code—Enter ''AW8U.''
15A	Quantity—Enter the numeral ''1.''
16A	Amount Due—Enter the total upfront payment indicated in block 2.
17A	FCC Code 1—Enter the number ''16'' (indicating Auction 16).

Notes:

- Blocks 12A and 18A do not apply, so leave them blank.
- If applicant is different from the payor, complete blocks 11A, 13A, 19A, 20A and 21A for the applicant, using the same information shown on FCC Form 175. Otherwise leave them blank.
- Since this auction does not involve multiple applications, leave blocks 11B through 21B blank. For the same reason, do not use Advice (Continuation Sheet), FCC Form 159-C, for upfront payments.
- Since credit card payments will not be accepted for this auction, leave blocks 22 and 23 blank.

Attachment B contains blank copies of FCC Forms 175 and 159.

Electronic filers use on-line software to generate these forms and do not need paper copies. Manual filers can obtain paper copies by calling 202–418–FORM.

Attachment C—Electronic Filing of FCC Form 175

The Commission has implemented a remote access system to allow applicants to submit their FCC Form 175 applications electronically. The remote access system for initial filing of the FCC Form 175 applications will generally be available 24 hours per day beginning at approximately the same time as the release of this Public Notice. FCC Form 175 applications that are filed electronically using this remote access system must be submitted and confirmed by 5:30 p.m. ET on September 29, 1997. Late applications or unconfirmed submissions of electronic data will not be accepted. The electronic filing process consists of an initial filing period and a resubmission period to make minor corrections.

The FCC Remote Electronic Auction System includes various software, with which applicants can:

1. file an FCC Form 175 short-form application,
2. review other FCC Form 175 applications filed,
3. submit and withdraw bids and activity rule waivers,
4. receive auction messages/announcements and submit suggestions,
5. create and download customized round results files, and
6. file a long-form application.

In 1995 the FCC issued a Report and Order in WT Docket No. 95–69, FCC 95–308, 60 FR 38,276 (July 26, 1995), establishing fair and reasonable charges for auction software and on-line access to the FCC's wide area network to use the software. It established the following schedule of charges:

	Software	Access per minute
FCC Form 175 Filing	FREE	FREE.
FCC Form 175 Review	FREE	$2.30.
Bid Submission	$175.00	$2.30.
Messages/Announcements.	FREE	$2.30.
Suggestion Box	FREE	$2.30.
Round Results Reports	FREE	$2.30.
Bidding Analysis	FREE	Off-Line.

Parties interested in filing FCC Form 175 applications electronically may do so in one of two ways:

- Via a (202) number code telephone service with no additional access charge or
- Via a 900 number telephone service at a charge of $2.30 per minute. The first minute of connection time to the 900 number service will be at no charge.

Similarly, parties interested in reviewing FCC Form 175 applications electronically will do so via the 900 telephone service at a charge of $2.30 per minute. The first minute of connection time to the 900 number service will be at no charge. Applicants who wish to file their FCC Form 175 electronically or review other FCC Form 175 applications on-line will need the following hardware and software:

Hardware Requirements

- CPU: Intel 80486 or above
- RAM: 8 MB RAM (more recommended if you intend to open multiple applications)
- Hard Disk: 12 MB available disk space
- Modem: v.32bis 14.4kbps Hayes compatible modem
- Monitor: VGA or above
- Mouse or other pointing device

To create backup installation disks for the FCC Form 175 Application, you will need the following:

- 1.44 MB 3.5″ Floppy Drive
- Three blank MS–DOS® formatted 1.44-MB floppy disks

Software Requirements

- FCC Form 175 Application Software (available through the Internet and the FCC Bulletin Board System)
- Microsoft Windows 3.1 or Microsoft Windows for Workgroups v3.11

Note: The FCC Form 175 Application has not been tested in a Macintosh, OS/2, or Windows 95 environment. Therefore, the FCC will not support operating systems other than Microsoft Windows 3.1 or Microsoft Windows for Workgroups v3.11. This includes any other emulated Windows environment. If your Windows is in a networked environment, check with your local network administrator for any potential conflicts with the PPP (Point-to-Point Protocol) Dialer that is incorporated into the FCC Form 175 Application. This usually includes any TCP/IP installed network protocol.

The PPP Dialer that is incorporated into the FCC Form 175 Application will establish a point-to-point connection from your PC to the FCC Network. This point-to-point connection is not routed through the Internet.

Applicants who wish to file their FCC applications electronically or who wish to view other applicants' applications

must first download the software from either the Internet or the FCC Bulletin Board System. Applicants must download the following compressed files to install the software: f175v11a.exe, f175v11b.exe, f175v11c.exe.

Download Method 1: Internet Access

You may download the compressed files from your Internet browser using either http or ftp, as described in the following sections.

- Internet Browser via http: http://www.fcc.gov

1. Connect to your Internet service provider and start your Internet browser.
2. Enter the following location: http://www.fcc.gov
3. Click on Auctions
4. Scroll down to Auction 16 and click on the Auctions Tools/Programs icon.
5. Download the following files: f175v11a.exe, f175v11b.exe, f175v11c.exe

- *Internet Browser via ftp:* ftp://ftp.fcc.gov/pub/Auctions/SMR/800/Auction__16/Programs

1. Connect to your Internet service provider and start your Internet browser.
2. Enter the following location: ftp://ftp.fcc.gov
3. Click on the pub directory
   Click on the Auctions directory
   Click on the SMR directory
   Click on the 800 directory
   Click on the Auction__16 directory
   Click on the Programs directory
4. Download the following files: f175v11a.exe, f175v11b.exe, f175v11c.exe

Download Method 2: Dial-In Access to the FCC Auction Bulletin Board System (BBS): The FCC Auction Bulletin Board System (BBS) provides dial-in access for the FCC Form 175 Application Software. To access the FCC Auction BBS, use a communications package that can handle at least Xmodem protocol (such as PcAnyWhere, Procomm, or Microsoft Terminal in Windows 3.x) to dial in to (202) 682–5851. Use the settings of 8 data bits, no parity and 1 stop bit (8,N,1). Once your computer is connected to the Auction BBS, do the following:

1. To create an account:
   (a) Enter your first name.

Note: Throughout these instructions, ''enter'' means to type the appropriate information and then press the Enter key.

   (b) Enter your last name.
   (c) When asked whether you want to create an account, enter Y.
   (d) When prompted, enter a password. The password can be from four to ten characters long, where the characters can be either letters or numbers.
   (e) To confirm the password, enter it again.
   (f) When prompted for contact information, enter your voice phone number. Include the area code; for example, you might enter 202–555–1234.
   (g) Enter your company name.

2. On the Welcome screen, enter C for Continue. (You may also enter c, the program accepts either case.)
   Since C is the default (automatic) selection, you can also just press Enter to continue.

3. When asked whether you want to view the bulletin menu. Enter Y for Yes. Then, to continue, press Enter to obtain the FCC Auction BBS Main Menu.

4. Enter A (for Auction Menu) to obtain the Auction Library Menu. The top options on this menu provide a range of numbers to represent the available auctions.

5. To select Auction 16, enter B to select the second range.

6. On the Auctions Library Menu, enter the number of the auction you want. Enter 16, in this case.
   The Auction Menu appears.

7. Enter P to select Program files. The list of available files for Auction 16 appears. These files are sorted by date, with the most recent files at the beginning of the list.

8. To scroll downward to the next screen of file names, either press Enter or enter C for Continue. To scroll upward to the preceding screen of file names, enter P for Previous.
   Note that on each screen, file names are numbered separately, starting with 1.

9. To select one or more files for downloading or viewing, mark the files you want. The program marks a file by preceding its name with an asterisk (*).
   You can do the following:
   - To mark an individual file, enter its line number.
   - To mark a range of files, enter M (for Mark) and then enter the range of files in response to the prompt.
   For example, to mark files 6 through 12, enter 6–12 at the prompt.
   - To unmark a file, enter its number again.
   You can also use Mark to unmark a range of files. Use any of these techniques to mark the following files: f175v11a.exe, f175v11b.exe, f175v11c.exe

10. When you have finished marking files, download them as follows:
   (a) Enter D for Download.
   The program displays a list that summarizes the download operation. The Time column lists the download time for each file; the Total Time column lists a running total of the download times.
   (b) Enter D to proceed.
   (c) Select the file transfer protocol that has been specified in your terminal emulation software (e.g., Xmodem or Zmodem). When the download operation has finished, the list of files reappears.

11. Enter X to leave the BBS.

Extracting the FCC Form 175 Application

The FCC Form 175 Application files are downloaded in a self-extracting, compressed file format. When you have downloaded all of the compressed files for the FCC Form 175 Application, you must extract the FCC Form 175 Application from those files. To extract the software, start File Manager in the Main Program group, open the file folder where you downloaded the files, and double-click on f175v11a.exe. A message will appear listing the default directory to which the software will extract. If this directory does not exist, it will be created automatically. Press Unzip to begin extracting the software from the compressed file. When the extraction is complete, a message will appear listing the number of files that were unzipped. Press OK and repeat the above process for the remaining compressed files (f175v11b.exe, f175v11c.exe). Be sure to extract to the same directory as the first compressed file.

Installing the FCC Form 175 Application

After you extract the software from the compressed files, you must install the FCC Form 175 Application. To install the software, start File Manager, open the file folder to which you extracted the software, and double-click on setup.exe.

To begin, the setup program shows a screen listing the default directory to which the software will install. Press the Install button, then press OK to install to the specified directory. If the directory does not exist, the setup program will create it automatically.

When the installation is complete, a message may appear asking you to restart Windows so that the changes made by the installation may take effect. Press Restart to restart Windows or press Stay Here to restart at a later time. Do not use the FCC Form 175 Application until you have restarted Windows.

Creating Backup Installation Disks for the FCC Form 175 Application

To create backup installation disks for the FCC Form 175 Application, go to File Manager, open the file folder to which you extracted the software, double-click on backup.bat, and follow the instructions on the screen.

Running the FCC Form 175 Application

When the installation process is complete, you will have a new Program Manager group called FCC Form 175 Application v11 with the following icons: Configure PPP, FCC Form 175 Submit, FCC Form 175 Review, Suggestion Box, Readme File, and Uninstall. You must verify/modify the parameters in the Configure PPP program prior to establishing a PPP connection. Please consult the readme.txt file included with the software for information regarding Configure PPP.

Double-click on an icon to start the respective system.

Uninstalling the FCC Form 175 Application

To uninstall the FCC Form 175 Application, double-click on the Uninstall icon in the FCC Form 175 v11 program group. Press Start to uninstall the software.

Note that the Uninstall program will remove all versions of the FCC Form 175 software located in that installation directory.

Alternatively, you may uninstall the FCC Form 175 Application by deleting the directory to which you installed the software, then switching to Program Manager and deleting the FCC Form 175 v11 icons and group.

Help

Detailed instructions for using all FCC Remote Electronic Auction System software are contained in the readme file associated with the software and in the context-sensitive help function associated with each software system.

For technical assistance in installing or using the FCC Form 175 Application, contact the FCC Technical Support Hotline at (202) 414–1250. The FCC Technical Support Hotline will be generally available Monday through Friday, from 9 a.m. to 6 p.m. ET.

How To Monitor FCC Auctions

Auction announcements and round results for Auction 16 will be accessible through the FCC Wide Area Network, the Internet and the FCC Auction Bulletin Board System (BBS). Using these tools, you can check on round results and/or read material released by the Commission during the course of the auction. Additionally, a software tool for tracking the progress of the FCC's SMR 800 MHz auction will be made available to the public prior to the start of the auction. The software for the tracking tool will be available via the Internet and the FCC Auctions Bulletin Board System. A public notice will be released to provide detailed installation and access instructions.

Disclaimer. The Commission makes no warranty whatsoever with respect to the auctions tracking software packages. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the auctions tracking software packages. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the auctions tracking software packages.

Attachment D—Summary Listing of Documents From the Commission and the Wireless Telecommunications Bureau

Addressing Application of the Anti-Collusion Rules

To date, discussion concerning the anti-collusion rules may be found in the following Commission and Bureau items:

Commission Decisions

Second Report and Order in PP Docket No. 93–253, FCC 94–61, 59 FR 18493, 9 FCC Rcd 2348 (1994), paragraphs 221–226.

Fifth Report and Order in PP Docket No. 93–253, FCC 94–178, 59 FR 37,566, 9 FCC Rcd 5532 (1994), paragraphs 91–92.

**Internet Address:* http://www.fcc.gov/wtb/auctions/smr200u1/frao3253.pdf/txt/wp

Second Memorandum Opinion and Order in PP Docket No. 93–253, FCC 94–215, 59 FR 44,272, 9 FCC Rcd 7245 (1994), paragraphs 48–55.

Fourth Memorandum Opinion and Order in PP Docket No. 93–253, FCC 94–264, 59 FR 53364, 9 FCC Rcd 6858 (1994), paragraphs 47–60.

**Internet Address:* http://www.fcc.gov/wtb/auctions/smr200u1/fmoo 4264.pdf/txt/wp

Memorandum Opinion and Order in PP Docket No. 93–253, FCC 94–295, 9 FCC Rcd 7684 (1994), paragraphs 8–12.

In re Commercial Realty St. Pete, *Notice of Apparent Liability for Forfeiture,* 10 FCC Rcd 4277 (1995).

In re Applications of GWI PCS, Inc. For Authority to Construct and Operate Broadband PCS Systems Operating on Frequency Block C, *Memorandum Opinion and Order,* DA 96–674 (released April 4, 1997).

Wireless Telecommunications Bureau Decisions

Order in PP Docket No. 93–253 and MM Docket No. 94–131, DA 95–2292, (released November 3, 1995).

Public Notices

''Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules,'' Public Notice, DA 95–2244 (released October 26, 1995).

**Internet Address:* http://www.fcc.gov/Bureaus/Wireless/Public—Notices/1995/da952244.txt

''Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders,'' Public Notice, DA 96–1460 (released August 28, 1996). *Internet Address: http://www.fcc.gov/wtb/auctions/smr200u1/da961460.txt/wp/pdf

Letters From the Office of General Counsel and the Wireless Telecommunications Bureau

Letter to Gary M. Epstein and James H. Barker from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1994).

Letter to Alan F. Ciamporcero from William E. Kennard, General Counsel, Federal Communications Commission (released October 25, 1996).

Letter to R. Michael Senkowski from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 1, 1994).

Letter to Leonard J. Kennedy from Rosalind K. Allen, Acting Chief, Commercial Radio Division, Wireless Telecommunications Bureau (released December 14, 1994).

Letter to Jonathan D. Blake and Robert J. Rini from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, DA 95–2404 (released November 28, 1995).

Letter to Mark Grady from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, DA 96–587 (released April 16, 1996).

Letter to David L. Nace from Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, DA 96–1566 (released September 17, 1996).

Miscellaneous

The Commission has received a formal complaint alleging that the practice of using ''trailer'' bids to signal interest in particular markets (e.g. by using the BTA number of a market as the final three digits of the bid amount) is an improper disclosure of bidding strategy, and as such violates the anti-collusion rule, 47 CFR 1.2105(c). The Commission has reached no determination on the merits of this argument. See In re Application of Mercury PCS II, LLC to Bid in the Broadband PCS Auction for Authorization to Serve BTAs 013 (Amarillo, Texas) and 264 (Lubbock, Texas) on Frequency Blocks D, E and F (Auction No. 11), Emergency Motion for Disqualification (filed November 26, 1996) and related pleadings.

*__Please Note:__ When the address is followed by .pdf/txt/wp, the document is available in more than one format. In order to review a document in its entirety (including footnotes), it is necessary to access the document in the Word Perfect or Acrobat Reader formats.

pdf = Acrobat Reader
txt = Text format
wp = Word Perfect format

[FR Doc. 97–24930 Filed 9–18–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–1933]

Comment Sought on Balanced Budget Provisions Calling for Reserve Prices or Minimum Opening Bids in FCC Auctions

Released September 5, 1997.

Report No. AUC–16–E (Auction No. 16)

When FCC licenses are subject to auction (*i.e,* because they are mutually exclusive) the recently enacted Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price is required or minimum opening bid established, unless it determines that such an assessment is not in the public interest. The Wireless Telecommunications Bureau recently announced the auction of 525 licenses in the upper 10 MHz of the 800 MHz Specialized Mobile Service (SMR), which is to begin October 28, 1997. In anticipation of that auction, and in light of the recently adopted legislation, it is proposed that a reserve price or minimum opening bid be established.

Specifically, it is proposed that in no event should any of the licenses in the 800 MHz auction be sold for less than the value of the upfront payment amounts specified for the licenses in the Public Notice released August 6, 1997 for that auction. The upfront payments for the 800 MHz SMR auction are based on a $0.02 per MHz–POP formula, as was used in the 900 MHz SMR auction. The $0.02 MHz–POP has been discounted for each Economic Area by 75 percent, with a floor of $2,500, to account for the degree of incumbency for this service. Under this formulation, the minimum amount is $2,500 and the maximum amount is $717,571. Comment is sought on this proposal.

Parties should also comment on whether the upfront payment should be considered a reserve price or a minimum opening bid for this auction. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. In a minimum opening bid scenario, the auctioneer often has the discretion to lower it later in the auction.

Furthermore, commenters should also address whether the amount of the reserve price or minimum opening bid should be capped to ensure that bidding is not deterred on high valuation markets, in particular. For example, a cap of $250,000 could be applied.

Finally, if commenters believe that a reserve price or minimum opening bid equal to the upfront payment will result in substantial unsold licenses, or is not a reasonable amount, they should explain why this is so, and comment on the desirability of a reserve price or minimum opening bid greater or less than the upfront payment.

Comments are due on or before September 12, 1997. To file formally, parties must file an original and four copies. Parties may send comments to the Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street, NW., Washington, DC 20554. Comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, NW., Washington, DC 20554.

For further information concerning this proceeding, contact Alice Elder at the Auctions and Industry Analysis Division, Wireless Telecommunications Bureau at (202) 418–0660.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97–24931 Filed 9–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

September 11, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0789.

Expiration Date: 03/31/98.

Title: Modified Alternative Plan, CC Docket No. 90–571, Order (1997 Suspension Order).

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 36 respondents; 13 hours per response (avg.); 468 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; one-time requirement.

Description: Title IV of the Americans with Disabilities Act of 1990 (''ADA'') requires each common carrier providing voice transmission services to provide Telecommunications Relay Services (''TRS'') throughout the area it serves to individuals with hearing and speech disabilities by 1993. The TRS enables customers with hearing or speech disabilities to use the telephone network in ways that are ''functionally equivalent'' to those used by customers using traditional telephone service. Under the Commission's rules, the TRS must be able to handle all calls normally provided by common carriers, unless those carriers demonstrate the infeasibility of doing so. 47 CFR 64.604(a)(3). The Commission has interpreted ''all calls'' to include coin sent-paid calls, which are calls made by depositing coins in a standard coin-

operated public payphone. The Bureau has suspended enforcement of the requirement that carriers provide coin sent-paid calls through the TRS centers since 1993 based on common carriers' representations that it has been technically infeasible to provide the coin sent-paid service through the TRS centers (''coin sent-paid rule''). Since 1995, carriers have made payphones accessible to TRS users through an Alternative Plan (''Alternative Plan''). The Alternative Plan enables TRS users to make local relay calls for free and to make toll calls from payphones using calling or prepaid cards at or below the coin call rates. The Alternative Plan also requires carriers to educate TRS users about the alternative payment methods for the TRS users to make relay calls from payphones. In Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Order, (released 8/21/97), (1997 Suspension Order), the Common Carrier Bureau (''Bureau'') suspended the enforcement of the requirement that the TRS be capable of handling coin sent-paid calls for one year until August 26, 1998 because the only technological solution that can provide the coin sent-paid calls through the TRS centers, coin signalling interface (''CSI''), has serious deficiencies and no new technological solution appears imminent. In the 1997 Suspension Order, the Bureau recommends that during the one year suspension, the Commission conduct a rulemaking on coin sent-paid issues to gather information sufficient to ensure that the Commission's final decision on whether the TRS must be capable of handling coin sent-paid calls is based on a complete and fresh record. In addition, the Bureau directed the industry to continue to make payphones accessible to TRS users under the terms of the Alternative Plan, as set forth in Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Memorandum Opinion and Order, 10 FCC Rcd 10927 (1995) (''1995 Suspension Order''), and as modified by the 1997 Suspension Order. The 1997 Suspension Order modifies the Alternative Plan by requiring industry to: (1) Send a consumer education letter to TRS centers (no. of respondents: 1; hour burden per respondent: 4 hours; total annual hour burden: 4); (2) inform organizations representing the hearing and speech disability community before attending their regional and national meetings who will be present at the meeting, where the industry booth will be located, and at what times the booth will be in operation (no. of respondents: 1; hour burden per respondent: 15 mins; total annual burden: 1.5 hours); (3) publish an article in Consumer Action Network (''CAN's'') respective organizations magazines or newsletters (no. of respondents: 1; hour burden per respondent: 8 hrs; total annual hour burden: 8 hours); (4) send a letter directly to all CAN's members (no. of respondents: 1; hour burden per respondent: 4 hours; total annual burden 4 hours); (5) create laminated cards with visual characters that will provide a pictorial explanation to accompany the text describing access to TRS centers from payphones to be distributed to TRS users (no. of respondents: 30; hour burden per respondent: 15 hours; total annual hour burden: 450 hours); and (6) work jointly with affected communities to draft and submit a report within two months of the publications of a summary of the 1997 Suspension Order in the **Federal Register** (no. of respondents: 1; hour burden per respondent: 7 hours; total annual hour burden: 7 hours). The Commission has imposed these third party disclosure requirements to educate TRS users about their ability to make relay calls from payphones, the payment methods available and the rates for the payphone calls. The report will help the Commission assess the effectiveness of the current consumer education programs and determine whether further requirements to educate TRS users about their ability to make relay calls from payphones are warranted. You are required to respond.

OMB Control No.: 3060–0681.

Expiration Date: 09/30/2000.

Title: Toll-Free Service Access Codes—CC Docket No. 95–155, 47 CFR part 52, subpart D, Sections 52.101–52.111.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 168 respondents; 15 hours per response (avg.); 2,520 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In Toll Free Service Access Codes, CC Docket No. 95–155, Second Report and Order, (released 4/11/97), the Commission requires written requests for toll free numbers to be placed in unavailable status. RespOrgs requesting that specific toll free numbers be placed in unavailable status will be required to submit written requests, with appropriate documentation, to the toll free database administrator, Database Services Management, Inc. (DSMI). See 47 CFR 52.103(f). This requirement will hold those RespOrgs more accountable and will decrease abuses of the lag time process. It will prevent numbers from being held in unavailable status without demonstrated reasons, and will make more numbers available for subscribers who need and want them. The Order states that, if DSMI is uncertain whether a number should be placed in unavailable status, it should seek guidance from the Commission's Common Carrier Bureau. Current industry guidelines already require that RespOrgs requesting that a toll free number be made unavailable submit written requests to DSMI with appropriate documentation. The Second Report and Order simply codifies the existing industry guidelines. DSMI (and, if necessary, the Common Carrier Bureau) will continue to use the information collected to determine if a particular toll free number appropriately can be placed in ''unavailable'' status. This will prevent the fraudulent use of toll free numbers.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 97–24857 Filed 9–18–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, September 23, 1997, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda: Memorandum and resolution re: **Part 303—**

Applications, Requests, Submittals, Delegations of Authority, and Notices Required To Be Filed by Statute or Regulation.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: September 16, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–25075 Filed 9–17–97; 11:58 am]

BILLING CODE 6714–01–M

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, DC 20573.

International Globtrade, Inc. d/b/a JAB Forwarding, 332 S. Michigan Ave., Suite 1522, Chicago, IL 60604, Officers: Spiro Jankovich, President Frederick W. Amft, Vice President

Perfect West Inc., 17813 S. Main St., Suite #116, Gardena, CA 90248, Officer: Sung Woo Won, President

Castine Forwarding, Inc., 1235 Chestnut Street, Athol, MA 01331, Officers: Donald R. Castine, President, Cheney M. Castine, Vice President.

Dated: September 16, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–24990 Filed 9–18–97; 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. The application also will 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 October 14, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102–2034:

1. First Banks, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Surety Bank, Vallejo, California.

Board of Governors of the Federal Reserve System, September 15, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–24851 Filed 9–18–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Regional Offices of the Administration for Children and Families; Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KD, The Regional Offices of the Administration for Children and Families (62 FR 31610), as last amended, June 10, 1997. This Notice reflects the realignment of functions in Region 5. This Chapter is amended as follows:

After the end of KD4.20 Functions (62 FR 15897, 04/03/97), Paragraph D, and before KD6.10 Organization (60 FR 27315, 05/23/95), insert the following:

KD5.10 Organization. The Administration for Children and Families, Region 5, is organized as follows: Office of the Regional Hub Director (KD5A), Office of Self-Sufficiency Programs (KD5C), Office of Community Programs (KD5D),

KD5.20 Functions. A. The Office of the Regional Hub Director is headed by a Director, who reports to the Assistant Secretary for Children and Families through the Director, Office of Regional Operations. In addition, the Office of the Regional Hub Director has a Deputy Regional Administrator. The Office is responsible for the Administration for Children and Families' key national goals and priorities. It represents ACF's regional interests, concerns, and relationships within the Department and among other Federal agencies and focuses on State agency culture change, more effective partnerships, and improved customer service. The Office provides executive leadership and direction to state, county, city, and tribal governments, as well as public and private local grantees to ensure effective and efficient program and financial management. It ensures that these entities conform to federal laws, regulations, policies and procedures governing the programs, and exercises all delegated authorities and responsibilities for oversight of the programs.

The Office takes action to approve state plans and submits its recommendations to the Assistant Secretary for Children and Families concerning state plan disapproval. The

Office contributes to the development of national policy based on regional perspectives for all ACF programs. It oversees ACF operations and the management of ACF regional staff; coordinates activities across regional programs; and assures that goals and objectives are carried out. The Office alerts the Assistant Secretary for Children and Families to problems and issues that may have significant regional or national impact. It represents ACF at the regional level in executive communications within ACF, with the HHS Regional Director, other HHS operating divisions, other federal agencies, and public or private local organizations representing children and families.

Within the Office of the Regional Hub Director, an administrative staff assists the Regional Hub Director. The staff directs the development of regional work plans related to the overall ACF strategic plan; tracks, monitors and reports on regional progress in the attainment of ACF national goals and objectives; and manages special and sensitive projects. It serves as the focal point for public affairs and contacts with the media, public awareness activities, information dissemination and education campaigns in accordance with the ACF Office of Public Affairs and in conjunction with the HHS Regional Director; and assists the Regional Hub Director in the management of cross-cutting initiatives and activities among the regional components.

The Office provides day-to-day support for regional administrative functions, oversees the management and coordination of automated systems in the region, and provides data management support to all Regional Office components. Administrative functions include budget planning and execution, facility management, employee relations, and human resources development. Data management responsibilities include the development of automated systems application to support and enhance program, fiscal, and administrative operation, and the compilation and analysis of data on demographic and service trends that assist in monitoring and oversight responsibilities.

The Office is responsible for the effective and efficient management of internal ACF automation process. Staff performs an independent grants management function to support the grants processing in the office.

B. The Office of Self-Sufficiency Programs is headed by an Assistant Regional Administrator who reports to the Regional Hub Director and consists of Child Support Enforcement Branch; Child Welfare Branch; and Family Independence/Child Care Branch.

The Office is responsible for providing centralized program, financial management and technical administration of certain ACF formula, entitlement, discretionary and block grant programs, such as Temporary Assistance for Needy Families, Child Support Enforcement, Child Care and Development Fund, Child Welfare Services, Family Preservation and Support, Foster Care and Adoption Assistance, and Child Abuse and Neglect and for oversight of state systems projects for ACF programs. In coordination with other Regional Office components, it monitors state systems projects and is the focal point for technical assistance to states and grantees on the development and enhancement of automated systems.

In that regard the Office provides policy guidance to states to assure consistent and uniform adherence to federal requirements governing formula and entitlement programs. The Office reviews cost estimates and reports from ACF entitlement and formula grant programs, and recommends funding levels.

A Financial/Grants Management Officer is located in each Branch of the Office of Self-Sufficiency Programs to provide expertise in business and other non-programmatic areas of grants administration and to help ensure that grantees fulfill requirements of law, regulations and administrative policies.

The Office establishes regional financial management priorities; reviews cost allocation plans, and makes recommendations to the Regional Hub Director to approve, defer or disallow claims for federal financial participation in ACF formula and entitlement programs. As applicable, it makes recommendations on the clearance and closure of audits of state and grantee programs, paying particular attention to deficiencies that decrease the efficiency and effectiveness of ACF programs and taking steps to resolve such deficiencies.

The Office represents the Regional Hub Director in dealing with ACF central office, states and grantees on all program and financial management policy matters for programs under its jurisdiction. It alerts the Regional Hub Director to problems or issues that have significant implications for the programs.

C. The Office of Community Programs is headed by an Assistant Regional Administrator who reports to the Regional Hub Director and consists of three Head Start and Youth Branches.

The Office is responsible for providing centralized program, financial management and technical administration of certain ACF discretionary programs, such as Head Start and Runaway and Homeless Youth, as well as the Developmental Disabilities program.

A Financial/Grants Management Officer is located in each Branch of the Office of Community Programs to provide expertise in business and other non-programmatic areas of grants administration and to help ensure that grantees fulfill requirements of law, regulations and administrative policies.

The Office establishes regional financial management priorities; reviews cost allocation plans, and makes recommendations to the Regional Hub Director to approve or disallow costs under ACF discretionary grant programs. The Office issues certain discretionary grant awards based on a review of project objectives, budget projections and proposed funding levels. As applicable, it makes recommendations on the clearance and closure of audits of state and grantee programs, paying particular attention to deficiencies that decrease the efficiency and effectiveness of ACF programs and taking steps to resolve such deficiencies.

The Office represents the Regional Hub Director in dealing with ACF central office, states and grantees on all program and financial management policy matters for programs under its jurisdiction. It alerts the Regional Hub Director to problems or issues that have significant implications for the programs.

Dated: September 12, 1997.

Olivia A. Golden,

Principal Deputy Assistant Secretary for Children and Families.

[FR Doc. 97–24989 Filed 9–18–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0182]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collections of information listed below have been

submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by October 20, 1997.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collections of information to OMB for review and clearance.

1. Requests for Samples and Protocols: Official Release—(OMB Control Number 0910–0206—Reinstatement)

Under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262), FDA has the responsibility to issue regulations that prescribe standards designed to assure the safety, purity, and potency of biological products and to ensure that licenses for such products are only issued when a product meets the prescribed standards.

Since January 8, 1948, there has been a regulation, now codified under § 610.2 (21 CFR 610.2), that gives authority to FDA to require manufacturers of licensed biological products to submit lot samples and protocols prior to marketing the lot of product. These lot samples and protocols are required by FDA when necessary for the safety, purity, or potency of the product. This requirement remains essential because of the potential lot-to-lot variability of many biological products. In cases of certain biological products (e.g., Albumin, Plasma Protein Fraction, and specified biotechnology and specified synthetic biological products) that are known to have lot-to-lot stability, official lot release is normally not required. In addition to § 610.2, there are other regulations that require additional standards for the submission of samples and protocols for specific licensed biological products: §§ 640.101(f) (21 CFR 640.101(f)) (Immune Globulin (Human)), 660.6 (21 CFR 660.6) (Antibody to Hepatitis B Surface Antigen), 660.36 (21 CFR 660.36) (Reagent Red Blood Cells), and 660.46 (21 CFR 660.46) (Hepatitis B Surface Antigen).

Respondents to this collection of information are manufacturers of licensed biological products that are subject to lot release. Approximately 80 manufacturers are subject to lot release. Previously, 90 firms were subject to lot release, however, 10 of those firms have been exempted from this reporting requirement because the firms manufacture specified biotechnology and/or specified synthetic biological products. FDA estimates are based on data on lot releases submitted in fiscal year 1995. The estimated burdens for §§ 640.101(f), 660.6, 660.36, and 660.46 are included in the estimated annual reporting burden for § 610.2.

In the **Federal Register** of May 30, 1997 (62 FR 29353), the agency requested comments on the proposed collection of information for ''Requests for Samples and Protocols: Official Release.'' The agency received one comment, which suggested a higher estimated average for the time to prepare a protocol for submission to FDA than the agency had estimated. Subsequently, FDA contacted another representative from industry in August 1997 regarding the lot release requirements for § 610.2. The average time estimated herein was adjusted accordingly to reflect the comment received and all four contacts with industry. The burden estimate ranged from 1 to 5.6 hours and the average was rounded to 3 hours.

FDA estimates the burden of this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.2	80	75	6,500	1	6,500

There are no capital costs or operating and maintenance costs associated with this collection of information.

2. Transmittal of Labels and Circulars, Form FDA 2567—21 CFR 601.2(a) and 601.12(a) (OMB Control Number 0910–0039—Reinstatement)

Under section 351 of the PHS Act, FDA reviews the labeling for biological products prior to marketing of the licensed product and when changes to labeling are proposed. Section 601.2(a) (21 CFR 601.2(a)) requires manufacturers of biological products to submit an establishment and product, or biologics license application for review and approval to the Center for Biologics Evaluation and Research (CBER) prior to marketing a biological product in interstate commerce. Specimens of the label are required to be submitted as part of the approval process. Section 601.12(a) (21 CFR 601.12(a)) requires proposed changes to labeling to be submitted to CBER for approval. For these labeling requirements, Form FDA 2567 is used to determine the type of labeling being submitted (container label, package label, diluent label and/or circular) and the type of change(s) to the labeling. This form is also used for the submission of advertising and promotion labeling. The form is composed of two parts: Part I is for the submission of draft and preliminary proof labeling and is completed by manufacturers of biological products, and Part II of the form is submitted upon implementation of final printed labeling. Parts I and II of the form are submitted separately. Respondents to this collection of information are manufacturers of biological products.

FDA estimates the burden of this collection of information as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN

Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA Form 2657 Transmittal of Labels and Circulars	601.2(a) and 601.12(a)	387	7.2	2,800	.16	448

There are no capital costs or operating and maintenance costs associated with this information collection of information.

Dated: September 12, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–24954 Filed 9–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0378]

Food Code; 1997 Revision; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the 1997 revision of the Food Code. This 1997 revision was initiated in cooperation with the Conference for Food Protection (CFP) to help ensure that safe, unadulterated, and honestly presented food is sold or offered for human consumption by retail food establishments.

ADDRESSES: The 1997 revision of the Food Code is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding questions about this document: Betty Harden, Office of Field Programs, Center for Food Safety and Applied Nutrition (HFS–627), 200 C St. SW., Washington, DC 20204, 202–205–8140.

Regarding additional information about the CFP: Leon Townsend, Conference for Food Protection, 110 Tecumseh Trail, Frankfort, KY 40601, 502–695–0253.

SUPPLEMENTARY INFORMATION: FDA provides assistance to local, State, and Federal governmental bodies to ensure that the food that is provided to consumers by retail food establishments is not a vector of communicable diseases. One mechanism for providing that assistance is the publication of a model code that sets out FDA's best advice for a uniform system of regulation to ensure that the food sold or offered for human consumption at retail is safe, properly protected, and accurately presented.

The CFP was originally established in 1971 by State and Federal officials and by representatives of industry. In 1988, the CFP adopted a constitution and by-laws to provide a formal structure under which State regulatory authorities could meet and consider guidelines for improving food safety in the retail segment of the food industry.

At the 1986 CFP meeting, FDA presented a White Paper that recommended combining the three distinct model codes that existed at that time (retail food stores, food service facilities, and vending) into a Food Protection Unicode. The CFP endorsed the approach that FDA would develop a model Food Protection Unicode as a priority project. FDA formed a Unicode Task Group and published a notice of the Unicode's availability for comment in the **Federal Register** of May 9, 1988 (53 FR 16472), when the Task Group completed a draft. Based on comments submitted in response to that notice, and in consideration of subsequent comments provided by regulatory officials, industry representatives, academia, and consumer representatives at the CFP meetings in 1988, 1990, and 1992, FDA modified the document and finalized it as the 1993 Food Code. Based on field application trials, further comment, and input from the 1994 CFP meeting, FDA issued a revised version of the 1993 Food Code as the 1995 Food Code.

The CFP wrote a letter to FDA on May 28, 1996, and suggested changes in the 1995 Food Code. The CFP developed these suggestions in cooperation with the Association of Food and Drug Officials (AFDO).

The 1997 Food Code responds to those suggestions. Noteworthy changes from the 1995 Food Code include the following:

(1) Modification of the definition of potentially hazardous food to specifically state that a food might contain pathogens even though it does not qualify as a potentially hazardous food;

(2) Identification of three methods of complying with the knowledge requirements for the person in charge;

(3) Addition of *Shigella* spp. and *E. coli* O157:H7 to the list of organisms that warrant restriction or exclusion if a food worker is found to be an asymptomatic shedder;

(4) Removal of the special handwashing procedures and reservation of that section;

(5) Allowance for the storage of potentially hazardous food at 45 °F (7 °C) under certain conditions;

(6) Adjustment of the number of days that prepared foods may be stored at 41 °F (5 °C) and 45 °F from 10 to 7 and from 3 to 4, respectively;

(7) Revision of certain cooking temperatures and times, e.g., for preparing ratites and formed roast beef and for microwave cooking;

(8) Modifications throughout the document to coincide with the seafood hazard analysis critical control point rule at 21 CFR parts 123 and 1240;

(9) Provision for the regulatory authority to approve alternatives to the rule of no bare hand contact with ready-to-eat food;

(10) Insertion of an explanation of the current status of the consumer advisory language recommended by the CFP;

(11) Use of the term ''raw shell eggs'' to distinguish provisions that apply to in-shell eggs versus in-shell eggs that were subjected to in-shell pasteurization at a food processing plant;

(12) Addition of a statement that shell eggs placed, upon receipt, in a refrigerated unit that maintains food at the required temperature constitutes satisfactory compliance;

(13) Addition of a section that collates and expands the Food Code's special precautions for highly susceptible populations;

(14) Removal of the requirement for a specified carbonator backflow prevention device and reservation of the section; and

(15) Update of information and addition of user aides in the annexes.

The 1997 revision of the Food Code is available for public examination in

the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Copies of the 1997 Food Code are available on the World Wide Web at http://vm.cfsan.fda.gov/list.html or at http://www.fedworld.com. The 1997 Food Code also may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, in several formats: Spiral bound, WordPerfect 6.1 files on diskette, or enhanced electronic version on diskette or CD–Rom. The enhanced versions include electronic features such as hypertext links that enable the reader to quickly locate a specific code provision and to simultaneously read the text of cross-referenced documents.

Dated: September 12, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–24956 Filed 9–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0362]

A New 510(k) Paradigm; Draft of Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''A New 510(k) Paradigm—Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications.'' The draft 510(k) paradigm, which is neither final nor in effect at this time, presents two alternative methods of demonstrating substantial equivalence in premarket notifications, and it is intended to conserve FDA's review resources while facilitating the introduction of safe and effective devices into interstate commerce. The paradigm addresses the type of data needed by the Center for Devices and Radiological Health (CDRH) to implement alternative procedures in establishing substantial equivalence. The agency requests comments on this draft paradigm.

DATES: Submit written comments by November 18, 1997.

ADDRESSES: Submit written requests for single copies of the draft paradigm entitled ''A New 510(k) Paradigm—Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the paradigm. Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Robert I. Chissler, Program Operations Staff (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

The draft paradigm announced in this document presents device manufacturers with several optional approaches for obtaining marketing clearance for their Class II devices. While the draft paradigm maintains the traditional method of demonstrating substantial equivalence under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)), it also represents two alternatives. The first alternative, the ''Special 510(k): Device Modification,''utilizes certain aspects of the quality system regulation, while the second alternative, the ''abbreviated 510(k),'' relies on the use of special controls and consensus standards to facilitate 510(k) review.

Under section 510(k) of the act, a person who intends to introduce a device into commercial distribution is required to submit a premarket notification, or 510(k), to FDA at least 90 days before commercial distribution is to begin. Section 513(i) of the act (21 U.S.C. 360c(i)) stipulates that FDA may issue an order of substantial equivalence, only upon making a determination that the device to be introduced into commercial distribution is as safe and effective as a legally marketed device. Under 21 CFR 807.87, FDA has codified the content requirements for premarket notifications to be submitted by device manufacturers in support of the substantial equivalence decision. However, FDA has discretion in the type of information it deems necessary to meet those content requirements.

A. Special 510(k): Device Modification

The Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629) amended section 520(f) of the act (21 U.S.C. 360j(f)), providing FDA with the authority to issue regulations requiring pre-production design controls. Under the authority provided by the SMDA, FDA revised its current good manufacturing practice requirements to include pre-production design controls that device manufacturers must follow when initially designing devices or when making subsequent modifications to those designs.

Effective June 1, 1997, manufacturers of Class II and certain Class I devices must follow design control procedures for their devices including device modifications. Product modifications that could significantly affect safety and effectiveness are subject to 510(k) submission requirements under 21 CFR 807 as well as design control requirements under 21 CFR 820.30.

Because design controls are now in effect and require the conduct of verification and validation studies of a type that have traditionally been included in 510(k) submissions, FDA believes that test results generated under the new design control requirements will be sufficient to serve as a basis for certain substantial equivalence decisions. In light of the design control requirements, FDA believes that it may be appropriate, in certain circumstances, to forgo a detailed review of the underlying data normally required in 510(k)'s. While FDA would not rely on the design controls procedure requirements to issue a determination of substantive equivalence, it would rely on the existence of data generated in accordance with those procedures to issue a substantial equivalence determination.

Under the draft 510(k) paradigm, a manufacturer would use the FDA guidance document entitled, ''Deciding When to Submit A 510(k) for a Change to an Existing Device'' to decide if a device modification could be implemented without submission of a new 510(k). If a new 510(k) is needed for the modification and if the modification does not affect the intended use of the device or the basic fundamental scientific technology of the device, conformance with design controls could form the basis for clearing the application.

Special 510(k)'s will be processed by the Office of Device Evaluation (ODE) within 30 days of receipt by the

Document Mail Center (DMC). Modifications which affect the intended use or alter the basic fundamental scientific technology of the device are not appropriate for review under this type of application, but rather they should continue to be subject to routine 510(k) procedures or may be subject to an ''Abbreviated 510(k)'' as described in section I.B of this document.

B. Abbreviated 510(k)

The SMDA introduced the concept of special controls as the means by which the safety and effectiveness of Class II devices can be ensured. Special controls are defined by statute as those controls that provide reasonable assurance of the device's safety and effectiveness. Recently, considerable effort has been expended to develop the concept of a ''special control guidance document'' (SCGD). Under this initiative, reasonably foreseeable risks that are associated with a type of Class II device would be identified in a SCGD. For each risk, the agency would also identify a special control(s) such as a consensus standard, labeling content, or postmarket surveillance that would address the risk.

In addition to SCGD's that would be developed for generic Class II devices, CDRH is committed to recognizing individual consensus standards. The consensus standards could be cited in SCGD's, recognized in individual policy statements, or identified as ''special controls'' that address specific risks associated with multiple device types. IEC 60601 is an example of such a consensus standard. It has broad applicability to many electromedical devices. FDA's recognition of this standard, combined with modified review procedures, could streamline the review of many 510(k)'s for devices covered by the standard. Finally, by using the accompanying particular standards to adapt the general standard to specific devices, the 510(k) review process may be further expedited.

Under the draft paradigm, device manufacturers could choose to submit ''Abbreviated 510(k)'s'' for Class II devices when a SCGD exists or when FDA has recognized an individual special control such as a relevant standard. The incentive for manufacturers to elect to use special controls or to declare conformance to recognized standards would be a more expedient review of their submissions.

II. Electronic Access

In order to receive ''A New 510(k) Paradigm—Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications'' document via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (905) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the paradigm may also do so by using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. The CDRH home page, which is updated on a regular basis, includes: The draft document entitled ''A New 510(k) Paradigm—Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The paradigm will be available at http://www.fda.gov/cdrh/ode/parad510.html.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

III. Comments

Interested persons may, submit to the Dockets Management Branch (address above) written comments regarding this paradigm by November 18, 1997. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests for copies are to be identified with the docket number found in brackets in the heading of this document. The paradigm and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 9, 1997.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 97–24955 Filed 9–18–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: HLA Genotyping.

Date: October 8, 1997.

Time: 3:00 p.m.

Contact Person: William Elzinga, Ph.D., Scientific Review Administrator, Review Branch, NIDDK, Natcher Building, Room 6as–37A, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8895.

Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: September 12, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–24884 Filed 9–18–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following

meetings that are being held to review grant applications:

BIOBEHAVIORAL AND SOCIAL SCIENCES INITIAL REVIEW GROUP

Study section/contact person	October–November 1997 meetings	Time	Location
Human Development and Aging-1, Dr. Anita Miller Sostek, 301–435–1260.	Oct. 23–24	9:00 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Human Development and Aging-3, Dr. Anita Miller Sostek, 301–435–1260.	Nov. 6–7	9:00 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 12, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–24883 Filed 9–18–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Limited Exclusive License: Monoclonal Antibodies to Thymidylate Synthase

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I) that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive worldwide license to practice the inventions embodied in the U.S. Patent Application SN 07/690,841 filed 04/24/91, entitled ''Monoclonal Antibodies to Thymidylate Synthase'' to Oncotech, Inc. of Irvine, CA. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license field of use may be limited to the *in vitro* diagnosis of elevated Thymidylate Synthase for the treatment of cancer in humans.

DATES: Only written comments and/or applications for a license which are received by NIH on or before November 18, 1997 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Joseph G. Contrera, M.S., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7056 ext. 244; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: The invention relates to monoclonal antibody (MoAb) technology. The technology provides improved sensitivity and specificity that is necessary to overcome the problems of traditional biochemical assays. The present invention provides for the immunological detection and quantitation of thymidylate synthase (TS) through a series of hybridoma cell lines that produce MoAbs specific for antigenic determinants on TS. TS plays a critical role in DNA nucleotide precursor synthesis, and thus, an important therapeutic target for the fluoropyrimidine class of antineoplastic agents.

In sum, this invention allows for the immunological detection and quantitation of TS in human cells and enables the immuno-histochemical localization of TS in human colon carcinomas.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 10, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–24882 Filed 9–18–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–21]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings

and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register,** the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; *NAVY:* Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342. (These are not toll-free numbers.)

Dated: September 11, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT 09/19/97

Suitable/Available Properties

Buildings (by State)

Virginia

Bldg. E26, Naval Base Norfolk
Norfolk VA
Landholding Agency: Navy
Property Number: 779730042
Status: Excess
Comment: 21,654 sq. ft., 2-story, off-site use only

Bldg. X379, Naval Base Norfolk
Norfolk VA
Landholding Agency: Navy
Property Number: 779730043
Status: Excess
Comment: 1138 sq. ft., most recent use—recycling facility, off-site use only

Bldg. N27
Naval Base Norfolk
Norfolk VA
Landholding Agency: Navy
Property Number: 779730046
Status: Excess
Comment: 5166 sq ft., most recent use—indoor playing courts, poor condition, off-site use only

Bldg. 89
Naval Base Norfolk
Norfolk VA
Landholding Agency: Navy
Property Number: 779730047
Status: Excess
Comment: 16,077 sq. ft., most recent use—office, poor condition, off-site use only

Bldg. 138
Naval Base Norfolk
St. Juliens Creek Annex
Portsmouth , VA 23702–
Landholding Agency: Navy
Property Number: 779730048
Status: Excess
Comment: 192 sq. ft., most recent use—storage, poor condition, off-site use only

Bldg. 215
Naval Base Norfolk
St. Juliens Creek Annex
Portsmouth , VA 23702–
Landholding Agency: Navy
Property Number: 779730049
Status: Excess
Comment: 1600 sq. ft., most recent use—storage, poor condition, off-site use only

Bldg. 234
Naval Base Norfolk
St. Juliens Creek Annex
Portsmouth , VA 23702–
Landholding Agency: Navy
Property Number: 779730050
Status: Excess
Comment: 1161 sq. ft., most recent use—office, poor condition, off-site use only

Bldg. 248
Naval Base Norfolk
St. Juliens Creek Annex
Portsmouth , VA 23702–
Landholding Agency: Navy
Property Number: 779730051
Status: Excess
Comment: 4858 sq. ft., most recent use—office, poor condition, off-site use only

Bldg. 276
Naval Base Norfolk
St. Juliens Creek Annex
Portsmouth , VA 23702–
Landholding Agency: Navy
Property Number: 779730052
Status: Excess
Comment: 81 sq. ft., most recent use—storage, poor condition, off-site use only

Bldg. 194
Naval Base Norfolk
St. Juliens Creek Annex
Portsmouth , VA 23702–
Landholding Agency: Navy
Property Number: 779730053
Status: Excess
Comment: 1580 sq. ft., most recent use—office, poor condition, off-site use only

Suitable/Unavailable Properties

Buildings (by State)

Oregon

Gus Solomon U.S. Courthouse
620 SW Main Street
Portland Co: Multonomah OR 97205–
Landholding Agency: GSA
Property Number: 549730023
Status: Underutilized
Comment: 15,775 sq. ft., 7-story, does not meet Federal seismic requirements,

National Register of Historic Places, pending lease
GSA Number: 7–G–OR–724

[FR Doc. 97–24699 Filed 9–18–97; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–97–1220–00]

Temporary Closure and Restrictions on Public Lands; Silver Saddle Ranch; Carson City, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: The Carson City District Manager announces a temporary closure and restrictions on recently acquired lands in Carson City, Nevada known as the Silver Saddle Ranch. This action is taken to protect ranch buildings, facilities and sensitive meadow and riparian resources from vandalism and damage.

SUMMARY: The Bureau of Land Management recently completed a land exchange resulting in the transfer of the Silver Ranch in Carson City from private to public ownership. The ranch includes homes, buildings, fences and sensitive river and meadow lands. Immediate action is needed to protect features until measures can be implemented to provide adequate on site management and protection. Acquired lands on the west side of the Carson River are temporarily closed to public use. Lands on the east side of the Carson River are open to public use with restrictions on off-highway vehicle use, shooting and overnight camping.

EFFECTIVE DATES: These restrictions go into effect immediately and will remain in effect until 10/1/98 unless the authorized officer determines these restrictions need to be modified.

FOR FURTHER INFORMATION CONTACT: Tom Abbett, Outdoor Recreation Planner, 5665 Morgan Mill Road, Carson City, Nevada 89706. Telephone (702) 885–6125.

SUPPLEMENTARY INFORMATION: The public lands affected by these restrictions are described as follows:

Mt. Diablo Meridian

T. 15 N., R 20 E.,
Sec. 22: SE¼SE¼
Sec. 26: SW¼NE¼, W½, W½SE¼;
Sec. 27: NE¼, NE¼SE¼;
Sec. 35: NW¼NE¼

Excepting therefrom that portion on the NE¼NE¼ of Section 26 as conveyed to Carson City, and all that portion lying below the natural ordinary high water line of the Carson River.

Lands on the west side of the Carson River are closed to public use and entry. The exceptions to this closure include emergency, utility or law enforcement personnel, Carson City and BLM and officials conducting business, participants in tours or events sponsored by the BLM or Carson City, and others authorized in writing by the Authorized Officer of the BLM. The restrictions do not apply to Carson City public roads.

Lands on the east side of the Carson River are open to public recreation uses with the following exceptions: (1) Motorized vehicle use is limited to existing roads and trails. (2) The lands are closed to shooting and overnight camping consistent with previous orders for use on public lands in Carson City.

The authorities for these restrictions are 43 CFR 8341.2 and 8364.1. Any person failing to comply with the closure or restrictions may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 128 USC 3571, or both.

Dated this 4th day of September, 1997.

John O. Singlaub,

Carson City District Manager.

[FR Doc. 97–24897 Filed 9–18–97; 8:45 am]
BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–07–1430–00]

Notice of Intent To Prepare Planning Analysis, Arkansas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Jackson District Office, Eastern States, will prepare a Planning Analysis/Environmental Assessment (PA/EA) for the public lands within the state of Arkansas which are administered by the Bureau of Land Management (BLM).

The planning effort will follow the procedures set forth in 43 CFR, Subpart 1600.

The public is invited to participate in the planning process, beginning with the identification of planning issues and criteria. Planning criteria include applicable laws, regulations, and policies. Additional criteria will be developed if identified through public participation activities. The PA/EA will be prepared by an interdisciplinary team.

DATES: Comments relating to the identification of planning issues and criteria will be accepted through November 1, 1997.

ADDRESSES: Sent comments to District Manager, Bureau of Land Management, Jackson District, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206.

FOR FURTHER INFORMATION CONTACT: Judith Pace at (601) 977–5400.

SUPPLEMENTARY INFORMATION: The PA/EA will guide future use of several hundred acres, comprised of small parcels of land located throughout the State.

The anticipated issues for the PA/EA including the following (1) land ownership adjustments and (2) special management areas. These issues are preliminary and subject to change as a result of public input.

The PA/EA will be developed by an interdisciplinary team composed of specialists in realty, wildlife, forestry, cultural resources, visual resources, recreation, fire management, soil, water and air. Additional technical support will be provided by other specialists as needed.

Public participation will be an important part of the planning process. It is intended that all interested or affected parties be involved. The planning team will seek public input by direct mailings, person-to-person contacts, and coordination with local, state, and other federal agencies. Agency coordination meetings and public meetings may be held to obtain input on issues and planning criteria. Public meetings, if any, will be scheduled at a later time.

Complete records of all phases of the planning process will be available for public review at the Jackson District Office. Copies of the PA/EA will be available upon request.

Dated: September 11, 1997.

Bruce E. Dawson,

District Manager.

[FR Doc. 97–24908 Filed 9–18–97; 8:45 am]
BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–07–1220–00; GP7–0295]

Meeting of Advisory Board for the National Historic Oregon Trail Interpretive Center

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Advisory Board for the National Historic Oregon Trail Interpretive Center will be held on Thursday, October 2, 1997, from 8 a.m. to 5:00 p.m. at the Best Western Sunridge Inn, 1 Sunridge Lane, Baker City, Oregon 97814.

At an appropriate time, the Board will recess for approximately one hour for lunch. Public comments will be received from 2:00 p.m. to 2:30 p.m., October 2, 1997. Topics to be discussed are administrative activities of the Board, organizational processes, funding for the National Historic Oregon Trail Interpretive Center and the building of partnerships, and the progress of construction projects.

DATES: The meeting will begin at 8:00 a.m. and run to 5:00 p.m. October 2, 1997.

ADDRESSES: The meeting will take place at the Best Western Sunridge Inn, 1 Sundridge Lane, Baker City, Oregon.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail, Interpretive Center, PO Box 987, Baker City OR 97814, (Telephone 541–523–1845).

Edwin J. Singleton,

District Manager.

[FR Doc. 97–24985 Filed 9–18–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–97–1820–00–24–1A]

Bureau of Land Management, Carson City District Office—Notice of Change of Address and Relocation

AGENCY: Bureau of Land Management, Interior.

ACTION: Change of address and relocation notice.

SUMMARY: The Carson City District Office of the Bureau of Land Management will be moving on or about September 15, 1997 from 1535 Hot Springs Road, Carson City, Nevada 89706 to 5665 Morgan Mill Road, Carson City, Nevada 89701. The telephone number, (702) 885–6000 will remain the same.

Because of the relocation, records and services will be unavailable from September 10, 1997 until approximately September 17, 1997. The telephone will also be disconnected during a portion of this time.

The Carson City District Office of the Bureau of Land Management will reopen at 5665 Morgan Mill Road, Carson City, Nevada 89701 on September 15, 1997 for some services and records will be available as soon as possible. Office hours will be 7:30 a.m. to 5:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kelly Madigan, Carson City Assistant District Manager for Support Services, (702) 885–6000.

Dated: September 5, 1997.

Karl Kipping,

Associate District Manager.

[FR Doc. 97–24898 Filed 9–18–97; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–1430–01; AZA 12864 et al.]

Public Land Order No. 7285; Revocation of Secretarial Order Dated January 30, 1929, and Partial Revocation of Secretarial Orders Dated July 2, 1902, August 26, 1902, February 19, 1929, and October 16, 1931; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes one secretarial order in its entirety and partially revokes four Secretarial orders insofar as they affect 2,372.70 acres of lands withdrawn for the Bureau of Reclamation's Colorado River Storage and Survey Projects. The lands are no longer needed for reclamation purposes, and the revocation is necessary to facilitate consummation of a pending land exchange under Section 206 of the Federal Land Policy and Management Act of 1976. The lands are temporarily closed to surface entry and mining due to the pending land exchange. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: September 19, 1997.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825; 916–978–4675.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated January 30, 1929 (CAAZCA 7052); February 19, 1929 (AZA 12864); October 16, 1931 (AZA 12865); July 2, 1902 (AZA 13398); and August 26, 1902 (AZA 13398); which withdrew public lands for the Bureau of Reclamation's Colorado River Storage and Survey Projects, are hereby revoked insofar as they affect the following described lands:

San Bernardino Meridian

T. 9 S., R. 21 E.,
  Sec. 12, lots 1 and 2, and NE¼.
T. 8 S., R. 22 E.,
  Sec. 24, lot 4;
  Sec. 33, SE¼SE¼;
  Sec. 35, lots 1 and 2, N½SE¼, and SW¼SE¼.
T. 9 S., R. 22 E.,
  Sec. 2, lots 1 to 4, inclusive;
  Sec. 3, lots 1 to 19, inclusive;
  Sec. 4, lots 1 to 14, inclusive, lots 16 to 18, inclusive, S½NW¼, and NW¼SW¼;
  Sec. 5, lots 1 to 3, inclusive, lot 5, lots 8 to 10 inclusive, S½NE¼, SE¼NW¼, and NE¼SE¼;
  Sec. 8, lot 1;
  Sec. 9, lots 1 to 4, inclusive, that portion of lot 5 lying east of Neighbor's Boulevard, and lot 6;
  Sec. 10, lots 1 to 3, inclusive, and NW¼NW¼.

The areas described aggregate 2,372.70 acres in Riverside and Imperial Counties.

2. The above described lands are hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1994).

Dated: September 4, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–24900 Filed 9–18–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; WYW 71191–03]

Public Land Order No. 7284; Opening of Land Under Section 24 of the Federal Power Act; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order opens 40 acres of National Forest System land in Power Site Classification No. 286, subject to the provisions of Section 24 of the Federal Power Act. This order will permit consummation of a pending land exchange and retain the waterpower rights to the United States. The land has been and will continue to be open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, and to mineral leasing.

EFFECTIVE DATE: September 19, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office,

P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination by the Federal Energy Regulatory Commission in DVWY–192, it is ordered as follows:

1. At 9 a.m., on *September 19, 1997,* the following described National Forest System land withdrawn by the Secretarial Order dated July 16, 1934, which established Power Site Classification No. 286, will be opened to such forms of disposition as may by law be made of National Forest System land subject to the provisions of Section 24 of the Federal Power Act, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Sixth Principal Meridian

Bridger-Teton National Forest

T. 38 N., R. 115 W.,
Sec. 5, NE¼NE¼.

The area described contains 40 acres in Teton County.

2. The land has been and remains open to location and entry under the United States mining laws, subject to the provisions of the Act of August 11, 1955, 30 U.S.C. 621 (1994), and to applications and offers under the mineral leasing laws.

Dated: September 4, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–24892 Filed 9–18–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–067–1430–01; CARI–0654]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification for Conveyance

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following lands, located in eastern San Diego County, California, have been examined and found suitable for conveyance to the County of San Diego under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*):

San Bernardino Meridian

T. 13 S., R. 4 E.,
Sec. 9, E½NE¼

(80 acres, more or less).

These 80 acres were classified as suitable for lease in 1968, and R&PP lease CARI–0654 was issued to San Diego County's Department of General Services for a sanitary landfill later modified for a solid waste transfer station in Julian, California. The County proposes to continue using the lands for a solid waste transfer station. The lands are not needed for Federal purposes, and conveyance without reversionary interest is consistent with current BLM land use planning. Before conveyance can occur, a landfill transfer audit and environmental assessment must be conducted by a qualified agent in compliance with the National Environmental Policy Act of 1969 and any other Federal and State laws applicable to the disposal of solid waste and hazardous substances. The patent will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. Those rights for telephone line purposes granted to Pacific Bell by right-of-way grant CACA–21611.

4. Those rights for electrical distribution line purposes granted to San Diego Gas & Electric by right-of-way grant CACA–27735.

5. All minerals shall be reserved to the United States together with the right to prospect for, mine and remove same under applicable law and regulations as prescribed by the Secretary of the Interior. In accordance with BLM Manual Section 3060.23, a mineral potential and surface interference determination shall be completed.

6. The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances.

7. The patentee shall indemnify and hold harmless the United States against any legal liability or future costs that may arise out of any violation of such laws.

8. No portion of the land covered by such patent shall under any circumstance revert to the United States.

DATES: On or before November 3, 1997, interested parties may submit comments regarding the suitability determination to the Area Manager, Bureau of Land Management, El Centro Resource Area, 1661 South 4th Street, El Centro, CA 92243. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior on November 18, 1997.

FOR FURTHER INFORMATION CONTACT: Linda Self, Realty Specialist, at the above address or telephone (760) 337–4426.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public land to the extent that it will not be subject to appropriation under the public land laws, including locations under the mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

Dated: September 10, 1997.

Thomas F. Zale,

Acting Area Manager.

[FR Doc. 97–24890 Filed 9–18–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1220–00]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. September 10, 1997.

The plat representing the dependent resurvey of portions of the subdivisional lines and the 1899 meanders of the right bank of the Snake River, and the subdivision of section 20, T. 12 N., R. 7 W., Boise Meridian, Idaho, Group 939, was accepted, September 10, 1997.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: September 10, 1997.

Duane E. Olsen,

Chief, Cadastral Surveyor for Idaho.

[FR Doc. 97–24982 Filed 9–18–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–00]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho

State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. September 10, 1997.

The plat representing the dependent resurvey of a portion of the subdivisional lines and of the 1883 meanders of the right bank of the Snake River, the subdivision of sections 27 and 28, and the survey of lot 5 in section 27, T. 11 N., R. 7 W., Boise Meridian, Idaho, Group 947, was accepted, September 10, 1997.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: September 10, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor of Idaho.

[FR Doc. 97–24983 Filed 9–18–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–00]

Idaho: Filing of Plats of Survey

The supplemental plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. September 10, 1997.

The supplemental plat prepared to create lots 1 and 2 in tract 39, in unsurveyed T. 30 N., R. 7 E., Boise Meridian, Idaho, was accepted, September 10, 1997.

This survey was executed to meet certain administrative needs of the USDA Forest Service. All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: September 10, 1997.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 97–24984 Filed 9–18–97; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–07–1420–00]

Montana: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described land are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Principal Meridian, Montana

T. 27 N., R. 46 E.

The plat, representing the dependent resurvey of portions of the south boundary, subdivisional lines, subdivision of sections 29, 33, 34, and the adjusted original meanders of the former left bank of the Missouri River, downstream, through sections 33 and 34, and the subdivision of sections 33 and 34, and the survey of a division of accretion line, the new meanders of the left bank of the Missouri River, downstream, through sections 33 and 34, and certain division of accretion lines in sections 33 and 34, Township 27 North, Range 46 East, Principal Meridian, Montana, was accepted February 14, 1997.

T. 27 N., R. 50 E.

The plat, representing the dependent resurvey of portions of the subdivisional lines, the adjusted original meanders of the former left bank of the Missouri River, downstream, through section 23, and the subdivision of section lines in section 23, and the subdivision of section 23, the survey of the meanders of the present left bank of the Missouri River, downstream, through section 23, and a certain division of accretion line, Township 27 North, Range 50 East, Principal Meridian, Montana, was accepted May 1, 1997. These surveys were executed at the request of the Bureau of Indian Affairs, Billings Area Office, and were necessary to establish allotment boundaries. A copy of the preceding described plats will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these surveys, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests. These particular plats will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: September 11, 1997.

Daniel T. Mates,

Chief Cadastral Surveyor, Division of Resources,

[FR Doc. 97–24894 Filed 9–18–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–01; GP7–0200; OR–53642]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 12,426.43 acres of public lands and 40 acres of non-Federal land, to protect the natural and recreational values of the Leslie Gulch Area of Critical Environmental Concern. This notice closes the lands for up to 2 years from location and entry from the mining laws. Approximately 1,410.43 acres have been and will remain open to the mineral leasing laws, and the remaining 11,056 acres are included in three Wilderness Study Areas and have been and will remain closed to mineral leasing.

EFFECTIVE DATE: Comments and requests for a public meeting must be received by December 19, 1997.

ADDRESSES: Comments and meetings requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Betty McCarthy, BLM Oregon/Washington State Office, 503–952–6155.

SUPPLEMENTARY INFORMATION: On August 12, 1997, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands and non-Federal land from entry or location under the United States mining laws (30 U.S.C. Ch. 2 (1994)), subject to valid existing rights:

Willamette Meridian

Federal Lands

T. 26 S., R. 44 E.,
- Sec. 1, lots 3 to 6, inclusive, lots 11 to 15, inclusive, and S½;
- Sec. 2, lots 9, 10, 14, 15, and 16, NE¼SW¼, S½NW¼SW¼, S½SW¼, and SE¼;
- Sec. 3, S½NE¼SE¼ and SE¼SE¼;
- Sec. 9, SE¼SE¼;
- Sec. 10, NE¼ and S½;
- Secs. 11, 12, 13, and 14;

Sec. 15, NE¼, NE¼NW¼, E½SE¼NW¼, NE¼SE¼, N½NW¼SE¼, and NE¼SE¼SE¼;
Sec. 23, NE¼, E½NW¼, E½W½NW¼, NE¼SW¼, E½NW¼SW¼, SE¼SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, and SW¼SE¼SE¼;
Sec. 24, N½, N½SW¼, N½SW¼SW¼, SE¼SW¼SW¼, SE¼SW¼, and SE¼;
Sec. 25, NE¼, E½NW¼, and E½NW¼NW¼.
T. 26 S., R. 45 E.,
Sec. 7, lots 1 to 4, inclusive, W½NW¼NE¼, SE¼NW¼NE¼, SW¼NE¼, NE¼SE¼NE¼, S½SE¼NE¼, E½W½, and SE¼;
Sec. 8, SE¼NE¼NE¼, NE¼SE¼NE¼, S½SE¼NE¼, W½SW¼NW¼, SE¼SW¼NW¼, W½NE¼SW¼, SE¼NE¼SW¼, W½SW¼, SE¼SW¼, NE¼SE¼, SE¼NW¼SE¼, and S½SE¼;
Sec. 9, NE¼NE¼, NE¼NW¼NE¼, S½NW¼NE¼, S½NE¼, SW¼NW¼NW¼, S½NW¼, and S½;
Sec. 10, W½SW¼NE¼, SE¼SW¼NE¼, SW¼SE¼NE¼, W½NW¼NW¼, S½NW¼, and S½;
Sec. 15, NW¼NE¼NE¼, NW¼NE¼, N½NW¼, N½SW¼NW¼, SW¼SW¼NW¼, and N½SE¼NW¼;
Sec. 16, N½, SW¼, N½NW¼SE¼, SW¼NW¼SE¼, W½SW¼SE¼, and SE¼SW¼SE¼;
Sec. 17;
Sec. 18, lots 1 to 8, inclusive, E½W½, N½SE¼, and SE¼SE¼;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20;
Sec. 21, NW¼NE¼, N½SW¼NE¼, SW¼SW¼NE¼, W½, and W½NW¼SE¼;
Sec. 28, NW¼NW¼;
Sec. 29, NW¼NE¼, NW¼, and NW¼SW¼;
Sec. 30, lots 5, 6, and 7, and E½NE¼.

The areas described aggregate approximately 12,426.43 acres in Malheur County.

Non-Federal Land

T. 26 S., R. 45 E.,
Sec. 18, SW¼SE¼.

The area described contains 40 acres in Malheur County.

The purpose of the proposed withdrawal is to protect the unique natural and recreational values and the substantial improvements as to the public and non-Federal lands located in the Leslie Gulch Area of Critical Environmental Concern.

For a period of 91 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include licenses, permits, cooperative agreements, or discretionary land use authorizations, upon approval of the authorized officer of the Bureau of Land Management.

Dated: September 4, 1997.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 97–24893 Filed 9–18–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, announcement is made of a meeting of the Colorado River Basin Salinity Control Advisory Council.

Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Department of the Interior, the Department of Agriculture, and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss salinity control activities and the content of their report.

DATES: The meeting is scheduled to begin at 8 a.m., Wednesday, October 22, 1997, and recess at 12 noon. The council will briefly reconvene at 4:00 p.m. and adjourn at 4:30 p.m.

ADDRESSES: The meeting will be held at the Hotel Park Tucson, 5151 East Grant Road, Tucson, Arizona. Call (800) 257–7275 for reservation information.

FOR FURTHER INFORMATION CONTACT: Mr. David Trueman, Colorado River Salinity Control Program Manager, telephone (801) 524–3753.

SUPPLEMENTARY INFORMATION: The meeting of the Advisory Council is open to the public. Any member of the public may file written statements with the Council before, during, or after the meeting, in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting.

Dated: September 10, 1997.

Errol Bartholomew,

Manager Administrative Services Division.

[FR Doc. 97–24972 Filed 9–18–97; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–752 (Final)]

Crawfish Tail Meat From China Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of crawfish tail meat, provided for in subheadings 0306.19.00 and 0306.29.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective September 20, 1997, following receipt of a petition filed with the Commission and the Department of Commerce by Crawfish Processors Alliance, Breaux Bridge, LA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of crawfish tail meat from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 10, 1997 (62 FR 17637). The hearing was held in Washington, DC, on July 28, 1997, and

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 8, 1997. The views of the Commission are contained in USITC Publication 3057 (August 1997), entitled ''Crawfish Tail Meat from China: Investigation No. 731–TA–752 (Final).''

By order of the Commission.

Issued: September 15, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–24924 Filed 9–18–97; 8:45 am]

BILLING CODE 7020–02–P

PAROLE COMMISSION

Public Announcement; Sunshine Act Meeting

Pursuant To The Government In The Sunshine Act (Pub. L. 94–409) [5 U.S.C. Section 552b]

Agency Holding Meeting: Department of Justice, United States Parole Commission.

Federal Register *Citation of Previous Announcement:* Tuesday, September 16, 1997, 62 FR 48670.

Previously Announced Time and Date of the Meeting: 9:30 a.m. (closed meeting) and 1:30 p.m. (open meeting), Thursday, September 18, 1997.

Changes in the Meeting: The meeting is re-scheduled for Wednesday, September 17, 1997. The closed portion of the meeting will begin at 9:30 a.m. and the open portion of the meeting will begin at 1:30 p.m. on that same date. The meeting was re-scheduled due to a sudden change in one of the Commissioner's schedules which prevented earlier notification of the change.

Agency Contact: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: September 16, 1997.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 97–25050 Filed 9–16–97; 4:45 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division, Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determination Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. VA970036 dated February 14, 1997.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize Wage Decision No. VA970038. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency funds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts

MA970001 (Feb. 14, 1997)
MA970002 (Feb. 14, 1997)
MA970003 (Feb. 14, 1997)
MA970007 (Feb. 14, 1997)
MA970008 (Feb. 14, 1997)
MA970010 (Feb. 14, 1997)
MA970013 (Feb. 14, 1997)
MA970015 (Feb. 14, 1997)
MA970017 (Feb. 14, 1997)
MA970018 (Feb. 14, 1997)
MA970019 (Feb. 14, 1997)
MA970020 (Feb. 14, 1997)
MA970021 (Feb. 14, 1997)
Rhode Island
RI970001 (Feb. 14, 1997)
RI970002 (Feb. 14, 1997)

Volume II

Pennsylvania
PA970010 (Feb. 14, 1997)
PA970014 (Feb. 14, 1997)
PA970021 (Feb. 14, 1997)
PA970023 (Feb. 14, 1997)
PA970024 (Feb. 14, 1997)
PA970040 (Feb. 14, 1997)
PA970051 (Feb. 14, 1997)
Virginia
VA970038 (Feb. 14, 1997)
West Virginia
WV970002 (Feb. 14, 1997)
WV970003 (Feb. 14, 1997)
WV970006 (Feb. 14, 1997)

Volume III

None

Volume IV

Michigan
MI970075 (Feb. 14, 1997)

Volume V

Iowa
IA970006 (Feb. 14, 1997)
Kansas
KS970013 (Feb. 14, 1997)
Nebraska
NE970011 (Feb. 14, 19997)
NE970038 (Feb. 18, 1997
Texas
TX970007 (Feb. 14, 1997)
TX970034 (Feb. 14, 1997)
TX970037 (Feb. 14, 1997)
TX970060 (Feb. 14, 1997)

Volume VI

Alaska
AK970001 (Feb. 14, 1997)
AK970002 (Feb. 14, 1997)
AK970005 (Feb. 14, 1997)
AK970010 (Feb. 14, 1997)
Idaho
ID970001 (Feb. 14, 1997)
ID970003 (Feb. 14, 1997)
ID970013 (Feb. 14, 1997)
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Utah
UT970001 (Feb. 14, 1997)
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UT970028 (Feb. 14, 1997)
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UT970034 (Feb. 14, 1997)

Volume VII

Arizona
AZ970014 (Feb. 14, 1997)
California
CA970084 (Feb. 14, 1997)
CA970085 (Feb. 14, 1997)
CA970086 (Feb. 14, 1997)
CA970087 (Feb. 14, 1997)
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CA970112 (Feb. 14, 1997)
CA970113 (Feb. 14, 1997)
CA970114 (Feb. 14, 1997)
CA970115 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487-4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 12th day of September 1997.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–24670 Filed 9–18–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meetings and Agenda

The regular Fall meetings of the Business Research Advisory Council and its committees will be held on October 15, 16, and 23, 1997. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officials from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, October 15, 1997—Meeting Rooms 7 and 8

10:00–11:30 a.m.—Committee on Employment Projections

1. Update on status of 1996–2006 projections and publication schedule
2. Discussion of the employment impact of key developments to be reflected in the next set of BLS projections

1:00–2:30 p.m.—Committee on Compensation and Working Conditions

1. Update on status of the National Compensation Survey (NCS)
2. Integrating and aligning BLS wage and compensation data series
3. Factors explaining wage variation in the NCS

3:00–4:30 p.m.—Committee on Productivity and Foreign Labor Statistics

1. Report on recent developments in the Office of Productivity and Technology
2. International comparisons of hourly compensation in manufacturing:

possibilities of expanding country coverage
3. The BLS program of international technical assistance in labor statistics: recent developments
4. Measuring capital inputs for use in multifactor productivity computations

Thursday, October 16, 1997—Meeting Rooms 7 and 8

8:30–10:00 a.m.—Committee on Employment and Unemployment Statistics

1. Current Employment Statistics sample redesign and production test
2. Expansion of Occupational Employment Survey to include wages by occupation
3. Update on progress in development and implementation of the North American Industrial Classification System and the Standard Occupational Classification System

10:30–12:30 p.m.—Council Meeting

1. Chairperson's opening remarks
2. Commissioner's address and discussion
3. Chairperson's closing remarks

1:30–3:00 p.m.—Committee on Price Indexes

1. Update on program developments
   a. Producer Price Indexes
   b. The Consumer Price Index
2. Other business

Thursday, October 23, 1997—Meeting Room 6

1:30–3:00 p.m.—Committee on Occupational Safety and Health Statistics

1. Report on the 1996 Census of Fatal Occupational Injuries
2. Update on the Occupational Safety and Health Administration (OSHA) recordkeeping revision plan and its impact on the BLS Survey of Occupational Injuries and Illnesses
3. Report on the case circumstances and work demographic information from the 1995 Survey of Occupational Injuries and Illnesses
4. Report on other new releases of BLS occupational safety and health information
5. Accessing BLS occupational safety and health data on the INTERNET

The meetings are open to the public. Persons with disabilities and those wishing to attend these meetings as observers should contact Nancy Sullivan, Bureau of Labor Statistics, at (202) 606–5903, for appropriate accommodations.

Signed at Washington, DC the 11th day of September 1997.

Katharine G. Abraham,

Commissioner.

[FR Doc. 97–24976 Filed 9–18–97; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations: Certificate of Electrical/Noise Training

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Certificate of Electrical/Noise Training. MSHA is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the For Further Information Contact section of this notice.

DATES: Submit comments on or before November 18, 1997.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

MSHA qualifies mine electricians and certifies persons to take noise level measurements in coal mines. MSHA Form 5000–1 is used to report to MSHA those miners who have satisfactorily completed (1) a coal mine electrical training program; or (2) a noise training course. Based on the information submitted on Form 5000–1, MSHA issues certification cards that identify these individuals as qualified to perform certain tasks at the mine.

Title 30 CFR 75.153(a)(2) and 77.103(a)(2) require that a program be provided for the qualification of certain experienced personnel as mine electricians. Title 30 CFR 70.504 and 71.801 require that mine operators measure the noise levels to which each miner is exposed and that these measurements be taken by a person who has been certified by the Assistant Secretary of Labor for Mine Safety and Health as qualified. A qualified person is one who has been certified by MSHA as an instructor in noise measurement training programs; or has completed a noise training course conducted by and approved by MSHA.

II. Current Actions

MSHA uses the information from MSHA Form 5000–1 to issue certification cards to those persons who are qualified. MSHA inspectors may asks to see the cards to determine compliance with regulations during routine inspections. Mine operators use the cards to determine a person's

qualifications to perform certain tasks and when hiring new personnel. The information is also used by MSHA to determine mine operators' compliance with approved training plans, to monitor safety training programs, and in reporting to Congress.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Certificate and Electrical/Noise Training.

OMB Number: 1219–0001.

Agency Number: MSHA Form 5000–1.

Affected Public: Business or other for-profit institutions

Total Respondents: 3,800.

Frequency: On occasion.

Total Responses: 3,800.

Average Time per Response: 4.36 hours.

Total Burden Hours: 16,584 hours.

Total Burden Hour Cost: $431,184.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $389,049.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 10, 1997.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 97–24977 Filed 9–18–97; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–137]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Dow-United Technologies Composite Products, Inc., of Wallingford, CT 06492–1843, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,312,994, entitled ''PHENYLETHYNYL ENDCAPPING REAGENTS AND REACTIVE DILUENTS'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATES: Responses to this notice must be received by November 18, 1997.

FOR FURTHER INFORMATION CONTACT: George F. Helfrich, Patent Counsel, Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001, telephone (757) 864–9260, fax (757) 864–9190.

Dated: September 12, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–24949 Filed 9–18–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that propose the destruction of records not previously authorized for disposal, or reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before November 3, 1997. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Civilian Appraisal Staff (NWRC), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Records Management Programs, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301) 713–7110.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–97–1). Preliminary and final fishery product and sanitation inspection files.

2. Department of Commerce, Patent and Trademark Office (N1–241–96–6). Comprehensive records schedule for the Office of Legislative and International Affairs and the Office of the Assistant Commissioner for Trademarks.

3. Department of Justice, United States Marshals Service (N1–527–97–12). Records relating to the disposal of seized and forfeited assets, and receipts of civil and criminal service.

4. Department of the Navy, (N1–NU–97–4). Decrease in retention period for index cards containing the names of persons identified in Military Police or

Shore Patrol complaint reports as subject, victim, complainant or witness.

5. Department of the Treasury,(N1–56–95–3). Comprehensive schedule for the Financial Crimes Enforcement Network (substantive program and policy records are designated for permanent retention).

6. Minerals Management Service, Office of International and Marine Minerals Activities (N1–473–97–1). Administrative records pertaining to foreign and domestic training, cooperative agreements, and technical assistance.

7. Panama Canal Commission (N1–185–97–22). Routine general management and administrative records.

8. Tennessee Valley Authority (N1–142–97–25). Reduction in retention period for drawings and sketches for Resource Group laboratory and pilot plant apparatus and equipment (selected drawings and sketches will be preserved).

Dated: September 12, 1997.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 97–24981 Filed 9–18–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 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 meetings 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:* October 6–7, 1997.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Education Development and Demonstration in Focus Grants II, submitted to the Division of Research and Education Programs for projects at the September 15, 1997 deadline.

2. *Date:* October 9–10, 1997.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Education Development and Demonstration in Focus Grants III, submitted to the Division of Research and Education Programs for projects at the September 15, 1997 deadline.

3. *Date:* October 17, 1997.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for the National Heritage Preservation Program, submitted to the Division of Preservation and Access for projects at the July 1, 1997 deadline.

4. *Date:* October 21, 1997.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials submitted to the Division of Preservation and Access for projects at the July 1, 1997 deadline.

5. *Date:* October 24, 1997.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials submitted to the Division of Preservation and Access for projects at the July 1, 1997 deadline.

6. *Date:* October 28, 1997.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for the National Heritage Preservation Program submitted to the Division of Preservation and Access for projects at the July 1, 1997 deadline.

7. *Date:* October 31, 1997.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Library & Archival Preservation and Access/Reference Materials submitted to the Division of Preservation and Access for projects at the July 1, 1997 deadline.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 97–24929 Filed 9–18–97; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. IA 97–068; ASLBP No. 97–731–01–EA]

Atomic Safety and Licensing Board; Notice of Hearing

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. Jerry R. Kline, Dr. Peter S. Lam.

September 15, 1997.

Notice is hereby given that, by Memorandum and Order (Granting Request for Hearing and Scheduling Prehearing Conference), dated September 11, 1997, the Atomic Safety and Licensing Board has granted the request of Aharon Ben-Haim, Ph.D., for a hearing in the above-titled proceeding. The hearing concerns the Order Superseding Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) (hereinafter, Superseding Order), issued by the NRC Staff on August 27, 1997 (published at 62 FR 47224 (September 8, 1997)). The parties to the proceeding are Dr. Ben-Haim and the NRC Staff. The issue to be considered at the hearing is whether the Superseding Order should be sustained.

Materials concerning this proceeding are on file at the Commission's Public Document Room, 2120 L St., NW., Washington, DC 20555, and at the Commission's Region I office, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415.

During the course of this proceeding, the Licensing Board, as necessary, will conduct one or more prehearing conferences and evidentiary hearing sessions. The time and place of these sessions will be announced in Licensing Board Orders. Members of the public are invited to attend any such sessions.

Dated: Rockville, Maryland, September 15, 1997.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman Administrative Judge.

[FR Doc. 97–24914 Filed 9–18–97; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Office of Nuclear Reactor Regulation, Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station; Notice of Receipt of and Availability for Comment of Post-Shutdown Decommissioning Activities Report

The U.S. Nuclear Regulatory Commission (the Commission) is in receipt of and is making available for public inspection and comment, the Post-Shutdown Decommissioning Activities Report (PSDAR) for the Maine Yankee Atomic Power Station (Maine Yankee) located in Lincoln County, Maine.

Maine Yankee has been shut down since December 6, 1996, and the reactor has been defueled since June 20, 1997. By letter dated August 7, 1997, Maine Yankee Atomic Power Company (the licensee) certified to the Commission permanent cessation of power operation at Maine Yankee and that fuel had been permanently removed from the reactor. By letter dated August 27, 1997, the licensee submitted its PSDAR to the Commission in accordance with the requirements of 10 CFR 50.82.

In the PSDAR the licensee has described the planned decommissioning activities and schedule for the Maine Yankee facility, provided an estimate of expected costs and discussed the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities are bounded by the appropriate previously issued environmental impact statements. The licensee has chosen to decontaminate and dismantle the facility in a manner that results in the prompt removal of the existing nuclear plant. This approach is referred to as the DECON alternative. The licensee intends to complete the decontamination and dismantlement of the majority of plant structures within approximately seven years of cessation of operations. The licensee intends to construct an independent facility to store the spent fuel on site until the fuel can be permanently transferred offsite to a Department of Energy facility.

The PSDAR is available for public inspection at the local public document room located at the Wiscasset Public Library, High Street, Wiscasset, Maine and at the Commission's public document room located at The Gelman Building, 2120 L Street, NW, Washington, DC.

The Commission will schedule a public meeting in the vicinity of the Maine Yankee facility to solicit public comments on the Maine Yankee PSDAR. A notice will be published in the **Federal Register** and in the local media announcing the date, time and location of this meeting.

Comments regarding the Maine Yankee PSDAR should be submitted in writing to Mr. Singh Bajwa, Mail Stop 11–B–20, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days after the date of this notice.

Dated at Rockville, Maryland, this 12th day of September 1997.

For the Nuclear Regulatory Commission.

Albert W. DeAgazio,

Acting Director, Project Directorate I–3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–24918 Filed 9–18–97; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306]

Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Notice of Partial Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a portion of a request by Northern States Power Company (the licensee) for amendments to Facility Operating Licenses Nos. DPR–42 and DPR–60 issued to the licensee for operation of the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, located in Goodhue County, Minnesota. Notice of Consideration of Issuance of these amendments was published in the **Federal Register** on July 2, 1997 (62 FR 35850).

The purpose of the licensee's amendment request was to revise the Technical Specifications to delete limitations on crane operations in the spent fuel pool enclosure relating to spent fuel pool special ventilation system operability and conform the Technical Specifications to the guidance of NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants.''

The NRC staff has concluded that a portion of the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated September 15, 1997.

By October 20, 1997, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings 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.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated May 7, 1997, as supplemented May 30, July 29, and September 12, 1997, and (2) the Commission's letter to the licensee dated September 15, 1997.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 15th day of September 1997.

For the Nuclear Regulatory Commission.

Beth A. Wetzel,

Senior Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–24917 Filed 9–18–97; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an amendment to Facility Operating License No. NPF–42, issued to Wolf Creek Nuclear Operating Corporation (the licensee), for operation of the Wolf Creek Nuclear Generating Station, Unit 1 located in Coffey County, Kansas.

The proposed amendment would change the technical specifications to allow one-time testing of certain relay contacts while the plant is in MODE 1 and to allow a one-time addition of 24 hours to the shutdown action statement to provide time to perform the testing.

On September 4, 1997, as a result of reviews undertaken in response to Generic Letter 96–01, ''Testing of Safety Related Logic Circuits,'' and information received from another plant, Wolf Creek Nuclear Operating Corporation (WCNOC) determined certain relay contacts that open had not been monitored during performance of surveillance procedure, STS KJ–001A/B, ''Integrated Diesel Generator Safeguards Actuation Test Train A/B.'' The current testing process implemented through STS KJ–001A/B had not demonstrated the function of the contacts because there are other contacts in series that could also be open.

The relay contacts provide a blocking/time delay function for start of the component cooling water (CCW), essential service water (ESW) and motor driven auxiliary feedwater pumps (MDAFWP). On a loss of offsite power the CCW, ESW, and MDAFWP are shed from the safety busses and then loaded in sequence to the EDGs. The contacts blocking/time delay function assure that no matter what the start demand is for the pumps, they are not started until the parallel contacts of the load sequencer close to start the pumps in the required sequence.

Technical Specification 4.0.3 was entered at 1906 CDT on September 4, 1997, for missed surveillances. Technical Specification 4.0.3 allows the action requirements to be delayed for up to 24 hours to permit the completion of the surveillance when the allowable outage time limits of the action requirements are less than 24 hours. However, Technical Specification 4.8.1.1.2.g requires that the surveillance testing be performed once every 18 months during shutdown.

Without the proposed change, the plant would have had to shut down to perform this surveillance test. A Notice of Enforcement Discretion was issued on September 5, 1997, to allow a one time test of the unmonitored contacts in Mode 1 and to allow an additional 24 hours to complete the testing.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability of consequences of an accident previously evaluated.

This proposed change does not change the function or performance requirements for the Load Shedding and Emergency Load Sequencing System, as described in the Updated Safety Analysis Report (USAR) and the Technical Specifications. Testing these relays at power will not cause any degradation in system performance, nor will it increase the number of challenges to equipment assumed to function during an accident situation. The testing will require related equipment to be declared inoperable for the duration of each test, but these durations will be much less than those allowed by the applicable Technical Specification Action Statements. Further, the proposed change would prevent an unnecessary unit shutdown which could result in a reactor transient and a unwarranted challenge of the safety-related systems. This is a one-time test, and future testing will be performed in accordance with the requirements specified in the Technical Specifications.

Thus, the proposed change will not result in an increase in the consequences of, or an increase in the probability of occurrence of, any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Load Shedding and Emergency Load Sequencing System will continue to perform in a manner consistent with the assumptions in the USAR. No new scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced. There will be no adverse effects or challenges imposed on any safety-related system as a result of this request. Therefore, the possibility of a new or different kind of accident is not created.

3. The proposed change does not involve a significant reduction in the margin of safety.

The purpose of this request is to allow WCNOC the ability to perform a one-time partial test of the subject Load Shedding and Emergency Load Sequencing System relay contacts while at power. This testing will demonstrate complete compliance with Technical Specification 3/4.8.1 without having to shut down the unit. This activity will not affect any system or component setpoints or safety limit settings associated with the Load Shedding and Emergency Load Sequencing System. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced. There will be no significant adverse effects or challenges imposed on any safety-related system as a result of this request. This request will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike,

Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 20, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbidge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 8, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 15th day of September 1997.

For the Nuclear Regulatory Commission.

William H. Bateman,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–24919 Filed 9–18–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22–ISFSI; ASLBP No. 97–732–02–ISFSI]

Private Fuel Storage, LLC; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and sections 2.105, 2.700,

2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for hearing and for leave to intervene and to preside over the proceeding in the event that a hearing is ordered.

Private Fuel Storage, LLC (Independent Spent Fuel Storage Installation)

This Board is being established pursuant to a notice published by the Commission on July 31, 1997, in the **Federal Register** (62 FR 41099). The proceeding involves an application by Private Fuel Storage, LLC, for the issuance of a license for the storage of spent fuel under the provisions of 10 CFR part 72. The license, if granted, would authorize the applicant to possess and store spent fuel in an independent spent fuel storage installation that would be located on the Skull Valley Goshute Indian Reservation in Skull Valley, Utah.

The Board is comprised of the following administrative judges:

G. Paul Bollwerk, III, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Thomas D. Murphy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 15th day of September 1997.

B. Paul Cotter, Jr.,

Chief Administrative Judge Atomic Safety and Licensing Board Panel.

[FR Doc. 97–24915 Filed 9–18–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Workshop: Demonstrating Compliance With the Radiological Criteria for License Termination—License Termination Under Restricted Conditions

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: The NRC will hold a public workshop in Rockville, Maryland to receive input from licensees and the public on a working paper on ''License Termination Under Restricted Conditions.'' This working paper is being developed as a section of a future Regulatory Guide, ''Demonstrating Compliance With the Radiological Criteria for License Termination.'' The Regulatory Guide is being written to describe an acceptable method to comply with the NRC's recent final rule on Radiological Criteria for License Termination (62 FR 39058; July 21, 1997). The purpose of the workshop is to obtain comments, suggestions, and information from the public on the approach in the working paper so that a better Regulatory Guide can be developed. All interested licensees and members of the public are invited to attend this workshop.

DATES: The workshop will be held on October 15, 1997, beginning at 9 a.m. and ending at about 5 p.m.

Interested parties, unable to attend the workshop, are encouraged to provide written comments by November 30, 1997.

ADDRESSES: The public workshop will be held in the NRC's ACRS meeting room at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

The workshop will also be available at other locations by video-conferencing. Information on video-conferencing locations will be posted on the NRC Technical Conference Forum Website under the topic ''Final Rule for License Termination'' at http://techconf.llnl.gov/cgi-bin/topics.

A copy of the working paper to be discussed can be obtained electronically at the NRC Technical Conference Forum Website under the topic ''Final Rule for License Termination'' at http://techconf.llnl.gov/cgi-bin/topics or from the NRC's Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC 20555; telephone 202–634–3273; fax 202–634–3343.

Comments may be posted electronically on the NRC Technical Conference Forum Website mentioned above. Comments submitted electronically can also be viewed at that website.

Comments may also be mailed to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: For information or questions on meeting arrangements, contact Jayne McCausland, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–6219, fax 301–415–5385, E-mail: JMM2@NRC.GOV. For technical information or questions, contact Stephen A. McGuire, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–6204; fax: 301–415–5385; E-mail: SAM2@NRC.GOV.

SUPPLEMENTARY INFORMATION: This workshop is one of a series of interactions with the Agreement States, licensees, and the public to gather suggestions and ideas to ensure the success in developing a Regulatory Guide on ''Demonstrating Compliance With the Radiological Criteria for License Termination.'' The workshop will begin with a brief introduction on some of the more important questions that were considered in developing the Regulatory Guide working paper on ''License Termination under Restricted Conditions.'' After the introduction, the Working Paper will be reviewed section-by-section. Attendees will be asked for questions and comments on each section. The NRC will ask questions on the approach that it has developed. Written comments that have been received from the public will be discussed.

Visitor parking around the NRC building is limited; however, the workshop site is located adjacent to the White Flint Station on the Metro Red Line. Seating for the public will be on a first-come, first-served basis

A transcript of this workshop will be available for inspection, and copying for a fee at the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555, on or about October 31, 1997.

Dated at Rockville, Maryland this 11th day of September, 1997.

For the Nuclear Regulatory Commission.

Cheryl A. Trottier,

Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, RES.

[FR Doc. 97–24920 Filed 9–18–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Hosting of Information at World Wide Web Site Currently at FedWorld, Except for Agency Government Information Locator System (GILS)

Notice is hereby given that effective October 1, 1997, the Nuclear Regulatory Commission (NRC) will begin hosting at its World Wide Web (WWW) site (http://www.nrc.gov) agency information currently posted on the FedWorld bulletin board system at the

National Technical Information Service. NRC information at FedWorld will no longer be updated and maintained after that date, except for the NRC Government Information Locator System (GILS). GILS will be maintained at FedWorld until October 1, 1998.

Dated at Rockville, Maryland, this 15th day of September 1997.

For the Nuclear Regulatory Commission.

A.J. Galante,

Chief Information Officer.

[FR Doc. 97–24916 Filed 9–18–97; 8:45 am]

BILLING CODE 7590–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26759]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

September 12, 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 October 6, 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 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.

American Electric Power Company, Inc. (70–6126)

American Electric Power Company, Inc. (''AEP''), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed a post-effective amendment under sections 6(a), 7, 32, and 33 of the Act and rule 53 under the Act to an application-declaration filed before under sections 6(a), 7, 9(a), 10, 12(b), 32 and 33 of the Act and rules 45 and 53 under the Act.

By prior Commission orders,[1] AEP was authorized to issue and sell, through December 31, 2000, up to 3.8 million shares of its common stock, $6.50 par value per share (''Common Stock''), to the American Electric Power System Employees Savings Plan (''Savings Plan''). Fidelity Management Trust Company is a trustee of the Savings Plan (''Trustee''). As of August 31, 1997, AEP had 519,395 shares of Common Stock available for issuance and sale (''Unsold Balance'').

AEP now proposes, through December 31, 2001, to issue and sell to the Trustee: (i) the Unsold Balance, plus (ii) an additional 5 million shares of its Common Stock (''Additional Common Stock''). The Trustee will purchase the Common Stock for a price equal to the average of the Common Stock's high and low price on the New York Stock Exchange, determined after the close of trading for the day. In no event will the price of the Common Stock be less than its par value, unless the Trustee purchases the Common Stock through a dividend reinvestment plan, the exercise of stock rights, or other program similar to dividend reinvestment plans or stock rights.

The proceeds from the issuance and sale of the Additional Common Stock will be used: (i) to pay AEP's unsecured debt when it matures, (ii) to purchase additional common stock of AEP subsidiaries, (iii) to acquire interests in exempt wholesale generators (''EWGs''), as defined in section 32 of the Act, and in foreign utility companies (''FUCOs''), as defined in section 33 of the Act; and (iv) for other corporate purposes.

If the proceeds from the issuance and sale of Common Stock are invested in EWGs or FUCOs, the investment will be limited to 50% of the consolidated retained earnings of AEP determined in accordance with rule 53 (''Investment Limit''). In a separate filing, which the Commission noticed on April 18, 1997 (HCAR No. 26708), AEP requested authorization to increase the Investment Limit to 100% of consolidated retained earnings. In addition, when the proceeds from the sale of Common Stock are invested in EWGs and FUCOs, the number of shares of Common Stock sold will be deducted from the 10 million shares of Common Stock Authorized for these investments by order dated May 10, 1996 (HCAR No. 26516).

[1] Holding Co. Act Release Nos. 26516 (May 10, 1996), 25939 (Dec. 6, 1993), 25210 (Dec. 12, 1990), 24594 (Mar. 8, 1988), 22549 (June 28, 1982), 22112 (June 30, 1981), 21639 (June 24, 1980), 21022 (Apr. 27, 1979), 20516 (Apr. 25, 1978).

BEC Energy, et al. (70–9057)

BEC Energy, a Massachusetts business trust (''BEC''), and its parent company, Boston Edison Company, a Massachusetts public-utility holding company exempt from registration under section 3(a)(2) of the Act pursuant to rule 2 (''Boston Edison'') (together, ''Applicants''), both located at 800 Boylston Street, Boston, Massachusetts 02199, have filed an application under section 3(a)(1), 3(a)(2), 9(a) (2) and (10) of the Act.

The Applicants request an order: (1) authorizing BEC to acquire directly all of the outstanding common stock of Boston Edison and to acquire indirectly all of the outstanding common stock of Boston Edison's electric utility subsidiary company, Harbor Electric Energy Company (''HEEC''); (2) granting BEC an exemption under section 3(a)(1) from all provisions of the Act, except section 9(a)(2); and (3) granting Boston Edison an exemption under section 3(a)(2) from all provision of the Act, except section 9(a)(2). The Applicants state that the proposed restructuring will establish a more appropriate corporate structure to conduct nonutility business activities, while providing a mechanism for protecting the utility business and utility customers of Boston Edison and HEEC from the risks and costs of these activities.

BEC is organized under Massachusetts law to carry out the proposed restructuring and will become the holding company over Boston Edison. BEC holds all of the outstanding common stock of Boston Edison Mergeco Electric Company, Inc. (''Merger-Sub''), that has also been formed to carry out the proposed restructuring. Neither BEC nor Merger-Sub presently conduct any business or own any utility assets.

Boston Edison and HEEC are engaged principally in the generation, purchase, transmission, distribution and sale of electric energy. Boston Edison provides electricity at retail to an area of 590 square miles, including the City of Boston and 39 surrounding cities and towns. In 1996, Boston Edison served an average of 657,487 customers. Boston Edison also supplies electricity at wholesale for resale to other electric utilities and municipal electric departments. Boston Edison is subject to regulation by the Massachusetts Department of Public Utilities. Boston Edison also engages directly in certain

nonutility businesses through its wholly owned subsidiary, Boston Energy Technology Group (''BETG'') and indirectly through nine BETG subsidiaries.[2]

The Applicants propose to form the holding company structure under an Agreement and Plan of Merger to be entered into among Boston Edison, BEC and Merger-Sub (''Plan of Merger''). Under the terms of the Plan of Merger, Merger-Sub would be merged (''Merger'') with Boston Edison, and each outstanding share of common stock of Merger-Sub would be converted into one share of common stock, $1.00 per value per share, of Boston Edison (''Boston Edison Stock''). Subsequently, each outstanding share of Boston Edison Stock would be converted into one common share, $1.00 par value per share, of BEC (''BEC Common Stock''). Upon consummation of the Merger, each person that owns Boston Edison Stock immediately prior to the Merger will own a corresponding number of the outstanding shares of BEC Common Stock, and BEC will own all of the outstanding Boston Edison Stock.

After the Merger, Boston Edison will transfer to BEC, by stock dividend or otherwise, the common stock of BETG. BEC will then engage in nonutility business activities through BETG and the Nonutility Subsidiaries. After the Merger, BEC will directly own Boston Edison and BETG, and HEEC will continue to be a public-utility subsidiary of Boston Edison.

The preferred stock of Boston Edison (''Preferred Stock'') and all indebtedness of Boston Edison will remain securities and obligations of Boston Edison after the Merger. Consequently, the Applicants state that the holders of Boston Edison's debt securities and the Preferred Stock will not be affected by the proposed restructuring.

BEC asserts that, following the consummation of the proposed restructuring, it will be a public-utility holding company entitled to an exemption from registration under section 3(a)(1) of the Act, because it and each of its public-utility subsidiaries from which it derives a material part of its income will be predominately intrastate in character and will carry on their business substantially within the state of Massachusetts. Boston Edison claims that it will continue to be a public-utility holding company entitled to an exemption under section 3(a)(2) of the Act, because it is predominantly a public-utility company whose operations do not extend beyond its state of organization or any contiguous states.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24971 Filed 9–18–97; 8:45 am]

BILLING CODE 8010–01–M

[2] The nine subsidiaries are Boston Edison Services, Inc., Energyvision, LLC, BecoCom, Inc., RCN/BETG, LLC, Northwind Boston, LLC, Coneco Corporation, Coneco Financial Corporation, TravElectric Services Corporation, and Rez-Tek International Corporation (''Nonutility Subsidiaries''). Boston Edison's nonutility operations contributed a net loss of approximately $600,000 (or less than 1%) to Boston Edison's aggregate after-tax-net income in fiscal year 1996.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39064; File No. SR–Amex–97–18]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change to Amend the Manner of Calculation of the Hong Kong Option Index

September 12, 1997.

I. Introduction

On April 9, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act) [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the manner of calculation of the Hong Kong Option Index (''HK Index'').

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38651 (May 16, 1997), 62 FR 28524 (May 23, 1997). The Exchange filed Amendment No. 1 to the proposed rule change on July 9, 1997.[3] No comments were received on the proposal. This order approves the proposed rule change, as amended.

II. Description

The proposed rule change amends the manner in which Amex calculates the HK Index by using a floating rate of exchange for the Hong Kong dollar rather than a fixed value. On April 11, 1994, Amex received approval to trade standardized options on the HK Index.[4] The HK Index is a broad-based capitalization-weighted stock index designed and maintained by Amex, based on the capitalizations of 30 stocks that are traded on the Hong Kong Stock Exchange (''HKSE'') and whose issuers have major business interests located in Hong Kong. The HK Index value is calculated by multiplying the price of each component security (in Hong Kong dollars) by its number of shares outstanding, adding the sums, and dividing by the current HK Index divisor. For valuation purposes, one HK Index unit is assigned a fixed value of one U.S. dollar. The Exchange adopted a fixed value for the HK Index unit because Hong Kong has traditionally pegged the value of the Hong Kong dollar to the U.S. dollar.[5]

At midnight on June 30, 1997, sovereignty over Hong Kong transferred from the United Kingdom to the People's Republic of China, and Hong Kong became a Special Administrative Region of China. In its filing, Amex notes that while there has been much debate over what this will mean financially, politically, and socially for the former British colony, statements from the People's Republic of China indicate that the existing currency and financial systems of Hong Kong will remain unchanged. In order, however, to be prepared for any possible changes with respect to the Hong Kong dollar, such as a change in the policy of pegging its value to the U.S. dollar, the Exchange has determined to adopt a floating rate of exchange for the Hong Kong dollar when calculating the value of the HK Index.

Amex will use the WM/Reuters Hong Kong dollar/U.S. dollar exchange rate available at 4 p.m. London time, which is based on market rates. These underlying market rates will be commercial interbank bid and offer rates. Representative rates for each currency are selected based on a number

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 clarifies how the Exchange intends to distinguish between the HK Index option contract using the old calculation method and the new HK Index option contract using the new floating rate calculation method. In addition, Amendment No. 1 states that the Exchange intends to issue an Information Circular to advise its members of the new calculation method, discussing the new method and the procedures for phasing in the contracts using the new calculation method and phasing out those contracts using the old calculation method. Finally, the Exchange attached a description of the calculation method used by WM/Reuters for calculating their closing spot rates for the Hong Kong dollar. *See* letter from Claire P. McGrath, Vice President and Special Counsel, Amex, to Ivette Lopez, Assistant Director, Division of Market Regulation, Commission, dated July 8, 1997.

[4] *See* Securities Exchange Act Release No. 33894 (April 11, 1994), 59 FR 18429 (April 18, 1994).

[5] As of April 14, 1997, the exchange rate was approximately HK $7.75 per U.S. $1.

of ''snapshots'' of the latest contributed quotations taken from the Reuters System. Amex will receive this exchange rate between approximately 11:30 a.m. and 12:00 noon (New York time) each trading day. The Exchange will then use this rate in calculating and disseminating the HK Index value after it is received on that trading day, and will also use the rate in calculating and disseminating the HK Index value on the following day until a new value is received, again typically between 11:30 a.m. and 12:00 noon.[6] If on any business day WM/Reuters does not post a closing spot exchange rate for the Hong Kong dollar, the last reported closing spot rate will remain in effect until a new rate is posted. Amex intends to establish a separate contract on the HK Index using the floating rate in its calculation. The current contract using the fixed rate will continue to trade until the expiration of any remaining contracts.[7] No new series will be added using the fixed rate after the new floating rate calculation goes into effect. Until a phase-out of the current contract using the fixed rate is complete, options on both indexes will be trading simultaneously using different symbols.[8]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[9] Specifically, the Commission believes the proposal is consistent with the section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.[11]

The Commission believes that the proposed rule change will help to protect investors and the public by guarding against the possibility of a change in the exchange rate for the Hong Kong dollar, now that control of Hong Kong has reverted to China, as of midnight on June 30, 1997. The current exchange rate is a fixed rate that does not change and which is pegged to the U.S. dollar so that each Hong Kong Index unit is valued at one U.S. dollar.[12] The new rate will be a floating rate, based upon the daily exchange rate calculated by WM/Reuters, and the Index level will be multiplied by the exchange rate in order to determine the Index value. This change will allow Amex to protect against fluctuations in the exchange rate between the U.S. dollar and the Hong Kong dollar.

The Commission also notes that the Exchange has adequately addressed concerns about investor confusion over the simultaneous trading of HK Index options contracts using the current valuation method, and the HK Index options using the new fluctuating rate method for a certain period of time. The two contracts will be assigned different trading symbols for identification purposes. In addition, the Exchange will issue an Information Circular to its members discussing the new calculation method and the procedures for phasing in the contracts using the new calculation and phasing out those contracts using the old calculation method.

The Commission finds good cause to approves Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, by clarifying that Amex will distinguish between the old and new contracts by using different symbols, and by stating that Amex will advise its members of the change in the method of calculation for the HKO Index, Amendment No. 1 will help ensure that members of the Exchange receive adequate notice of the change in the method of calculation of the HKO Index and the procedures for phasing in the contracts using the new method of calculation and phasing out the contracts using the old calculation method. Accordingly, the Commission believes that it is consistent with section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–97–18 and should be submitted by October 10, 1997.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–AMEX–97–18), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24861 Filed 9–18–97; 8:45 am]

BILLING CODE 8010–01–M

[6] The Commission notes that if, for some reason, WM/Reuters changes the exchange rate after it has already been disseminated, Amex will correspondingly recalculate the Index value, if the change occurs during the trading day. When a change occurs on a settlement day, the new Index value will be used for settlement purposes if it is calculated prior to settlement. Telephone conversation between Claire P. McGrath, Vice President and Special Counsel, Amex, and Heather Seidel, Attorney, Market Supervision, Commission, on September 9, 1997.

[7] As of April 15, 1997, the outstanding interest in HKO Index contracts with expiration dates after July 1, 1997 was as follows: September 1997 series, 2042 contracts; December 1997 series, 835 contracts; and January 1998 series, 162 contracts. Phone conversation between Claire McGrath, Managing Director and Special Counsel, Amex, and Heather Seidel, Attorney, Market Regulation, Commission, on April 18, 1997.

[8] *See* Amendment No. 1, supra note 3. Currently the Exchange has the following series on the current HK Index option trading: July 1997; August 1997; September 1997; October 1997; November 1997; December 1997; March 1998; and January 1998 (reduced value). Therefore, once the March 1998 contracts expire, the Exchange will have only one HK Index option trading which will calculate the index using a floating rate of exchange for the Hong Kong dollar rather than the fixed rate currently being used. *Id*.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] For example, if the Index is at 300, the value in U.S. dollars is $300.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22821; 812–10520]

The Reserve Private Equity Series, et al.; Notice of Application

September 12, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the

''Act'') from the provisions of section 15(a) of the Act of and rule 18f–2.

SUMMARY OF APPLICATION: Applicants request an order to permit them to enter into and materially amend investment management agreements with the funds' subadvisers without shareholder approval.

APPLICANTS: The Reserve Private Equity Series, The Reserve Fund, The Reserve Tax-Exempt Trust, The Reverse New York Tax-Exempt Trust, and The Reserve Institutional Trust (collectively, the ''Funds''); Reserve Management Co., Inc. (the ''Manager'') and Resrv Partners, Inc.

FILING DATES: The application was filed on February 7, 1997 and amended on July 21, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 7, 1997 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 810 Seventh Avenue, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. Each Fund is registered under the Act as an open-end management investment company with one or more series (''Series'').[1] The Reserve Fund, The Reserve Tax-Exempt Trust, The Reserve New York Tax-Exempt Trust, and The Reserve Institutional Trust are business trusts organized under Massachusetts law. The Reserve Private Equity Series is a business trust organized under Delaware law.

2. The Manager is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Manager serves as investment manager to each Series pursuant to an investment management agreement between the manager and each Fund. The Manager provides general management services to the Funds and is responsible for the day-to-day administration of the Series' activities. The manager is paid a fee based on average daily net assets of each Series.

3. The Reserve Private Equity Series currently employs subadvisers, each of which is registered as an investment adviser under the Advisers Act. The Reserve Private Equity Series currently employs only on subadviser for each one of its Series, but may employ multiple subadvisers for each Series in the future. The other Funds do not have Series that currently employ subadvisers, but they may do so in the future. All investment decisions for the Series that employ subadvisers are made by the subadvisers, who have discretionary authority to invest all or a portion of the assets of a Series, subject to the general supervision of the Manager and the board of trustees of each Fund. The Manager recommends subadvisers to the Fund's board, and also will recommend the termination of a subadviser when the Manager deems a termination to be in the best interests of a Series. Subadvisers provide advisory services pursuant to a written advisory agreement (''Subadvisory Agreement''). The subadvisers' fees are paid by the Manager out of the fees paid by a Series to the Manager at rates negotiated by the Manager. The fees are based on assets allocated to the subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants request an exemption from section 15(a) of the Act and rule 18f–2 to permit the Funds and the Manager to enter into and materially amend Subadvisory Agreements without shareholder approval.

3. Applicants state that the Series' shareholders rely on the Manager for investment management and expertise in selecting subadvisers. The Manager seeks to enhance Series' performance and reduce market risk by allocating a Series' assets among multiple ''specialist'' subadvisers. Applicants state that the Manager employs a comprehensive screening process of reviewing the qualifications and capabilities of potential new subadvisers, and engages in a thorough on-going analysis of the continued advisability as to the retention of its existing subadvisers. Applicants contend that the Manager's continuing quantitative and qualitative evaluation of the subadvisers will permit new subadvisers to be introduced or, at such time as multi-subadvisers are utilized, the proportion of shareholders' assets subject to particular subadviser styles to be reallocated, to the extent the Manager deems appropriate to achieve the overall investment objectives of the particular Series. Applicants assert that shareholders are, in effect, electing to have the Manager select one or more subadvisers best suited to achieve each Series' investment objective. Applicants state that the subadvisers are concerned only with the selection of portfolio investments in accordance with a Series' investment objectives and policies.

4. Applicants contend that, because shareholders rely on the Manager for investment results and overall management services, it is the investment advisory agreements with the Manager (''Management Agreements'') over which shareholders should exercise control. Management Agreements would continue to be subject to the shareholder approval requirements of section 15 of the Act.

5. Applicants contend that requiring shareholder approval of subadvisers and Subadvisory Agreements would impose costs on the Series without advancing shareholder interests. Applicants also believe that requiring shareholder approval of new subadvisers and amendments to Subadvisory Agreements would prevent the Funds from promptly and timely employing

[1] Applicants request that the order also extend to (a) Any other Series organized in the future, and (b) any other open-end management investment company (a ''Future Company'') advised or managed by the Manager, or a person controlling, controlled by, or under common control with the Manager, in the future, provided that such Future Company operates in the same manner as the Funds and complies with the conditions of the order requested in the application.

subadvisers best suited to the needs of the Series. Applicants believe that shareholders' interests are adequately protected by their voting rights with respect to the Management Agreements and the responsibilities assumed by the Manager and the Funds' boards.

6. Applicants contend that shareholders will be provided with adequate information about subadvisers. Funds' prospectuses and statements of additional information will contain all required information regarding each subadviser. Within 90 days of the hiring of a new subadviser, a Fund will furnish shareholders with all the information that would have been provided in a proxy statement.

7. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested exemptive relief satisfies this standard.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. Before a Series may rely on the order requested in the application, the operation of the Series in the manner described in the application will be approved by a majority of the outstanding voting securities, as defined in the Act, of the Series or, in the case of a new Series whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplate by condition 2 below, by the sole initial shareholder(s) before offering shares of such Series to the public.

2. Any Series relying on the requested relief will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, the Series will hold itself out to the public as employing the subadviser structure described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility to oversee the subadvisers and recommend their hiring, termination, and replacement.

3. The Manager will provide management and administrative services to the Funds and, subject to the review and approval of their respective boards of trustees, will set the overall investment strategies of the Series; recommend subadvisers; where appropriate, allocate and reallocate the assets of the Series among subadvisers; and monitor and evaluate the investment performance of the subadvisers, including their compliance with the investment objectives, policies, and restrictions of the Series.

4. A majority of each board of trustees of each Fund will be persons each of whom is not an ''interested person'' of the Fund (as defined in section 2(a)(19) of the Act) (the ''Independent Trustees''), and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

5. The Funds will not enter into Subadvisory Agreements with any subadviser that is an ''affiliated person,'' as defined in section 2(a)(3) of the Act, of the Series, or the Manager other than by reason of serving as a subadviser to one or more of the Series (an ''Affiliated Subadviser'') without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Series.

6. When a change of subadviser is proposed for a Series with an Affiliated Subadviser, the board of trustees of the applicable Fund including a majority of the Independent Trustees, will make a separate finding, reflected in the minutes of the meeting of the board of trustees of the Fund, that the change of subadviser is in the best interest of the Series and its shareholders and does not involve a conflict of interest from which the Manager, or an Affiliated Subadviser derives an inappropriate advantage.

7. No director, trustee, or officer of a Fund or the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee, or officer) any interest in a subadviser except for ownership of interests in the Manager or any entity that controls, is controlled by, or under common control with the Manager, or ownership of less than 1% of the outstanding securities of any class of equity or debt securities of a publicly-traded company that is either a subadviser or an entity that controls, is controlled by, or is under common control with a subadviser.

8. Within 90 days of the hiring of any subadviser, the affected Series will furnish its shareholders with all information about the new subadviser that would be included in a proxy statement. Such information will include any change in such disclosure caused by the addition of a new subadviser. The Fund will meet this condition by providing shareholders, within 90 days of the hiring of a subadviser with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 (''1934 Act''). The information statement also will meet the requirements of Item 22 of Schedule 14A under the 1934 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24970 Filed 9–18–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39055; File No. SR–CHX–97–17]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Tier I Listing Standards to Adopt a Share Price Maintenance Standard for Common Stock Listed on the Exchange

September 11, 1997.

I. Introduction

On June 25, 1997, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to add a share price maintenance standard for common stock listed on Tier I of the Exchange.

The proposed rule change was published for comment in the **Federal Register** on July 8, 1997.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The National Securities Markets Improvement Act of 1996 [4] amended section 18 of the Securities Act of 1933 [5] to provide for exclusive federal registration of securities listed, or authorized for listing, on the New York Stock Exchange (''NYSE''), the American Stock Exchange (''Amex'') or listed on the National Market System of the Nasdaq Stock Market (''Nasdaq/NMS''), or any other national securities exchange designated by the Commission by rule to have substantially similar listing standards to those markets. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 38795 (June 30, 1997), 62 FR 36594 (July 8, 1997).

[4] Pub. L. 104–290, 110 Stat. 3416 (1996).

[5] 15 U.S.C. 77s.

CHX petitioned the SEC in February of this year to adopt a rule finding the CHX's Tier I listing standards to be substantially similar to those of the NYSE, Amex or Nasdaq/NMS. If the SEC adopts such a rule, any security listed on the CHX under its Tier I standards would be exempt from registration in all fifty states.

The Commission has recently published for comment proposed Rule 146(b) which would designate various exchanges' listing standards as being substantially similar to those of the NYSE, Amex or Nasdaq/NMS.[6] The Commission has indicated that it preliminary believes that the only deficiency in the CHX Tier I standards, which precludes it from designating the CHX Tier I securities as qualifying, is that there is no minimum share price requirement for continued listing on Tier I. If such deficiency was corrected, the SEC indicated that it would consider including CHX's Tier I securities in the final Rule 146(b).

As a result of the above, the CHX is proposing to amend Article XXVIII, Rule 14 of the Exchange rules to add a minimum share price requirement for continued listing of common stock on Tier I. The proposed amendment is virtually identical to Amex's requirement. In essence, the proposed amendment states that an issuer that has a common stock listed under Tier I that is selling for a substantial period of time at a low price per share must effect a reverse split within a reasonable period of time after being notified that the Exchange deems such action to be appropriate. The proposed amendment then sets forth examples of pertinent factors which the Exchange will review in determining whether a reverse split is appropriate. If the issuer fails to effect a reverse split, then the Exchange would initiate a proceeding to delist the issuer's common stock from Tier I.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[7] Specifically, the Commission believes the proposal is consistent with the section 6(b)(5)[8] requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[9] New Exchange Rule 14(a)(4) provides the CHX with specific authority to require an issuer with common stock listed on Tier I to effect a reverse stock split when the issue is selling for a substantial period of time at a low price per share. If such issuer does not effect a reverse split of the shares, which should have the effect of increasing share price, within a reasonable period of time after being notified that the Exchange deems the reverse split to be appropriate, the Exchange will delist the issuer's stock.

In establishing criteria to uphold the quality of its market, the Commission believes that it is appropriate for the Exchange to have a maintenance standard for securities selling at low prices in conjunction with the other standards for listing and maintenance. The Commission finds that the share price maintenance standard is a reasonable measure for the Exchange to use to maintain its quality control standards for issuers listed on Tier I of the Exchange and is a reasonable standard to use to remove low-priced securities from the Exchange. As noted above, under the rule, the issuer will have the opportunity to remedy concerns about stock selling at a low price by effecting a reverse stock split.

The Commission also believes that the addition of the share price maintenance standard to the Exchange's maintenance requirements for common stock should help the Exchange monitor the continued financial stability of companies listed on Tier I because low share prices can sometimes be the result of financial difficulty with the issuer. The maintenance standard will also help ensure that stocks that are more susceptible to manipulation will not be traded on the Exchange. This should protect investors and the public interest consistent with section 6(b)(5) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CHX–97–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24865 Filed 9–18–97; 8:45 am]

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[6] Securities Exchange Act Release No. 38728, Securities Act Release No. 7422 (June 10, 1997).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39076; File No. SR–CHX–97–06]

Order Granting Approval to Proposed Rule Change

September 15, 1997.

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating to Listing and Trading Standards for Portfolio Depositary Receipts.

I. Introduction

On March 17, 1997,[1] the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to add Rule 25 to Article XXVIII of CHX's rules relating to the listing and trading of Portfolio Depository Receipts (''PDRs'').

The proposed rule change as amended by Amendment Nos. 1, 2, and 3, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38777 (June 26, 1997) 62 FR 35866 (July 2, 1997). One comment letter was received in response to the proposal.[4]

II. Background and Description

The Exchange proposes to adopt new Rule 25 under Article XXVIII to accommodate the trading of PDRs, securities which are interests in a unit investment trust (''Trust'') holding a

[1] On June 4, 1997, the Exchange filed Amendment No. 1 to this rule filing. Amendment No. 1 supersedes entirely the Exchange's rule filing and was incorporated into the notice in its entirety. On June 17, 1997 and June 24, 1997, the Exchange filed Amendment Nos. 2 and 3 respectively; Amendment No. 3 replaces Amendment No. 2 in its entirety and the substance of Amendment No. 3 was incorporated into the notice. *See* letter from J. Craig Long, Attorney, Foley & Lardner, to Ivette Lopez, Assistant Director, Market Regulation, Commission, dated May 27, 1997 (''Amendment No. 1'') and letters from David T. Rusoff, Attorney, Foley & Lardner, to Sharon Lawson, Senior Special Counsel, Market Regulation, Commission, dated June 13, 1997 (''Amendment No. 2'') and June 18, 1997 (''Amendment No. 3'') respectively.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Letter from James F. Duffy, Executive Vice President and General Counsel, Legal and Regulatory Policy, American Stock Exchange, to Jonathan G. Katz, Secretary, Commission, dated July 31, 1997 (''Amex Comment Letter'').

portfolio of securities linked to an index. Each Trust will provide investors with an instrument that: (i) Closely tracks the underlying portfolio of securities, (ii) trades like a share of common stock, and (iii) pays holders of the instrument periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses (as described in the Trust prospectus).

Under the proposal, the exchange may list and trade, or trade pursuant to unlisted trading privileges (''UTP''), PDRs based on one or more stock indexes or securities portfolios. PDRs based on each particular stock index or portfolio shall be designated as a separate series and identified by a unique symbol. The stocks that are included in an index or portfolio on which PDRs are based shall be selected by the Exchange, or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised as deemed necessary or appropriate to maintain the quality and character of the index or portfolio. As discussed in more detail below, CHX intends to trade two existing PDRs currently traded on the American Stock Exchange (''Amex'')—Standard & Poor's Depositary Receipts (''SPDRs'') and Standard & Poor's MidCap 400 Depositary Receipts (''MidCap SPDRs'')—pursuant to UTP upon approval of these listing standards. CHX is not asking for permission to list SPDRs or MidCap SPDRs at this time, but rather will trade SPDRs and MidCap SPDRs pursuant to unlisted trading privileges once the generic listing standards set forth herein are approved. Pursuant to Rule 12f–5 under the Act, in order to trade a particular class or type of security pursuant to unlisted trading privileges, CHX must have rules providing for transactions in such class or type of security. The Amex has enacted listing standards for PDRs, and CHX's proposed rule change is designed to create similar standards for PDR listing and/or trading on CHX.

If at a later time CHX and the issuer of the product desire to list SPDRs and MidCap SPDRs or any other PDRs on the Exchange, the Exchange will request Commission approval for that listing in a separate proposed rule change filed pursuant to Section 19(b)of the Act.[5] Additionally, in the event a new PDR is listed on another exchange using listing standards that are different than current CHX listing standards or the CHX listing standards proposed in this filing, the CHX will file a proposed rule change pursuant to Section 19(b) of the Act to adopt the listing standard before it trades that PDR pursuant to unlisted trading privileges.

Criteria for Initial and Continued Listing

In connection with an initial listing, the Exchange proposes that, for each Trust of PDRs, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading, and such minimum number will be filed with the Commission in connection with any required submission under Rule 19b–4 for each Trust. If the Exchange trades a particular PDR pursuant to unlisted trading privileges, the Exchange will follow the listing exchange's determination of the appropriate minimum number.

Because the Trust operates an open-end type basis, and because the number of PDR holders is subject to substantial fluctuations depending on market conditions, the Exchange believes it would be inappropriate and burdensome on PDR holders to consider suspending trading in or delisting a series of PDRs, with the consequent termination of the Trust, unless the number of holders remains severely depressed during an extended time period. Therefore, twelve months after the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) If the index on which the Trust is based is no longer calculated, or

(c) If such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A Trust shall terminate upon removal from Exchange listing and its PDRs will be redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set forth in the Trust prospectus. For example, the sponsor of the Trust (''Sponsor''), following notice to PDR holders, shall have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount.

Trading of PDRs

Dealings in PDRs on the Exchange will be conducted pursuant to the Exchange's general agency-auction trading rules. The Exchange's general dealing and settlement rules will apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Exchange equity rules and procedures will also apply, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists.[6]

With respect to trading halts, the trading of PDRs will be halted, along with the trading of all other listed or traded stocks, in the event the ''circuit breaker'' thresholds of CHX Article IX, Rule 10A are reached. In addition, for PDRs tied to an index, the triggering of futures price limits for the Standard & Poor's 500 Composite Price Index (''S&P 500 Index''), Standard & Poor's 100 Composite Price Stock Index (''S&P 100 Index''), or Major Market Index (''MMI'') futures contracts will not, in itself, result in a halt in PDR trading or a delayed opening. However, the Exchange could consider such an event, along with other factors, such as a halt in trading in S&P 100 Index Options (''OEX''), S&P 500 Index Options (''SPX''), or MMI Options (''XMI''), in deciding whether to halt trading in PDRs.

Under the proposed rule change, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Article XXXVI, Rule 19, the Exchange's rule governing trading halts for Basket trading (except that the term ''Basket'' shall be replaced by ''stock index'') in exercising its direction to

[5] The Commission notes that CHX, if it were to file a proposed rule change to list and trade a new PDR, would have to request the appropriate exemptions for the new product under the Investment Company Act of 1940 (''Investment Company Act'') (such as those exemptions requested for SPDRs and MidCap SPDRs), such an exemption from Investment Company Act Section 22(d) and Rule 22c–1 thereunder to allow the PDR to trade in the secondary market.

[6] The Commission notes that CHX has stated its intention to file a proposed rule change in the near future in order to create a know-your-customer rule in which a member, before recommending a transaction in a security, would have to use due diligence to learn the essential facts relating to every customer, every order, and every account accepted by the member. Telephone call between Craig Long, Attorney, Foley & Lardner, Sharon Lawson, Senior Special Counsel, Market Regulation, Commission, and Heather Seidel, Attorney, Market Regulation, Commission, on July 29, 1997.

halt or suspend trading. For a PDR based on an index, these factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value, or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Disclosure

Proposed Rule 25 of Article XXVIII requires that members and member organizations provide to all purchasers of each series of PDRs a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such series of PDRs is delivered to such purchaser. In this regard, a member or member organization carrying an omnibus account for a non-member broker-dealer will be required to inform such non-member that execution of an order to purchase PDRs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to member and member organizations. The written description must be included with any sales material on that series of PDRs that a member provides to customers or the public. Moreover, other written materials provided by a member or member organization to customers or the public making specific reference to a series of PDRs as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of PDRs] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of PDRs]. In addition, upon request you may obtain from your broker a prospectus for [the series of PDRs].'' Additionally, as noted above, the Exchange requires that members and member organizations provide customers with a copy of the prospectus for a series of PDRs upon request.

With respect to disclosure, because SPDRs and MidCap SPDRs will be traded pursuant to unlisted trading privileges and will not be listed on CHX at this time, CHX does not intend to create its own product description to satisfy the requirements of proposed Rule 25(c) of Article XXVIII, which requires members to provide to purchasers, a written description of the terms and characteristics of SPDRs and MidCap SPDRs in a form approved by the Exchange. Instead, the CHX will deem a member or member organization to be in compliance with this requirement if the member delivers either: (i) The current product description produced by the Amex from time to time, or (ii) the current prospectus for the SPDR or MidCap SPDR, as the case may be.[7] It will be the member's responsibility to obtain these materials directly from Amex[8] for forwarding to purchasers in the time frames prescribed by CHX and Commission rules. The CHX will notify members and member organizations of this requirement in a notice to members.

Notwithstanding the foregoing discussion concerning the applicability of the Exchange's equity trading rules to PDRs generally, the Intermarket Trading System (''ITS'') rules briefly will not be applicable to SPDRs and MidCap SPDRs traded on the CHX pursuant to unlisted trading privileges. Currently, ITS is being modified in order to accommodate trading in a minimum variation of 1/64, but the changes are not yet complete. When such changes are made, which is expected in the near future, CHX intends to request that SPDRs and MidCap SPDRs be designated as ITS Securities. At such time as they are designated ITS securities, the ITS rules will apply to trading in SPDRs and MidCap SPDRs.

The current inapplicability of the ITS rules means, among other things, that the ITS trade-through rule will not apply. However, the CHX's BEST Rule, Article XX, Rule 37(a), will still be applicable to SPDRs and MidCap SPDRs, thereby guaranteeing the execution of certain agency orders on the basis of the size and price associated with the best bid (for a sell order) or best offer (for a buy order) among the Amex, Boston, Cincinnati, Chicago, New York, Pacific, Philadelphia and the Intermarket Trading System/Computer Assisted Execution System quote, which quote is defined in SR–CHX–97–9 as the ''ITS BBO.''[9] Because SPDRs and MidCap SPDRs are not traded in all of these market centers,[10] for purposes of this filing only, the ITS BBO is limited to those market centers listed above that trade SPDRs and MidCap SPDRs.[11] For example, if a CHX specialist receives an agency limit order for a SPDR, so long as all of the eligibility requirements of the BEST Rule are met, the specialist will be required to execute that order if there has been a price penetration in the primary market. In addition, if the Amex specialist is disseminating the best quote for SPDRs, the CHX specialist will be required to execute eligible agency market orders for SPDRs at the price quoted on the Amex, even if the CHX specialist is not, himself, quoting at that price. The CHX SPDR and MidCap SPDR specialist will have the ability to monitor the current quotations being disseminated by the Amex specialist on a real-time basis. The quotations for SPDRs and MidCap SPDRs are disseminated through the Consolidated Quotation System and are available for viewing by the CHX specialist at his or her post. Finally, the CHX specialist will have access to the Amex through the Amex's PER System (albeit through a correspondent firm). This will enable the CHX specialist to place limit orders on the Amex specialist's book or send market orders to the Amex specialist for execution against the Amex specialist's quote. In its filing, CHX states that these factors should minimize the possibility that a

[7] CHX plans to notify its members in an information circular that it is their responsibility to inform customers of the nature and terms of SPDRs an MidCap SPDRs prior to recommending their purchase. The circular also states that members must deliver a SPDR or MidCap SPDR product description to all purchases of the products and that they must provide the prospectus upon request.

[8] The Commission notes that Amex, in its comment letter to this rule filing, stated that the Distributor does not have responsibility for disseminating the SPDR and MidCap SPDR product descriptions; therefore, CHX members cannot obtain the product description from the Distributor, as noted in the notice release, but can obtain its form Amex. *See* Amex Comment Letter, *supra* note 4, and Section III infra.

[9] The Commission notes that SR–CHX–97–9, as amended to remove the phrase ''size and price associated with the'' from the filing, has become effective. *See* Securities Exchange Act Release No. 38772 (June 25, 1997). In addition, CHX represents that it will submit a separate rule filing pursuant to Section 19(b)(2) of the Act further amending the BEST Rule to add size and price to the definition of the ITS/BBO. Phone conversation between David Rusoff, Attorney, Foley & Lardner, and David Sieradzki, Attorney, Market Regulation, Commission, on June 17, 1997.

[10] Currently SPDRs and MidCap SPDRs are only traded on Amex.

[11] Under the BEST Rule, Exchange specialists are required to guarantee executions of all agency market and limit orders for Dual Trading System issues from 100 up to and including 2099 shares. Subject to the requirements of the short sale rule, the specialist must fill all agency market orders at a price equal to or better than the ITS BBO. For all agency limit orders in Dual Trading System issues, the specialist must fill the order if: (1) The ITS BBO at the limit price has been exhausted in the primary market; (2) there has been a price penetration of the limit in the primary market (generally known as a trade-through of a CHX limit order); or (3) the issue is trading at the limit price on the primary market unless it can be demonstrated that the order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related to, or other criteria for, requiring a fill.

CHX originated trade-through will occur.

SPDRs and MidCap SPDRs Generally

As discussed above, rules to accommodate the trading of PDRs generally on Amex, along with Amex's trading of SPDRs and MidCap SPDRs, were previously approved by the Commission.[12] The information provided below is intended to provide a description of how SPDRs and MidCap SPDRs are created and traded and is almost identical to that discussed in the original Amex Approval Order. The Sponsor of each series of PDRs traded on the Amex is PDR Services Corporation, a wholly-owned subsidiary of the Amex. The PDRs are issued by a Trust in a specified minimum aggregate quantity (''Creation Unit'') in return for a deposit consisting of specified numbers of shares of stock plus a cash amount.

The first Trust to be formed in connection with the issuance of PDRs was based on the S&P 500 Index, known as Standard & Poor's Depositary Receipts (''SPDRs''). SPDRs have been trading on the Amex since January 29, 1993. The second Trust to be formed in connection with the issuance of PDRs was based on the S&P MidCap 400 Index,[13] known as Standard & Poor's MidCap 400 Depositary Receipts (''MidCap SPDRs'').[14] The Sponsor of the two Trusts has entered into trust agreements with a trustee in accordance with Section 26 of the Investment Company Act of 1940. PDR Distributors, Inc. (''Distributor'') acts as underwriter of both SPDRs and MidCap SPDRs on an agency basis. The Distributor is a registered broker-dealer, a member of the National Association of Securities Dealers, Inc., and a wholly-owned subsidiary of Signature Financial Group, Inc.

SPDR and MidCap SPDR Creation

All orders to create SPDRs or MidCap SPDRs in creation unit size must be placed with the Distributor, and it is the responsibility of the Distributor to transmit such orders to the Trustee.[15] Payment with respect to creation orders placed through the Distribution will be made by: (1) The ''in-kind'' deposit with the Trustee of a specified portfolio of securities that is formulated to mirror, to the extent practicable, the component securities of the underlying index or portfolio, and (2) a cash payment sufficient to enable the Trustee to make a distribution to the holders of beneficial interests in the Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution (''Dividend Equivalent Payment''), subject to certain specified adjustments. The securities and cash accepted by the trustee are referred to, in the aggregate, as a ''Portfolio Deposit.''[16] Upon receipt of a Portfolio Deposit in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of SPDRs or MidCap SPDRs, which aggregate numbers are referred to as a ''Creation Unit.'' Currently, a Creation Unit will be made up of 25,000 MidCap SPDRs or 50,000 SPDRs.[17] Individual SPDRs or MidCap SPDRs can then be traded in the secondary market like other equity securities. Portfolio Deposits are expected to be made primarily by institutional investors, arbitragers, and the Exchange specialist. The price of SPDRs and MidCap SPDRs will be based on a current bid/offer market. The minimum fraction for trading in SPDRs and MidCap SPDRs on Amex is 1/64ths. The CHX has proposed this same minimum variation for the trading of SPDRs and MidCap SPDRs on CHX.

The Trustee or Sponsor will make available: (1) On a daily basis, a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (2) on a minute-by-minute basis throughout the day, a number representing the value (on a per SPDR or MidCap SPDR basis) of the securities portion of a Portfolio Deposit in effect on such day; and (3) on a daily basis, the accumulated dividends, less expenses, per outstanding SPDR or MidCap SPDR.[18]

Redemption of SPDRs and MidCap SPDRs

SPDRs and MidCap SPDRs in Creation Unit size aggregations will be redeemable in kind by tendering them to the Trustee. While holders may sell SPDRs and MidCap SPDRs in the secondary market at any time, they must accumulate at least 50,000 (or multiples thereof) to redeem SPDRs or 25,000 (or multiples thereof) to redeem MidCap SPDRs through the Trust. SPDRs and MidCap SPDRs will remain outstanding until redeemed or until the termination of the Trust. Creation Units will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in weighting and composition to the securities portion of a Portfolio Deposit in effect on the date a request is made for redemption, together with a ''Cash Component'' (as defined in the Trust prospectus), including accumulated dividends, less expenses, through the date of redemption. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.[19]

Distribution of SPDRs and MidCap SPDRs

The SPDR Trust and the MidCap SPDR Trust pay dividends quarterly.

[12] *See* Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (''Amex Approval Order'').

[13] The S&P MidCap 400 Index is a capitalization-weighted index of 400 actively traded securities that includes issues selected from a population of 1,700 securities, each with a year-end market-value capitalization of between $200 million and $5 billion. The issues included in the Index cover a broad range of major industry groups, including industrials, transportation, utilities, and financials.

[14] *See* Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995) (''Amex MidCap Approval Order'').

[15] To be eligible to place orders to create MidCap SPDRs as described below, an entity or person either must be a participant in the Continuous Net Settlement (''CNS'') system of the National Securities Clearing Corporation (''NSCC'') or a Depository Trust Company (''DTC'') participant. Upon acceptance of an order to create MidCap SPDRs, the Distributor will instruct the Trustee to initiate the book-entry movement of the appropriate number of MidCap SPDRs to the account of the entity placing the order. MidCap SPDRs will be maintained in book-entry form at DTC.

[16] A Portfolio Deposit also will include a cash payment equal to a pro rata portion of the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, plus or minus an amount designed to compensate for any difference between the net asset value of the Portfolio Deposit and the underlying Index caused by, among other things, the fact that a Portfolio Deposit cannot contain fractional shares.

[17] The Trust will issue SPDRs in exchange for ''Portfolio Deposits'' of all of the S&P 500 Index securities, weighted according to their representation in the Index. The Trust is structured so that the net asset value of an individual SPDR should equal one-tenth of the value of the S&P 500 Index.

[18] The Trustee of the SPDR Trust will have the right to vote any of the voting stocks held by the Trust, and will vote such stocks of each issuer in the same proportion as all other voting shares of that issuer voted. Therefore, SPDR holders will not be able to directly vote the shares of the issuers underlying the SPDRs.

[19] An investor redeeming a Creation Unit will receive Index securities and cash identical to the Portfolio Deposit required of an investor wishing to purchase a Creation Unit on that particular day. Since the Trust will redeem in kind rather than for cash, the Trustee will not be forced to maintain cash reserves for redemptions. This should allow the Trust's resources to be committed as fully as possible to tracking the underlying Index, enabling the Trust to track the Index more closely than other basket products that must allocate a portion of their assets for cash redemptions.

The regular quarterly ex-dividend date for SPDRs and MidCap SPDRs is the third Friday in March, June, September, and December, unless that day is a New York Stock Exchange holiday, in which case the ex-dividend date will be the preceding Thursday. Holders of SPDRs and MidCap SPDRs on the business day preceding the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date net of fees and expenses for such period. The payment of dividends will be made on the last Exchange business day in the calendar month following the ex-dividend date (''Dividend Payment Date''). On the Dividend Payment Date, dividends payable for those securities with ex-dividend dates following within the period from the ex-dividend date most recently preceding the current ex-dividend date will be distributed. The Trustee will compute on a daily basis the dividends accumulated within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee.

The MidCap SPDR Trust intends to make the DTC DRS available for use by MidCap SPDR holders through DTC participant brokers for reinvestment of their cash proceeds. The DTC DRS is also available to holders of SPDRs. Because some brokers may choose not to offer the DTC DRS, an interested investor would have to consult his or her broker to ascertain the availability of dividend reinvestment through that broker. The Trustee will use the cash proceeds of MidCap SPDR holders participating in the reinvestment to obtain the Index securities necessary to create the requisite number of SPDRs.[20] Any cash remaining will be distributed pro rata to participants in the dividend reinvestment.

III. Summary of Comments

The Commission received one comment letter on the proposed rule change, from Amex.[21] Amex commented on two aspects of the proposal, the requirement that CHX members deliver a product description to purchasers of PDRs no later than the time a confirmation is delivered to the purchasers, and on the trading of SPDRs and MidCap SPDRs pursuant to the ITS.

With regard to the first issue, Amex notes that CHX will not create its own product description but will deem its members in compliance with the delivery requirement if it delivers Amex's current product description or the current SPDR or MidCap SPDR prospectus, as applicable. CHX does not intend to supply these materials to its members but will require them to obtain the documents from Amex or the distributor of SPDRs and MidCap SPDRs.

Amex states that is does not object to the occasional request for prospectuses and Product Descriptions made in connection with trades on CHX, but reserves the right to charge a reasonable amount for the materials, if it finds that the requests become burdensome.[22] Amex also notes that the Distributor is not responsible for providing the Product Descriptions, that it is Amex's responsibility to provide the materials to Amex members in connection with the Exchange trading and compliance with Amex Rule 1000.

Second, while Amex acknowledges that SPDRs and MidCap SPDRs are not traded through ITS at this time because ITS cannot currently handle trading in 1/64ths (the minimum increment for MidCap and SPDRs MidCap), it is concerned about the future application of ITS rules to trading of SPDRs and MidCap SPDRs due to ongoing modifications to ITS to permit commitments to trade in increments as small as 1/256ths. Amex states that SPDRs and MidCap SPDRs be designated as ITS securities once these system changes are made. Amex states that while it has no objection to the use of ITS as an intermarket access mechanism for trading of SPDRs and MidCap SPDRs, it has serious concerns about the application of ITS trade through procedures to the trading of these products because of the nature of the product in that they are priced quite differently from common stocks

Specifically, because of the extreme frequency of quotation changes in SPDRs and MidCap SPDRs, Amex believes that cancellation or expiration of ITS commitments in these products would pose proportionally greater market risk for market makers and investors than for other ITS securities because a price change is far more likely to occur before an ITS commitment can be resent. Amex also believes that because of the frequency of quotation changes in SPDRs and MidCap SPDRs, the Amex specialist must be able to receive very rapid confirmation that his commitment sent to another market through ITS has been executed, and that a one or two minute time frame (the time during which an ITS commitment is irrevocable) would subject all market participants to an unacceptable level of market risk in a market with rapid quotation changes. Amex states that it intends to address with the Commission and the ITS Operating Committee the ITS procedures that it believes must be changed to permit SPDRs to continue to trade as they were designed to trade.[23]

IV. Discussion

The Commission finds that the proposed rule changes are 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).[24] The Commission believes that providing for the exchange-trading on CHX of PDRs, in general, and SPDRs and MidCap SPDRs, in particular, will offer investors an efficient way of participating in the securities markets. Specifically, the Commission believes that the trading on CHX of PDRs, in general, and SPDRs and MidCap SPDRs pursuant to unlisted trading privileges, in particular, will provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low-cost security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day, and by increasing the availability of SPDRs and MidCap SPDRs as an investment tool. The Commission also believes that PDRs will benefit investors by allowing them to trade securities based on unit investment trusts in secondary market transactions.[25] Accordingly, as discussed below, the proposed rule change is consistent with the requirements of Section 6(b)(5) that Exchange rules facilitate transactions in securities while continuing to further investor protection and the public interest.[26]

[20] The creation of PDRs in connection with the DTC DRS represents the only circumstances under which PDRs can be created in other than Creation Unit size aggregations.

[21] *See supra* note 4.

[22] The Commission notes that any imposition of fees would have to be in compliance with the Act, including the filing requirements under Section 19(b) of the Act. *See infra* note 34 and accompanying text.

[23] Additionally, Amex believes it is problematic to apply the current ITS trade-through rule to index-based securities such as SPDRs that trade in 1/64th increments. In addition, Amex believes that the trade through rule's five minute time frame for making a compliant is inappropriately long for these securities.

[24] 15 U.S.C. 78f(b)(5).

[25] The Commission notes, however, that unlike open-end funds where investors have the right to redeem their fund shares on a daily basis, investors could only redeem PDRs in creation unit share sizes. nevertheless, PDRs would have the added benefit of liquidity from the secondary market and PDR holders, unlike holders of most other open-end funds, would be able to dispose of their shares in a secondary market transaction.

[26] In approving this rule, the Commission notes that it has considered the proposed rule's impact on

As the Commission noted in the orders approving SPDRs and MidCap SPDRs for listing and trading on Amex,[27] the Commission believes that the trading on CHX of a security like PDRs in general, and SPDRs and MidCap SPDRs in particular, which replicate the performance of a broad portfolio of stocks, could benefit the securities markets by, among other things, helping to ameliorate the volatility occasionally experienced in these markets. The Commission believes that the creation of one or more products where actual portfolios of stocks or instruments representing a portfolio of stocks, such as PDRs, can trade at a single location in an auction market environment could alter the dynamics of program trading, because the availability of such single transaction portfolio trading could, in effect, restore the execution of program trades to more traditional block trading techniques.[28]

An individual SPDR has a value approximately equal to one-tenth of the value of the S&P 500 Index, and an individual MidCap SPDRs has a value of approximately one-fifth of the value of the S&P MidCap 400 Index, making them more available and useful to individual retail investors desiring to hold a security replicating the performance of a broad portfolio of stocks. Accordingly, the Commission believes that trading of SPDRs and MidCap SPDRs on CHX will provide retail investors with a cost efficient means to make investment decisions based on the direction of the market as a whole and may provide market participants several advantages over existing methods of effecting program trades involving stocks.

The Commission also believes that PDRs, in general, and SPDRs and MidCap SPDRs, in particular, will provide investors with several advantages over standard open-end S&P 500 Index and S&P MidCap 400 Index mutual fund shares. In particular, investors will have the ability to trade PDRs continuously throughout the business day in secondary market transactions at negotiated prices.[29] In contrast, pursuant to Investment Company Act Rule 22c–1,[30] holders and prospective holders of open-end mutual fund shares are limited to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors.[31] Accordingly, PDRs in general, and SPDRs and MidCap SPDRs in particular, will allow investors to (1) Respond quickly to changes in the market; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; and (4) reduce transaction costs for trading a portfolio of securities.

Although PDRs in general, and SPDRs and MidCap SPDRs in particular, are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will still be derived and based upon the securities held in their respective Trusts. In essence, SPDRs are equity securities that are priced off a portfolio of stocks based on the S&P 500 Index and MidCap SPDRs are equity securities that are priced off a portfolio of stocks based on the S&P MidCap 400 Index. Accordingly, the level of risk involved in the purchase or sale of a SPDR or MidCap SPDR (or a PDR in general) is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for SPDRs and MidCap SPDRs (and PDRs in general) is based on a basket of stocks. Nonetheless, the Commission has several specific concerns regarding the trading of these securities. In particular, PDRs raise disclosure, market impact, and secondary market trading issues that must be addressed adequately. As discussed in more detail below, and in the Amex Approval Order,[32] the Commission believes CHX adequately addresses these concerns.

The Commission believes that the CHX proposal contains several provisions that will ensure that investors are adequately apprised of the terms, characteristics, and risks of trading PDRs. As noted above, the proposal contains four aspects addressing disclosure concerns. First, CHX members must provide their customers trading PDRs with a written explanation of any special characteristics and risks attendant to trading such PDR securities (such as SPDRs or MidCap SPDRs), in a form approved by CHX. As discussed above, CHX's filing states that SPDRs and MidCap SPDRs product descriptions should be obtained from Amex. The Commission notes that although Amex commented on CHX's proposed method regarding the delivery of the SPDR and MidCap SPDR product descriptions, and reserved the right to charge CHX members for supplying the product description should the task become burdensome to Amex, Amex did not object to the underlying policy of CHX members obtaining the product description from Amex. The Commission believes that it is reasonable under the Act to allow CHX to require its members to obtain the product description for SPDRs and MidCap SPDRs from Amex.[33] Amex might decide to impose a reasonable charge for this service.[34] The Commission also notes that Amex states that the SPDR and MidCap SPDR product descriptions are only available from Amex, not the Distributor, and therefore CHX members cannot obtain them from the Distributor.

Second, members and member organizations must include this written product description with any sales material relating to the series of PDRs that is provided to customers or the

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[27] *See supra* notes 12 and 14.

[28] Program trading is defined as index arbitrage or any trading strategy involving the related purchase or sale of a ''basket'' or group of fifteen or more stocks having a total market value of $1 million or more.

[29] Because of potential arbitrage opportunities, the Commission believes that PDRs will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of a PDR comparable to its net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Commission believes that Trust will tract the underlying index more closely than an open-end index fund because the Trust will accept only in-kind deposits, and, therefore, will not incur brokerage expenses in assembling its portfolio. In addition, the Trust will redeem on in kind, thereby enabling the Trust to invest virtually all of its assets in securities comprising the underlying index.

[30] Investment Company Act Rule 22c–1 generally requires that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security, may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted SPDRs and MidCap SPDRs and exemption from this provision in order to allow them to trade at negotiated prices in the secondary market. The Commission notes that CHX would need to apply for a similar exemption in the instance that it wishes to list and trade a new PDR because the exemptions are specific to SPDRs and MidCap SPDRs.

[31] *Id.*

[28] *See supra* note 12.

[33] The Commission notes that the exemptions granted by the Commission under the Investment Company Act that permit the secondary market trading of SPDRs and MidCap SPDRs are specifically conditioned upon the customer disclosure requirements described above. Accordingly, CHX rules adequately ensue its members must deliver the current product description to all investors in SPDRs and MidCap SPDRs.

[34] The Commission notes that Amex would need to file proposed rule change under Section 19(b) of the Act in the event it decides to charge a fee for supplying the SPDR of MidCap SPDR product descriptions. The Commission notes that reasonable fees would have to be imposed on the member firms rather than the customers entitled to receive the prospectus or the product description.

public. Third, any other written materials provided by a member or member organization to customers or the public referencing PDRs as an investment vehicle must include a statement, in a form specified by CHX, that a circular and prospectus are available from a broker upon request. Fourth, a member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of PDRs for such omnibus account will be deemed to constitute agreement by the non-member to make the written product description available to its customers on the same terms as member firms. Accordingly, the Commission believes that investors in PDR securities, in general, and SPDRs and MidCap SPDRs, in particular, will be provided with adequate disclosure of the unique characteristics of the PDR instruments and other relevant information pertaining to the instruments.

Finally, under CHX's proposal there will be no special account opening or customer suitability rules applicable to the trading of PDRs.[35] Nevertheless, pursuant to CHX Rules Article VIII, Rule 17, CHX's equity rule governing account opening will apply. In addition, the Commission notes that CHX intends to file a proposed rule change to create a rule that would require members, before recommending any transactions in securities, to use due diligence to learn the essential facts relative to every customer, every order, and every account accepted by the member. Upon adoption of this rule, it would apply to recommendations in PDRs generally, including transactions in SPDRs and MidCap SPDRs.

The Commission believes CHX has adequately addressed the potential market impact concerns raised by the proposal. First, CHX's proposal permits listing and trading of specific PDRs only after review by the Commission. Second, CHX has developed policies regarding trading halts in PDRs. Specifically, the Exchange would halt PDR trading if the circuit breaker parameters under CHX Article IX, Rule 10A were reached.[36] In addition, in deciding whether to halt trading or conduct a delayed opening in PDRs, in general, and SPDRs and MidCap SPDRs, in particular, CHX represents that it will be guided by, but not necessarily bound to, relevant stock index option trading rules. Specifically, consistent with CHX Article XXXVI, Rule 19, CHX may consider whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Commission believes that the trading of PDRs in general on CHX should not adversely impact U.S. securities markets. As to the trading of SPDRs and MidCap SPDRs pursuant to UTP, the Commission notes that the corpus of the SPDR Trust is a portfolio of stocks replicating the S&P 500 Index, a broad-based capitalization-weighted index consisting of 500 of the most actively-traded and liquid stocks in the U.S.. The corpus of the MidCap SPDR Trust is a portfolio of stocks replicating the S&P MidCap 400 Index, also a broad-based, capitalization-weighted index consisting of 400 actively traded and liquid U.S. stocks. In fact, as described above, the Commission believes SPDRs and MidCap SPDRs may provide substantial benefits to the marketplace and investors, including, among others, enhancing the stability of the markets for individual stocks.[37] Accordingly, the Commission believes that SPDRs and MidCap SPDRs do not contain features that will make them likely to impact adversely the U.S. Securities markets, and that the addition of their trading on CHX pursuant to UTP could produce added benefits to investors through the increased competition between other market centers trading the product.

Finally, the Commission notes that CHX has submitted surveillance procedures for the trading of PDRs, specifically SPDRs and MidCap SPDRs, and believes that those procedures, which incorporate and rely upon existing CHX surveillance procedures governing equities, are adequate under the Act.

The Commission finds that CHX's proposal contains adequate rules and procedures to govern the trading of PDR securities, including trading SPDRs and MidCap SPDRs pursuant to UTP. Specifically, PDRs are equity securities that will be subject to the full panoply of CHX rules governing the trading of equity securities on CHX, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists. In addition, CHX has developed specific listing and delisting criteria for PDRs that will help to ensure that the markets for PDRs will be deep and liquid. As noted above, CHX's proposal provides for trading halt procedures governing PDRs. Finally, the Commission notes that CHX has stated its intention to file a rule requiring members, prior to recommending a transaction in any security, to use due diligence to learn the essential facts relative to the customer, every order, and every account accepted by the member.

As mentioned earlier, the trading of SPDRs and MidCap SPDRs will not be subject to ITS for a brief period of time until ITS can accommodate trading in increments of 1/64ths. In most instances, the Commission would predicate the trading of an equity product on more than one exchange on application of relevant ITS rules and procedures. In this instance, however, the delay in ITS implementation will be very brief.[38] The Commission believes that the procedures specified by CHX to replace the ITS trade-through rule during this brief period will help ensure that a customer receives the best price for a transaction in SPDRs or MidCap SPDRs among the market centers that

[35] This reflects the fact that PDRs are equity products and not an options product, and, therefore, do not necessitate the imposition of options-like rules.

[36] In addition, for PDRs tied to an index, the triggering of futures price limits for the S&P 500 Index, S&P 100 Index, or MMI futures contracts will not, in itself, result in a halt in PDR trading or a delayed opening. However, the Exchange could consider such an event, along with other factors, such as a halt in trading in OEX, SPX, or MMI options, in deciding whether to halt trading in PDRs.

[37] Even though PDR transactions may serve as substitutes for transactions in the cash market, and possibly make the order flow in individual stocks smaller than would otherwise be the case, the Commission acknowledges that during turbulent market conditions the ability of large institutions to redeem or create PDRs could conceivably have an impact on price levels in the cash market. In particular, if a PDR is redeemed, the resulting long stock position could be sold into the market, thereby depressing stock prices further. The Commission notes, however, that the redemption or creation of PDRs likely will not exacerbate a price movement because PDRs will be subject to the equity margin requirements of 50% and PDRs are non-leveraged instruments. In addition, as noted above, during turbulent market conditions, the Commission believes PDRs and SPDRs and MidCap SPDRs, in particular, will serve as a vehicle to accommodate and ''bundle'' order flow that otherwise would flow to the cash market, thereby allowing such order flow to be handled more efficiently and effectively. Accordingly, although PDRs and SPDRs and MidCap SPDRs could, in certain circumstances, have an impact on the cash market, on balance we believe the product will be beneficial to the marketplace and can actually aid in maintaining orderly markets.

[38] The ITS Operating Committee has indicated that it will be able to accommodate 64ths after its September 18, 1997 meeting. Consequently, the discussion regarding alternatives to ITS will only need to be used for an extremely short period of time. If ITS cannot handle 64ths after the next meeting, the Commission still expects ITS to be made available for SPDRs for messages in increments of 16ths or greater until ITS can accommodate 64ths.

trade the products. In particular, CHX's BEST Rule, which will apply to the trading of SPDRs and MidCap SPDRs, guarantees the execution of agency orders from 100 shares up to 2099 shares at the best bid or offer on any ITS market center that trades SPDRs and MidCap SPDRs. In addition, CHX specialists will have the ability to monitor the current SPDR and MidCap SPDR quotations disseminated by Amex through the Consolidated Quotation System. Finally, CHX specialists will have the ability to place limit orders on the Amex specialist's book or send market orders to the Amex specialist for execution against the Amex specialist's quote, through Amex's PER System (although through a correspondent firm). Though not as efficient as full ITS access, these alternative procedures are reasonable given the very short time until ITS accepts 64ths.

The Commission believes that Amex's statements in its comment letter regarding the trading of SPDRs and MidCap SPDRs through ITS should be resolved, as the Amex letter suggests, through the proper ITS committee, not through Commission action on the CHX proposal. Otherwise, the ITS process could be used to prevent action on the CHX's proposal for competitive reasons.[39]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[40] that the proposed rule change (SR–CHX–97–6) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[41]

Margaret H. McFarland,

Deputy Secretary.

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[39] The Commission does not want to suggest that Amex's concerns are unfounded, but only that the proper venue for their resolution is the proper ITS committee, not the Rule 19b–4 process.

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39070; File No. SR–DTC–97–10]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Certificate of Deposit Early Redemption Service

September 12, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 3, 1997, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will modify DTC's existing Certificate of Deposit Early Redemption Service (''CERR'') to allow participants to transmit certificate of deposit (''CD'') early redemption instructions by electronic delivery rather than by delivery of hardcopy forms (*i.e.,* paper).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, DTC participants redeeming CDs prior to maturity must process such transactions through DTC's Voluntary Offering Program. These participants submit early redemption instructions to DTC by way of a hardcopy Voluntary Offering Instruction Form (''VOI Form'') which must be accompanied by any additional required documentation.[3] Upon receipt of early redemption instructions, DTC debits the participant's general free account and enters a corresponding credit in the same account using a contra-CUSIP number. When DTC receives the proceeds of an early redemption from the issuer, DTC credits the principal amount and any accrued interest minus any applicable penalty for early redemption to the participant's settlement account.

DTC proposes to modify CERR by offering participants the ability to transmit early redemption instructions to DTC electronically through DTC's Participant Terminal System (''PTS''). DTC will modify its already existing PTS function, the Reorganization Inquiry for Participants System (''RIPS''), to offer information regarding early redemption[4] such as: (i) a CD's eligibility for processing through CERR; (ii) the last date prior to maturity on which an issuer will accept a CD for early redemption; and (iii) whether or not an issuer requires the immediate submission of documents supporting an exempt early redemption. In addition, DTC will add a CERR function to PTS through which participants will be able to transmit early redemption instructions electronically to DTC.

In order to submit an early redemption instruction to DTC electronically, a participant will input information into CERR, including (i) the quantity of the eligible securities to be

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] When a CD is redeemed prior to maturity, the beneficial owner of the CD is charged an early withdrawal fee unless the beneficial owner is deceased or has been adjudicated incompetent (or for any other reason listed in the applicable trust agreement or bond indenture). If the early withdrawal request is based on one of those circumstances, the early withdrawal fee is waived, and the early redemption is considered ''exempt.'' Some issuers require owners seeking an exempt early redemption to submit documentation substantiating the exemption. Such documentation presently is submitted to DTC by participants with the VOI form.

[4] DTC has advised the Commission that the RIPS procedures currently contain the following provision which will also be applicable to CD early redemption information on RIPS:

The information provided by means of the RIPS function is based upon communications (whether oral or written) received by DTC from a variety of sources, and DTC does not represent that such information is accurate, or adequate or fit for any particular purpose. DTC shall not be liable for (1) any loss resulting directly or indirectly from mistakes, omissions, interruptions, delays, errors or defects arising from or related to the information provided on the RIPS function, and (2) any special, consequential, exemplary, incidental, or punitive damages. The information provided in the RIPS function with respect to a particular reorganization activity is subject to change at any time without prior notice.

redeemed, (ii) customer information, (iii) information required by the issuer, (iv) whether the early redemption is exempt or nonexempt, and (v) if exempt, details regarding the circumstances supporting the exemption.[5] Next, the participant will transmit the early redemption instructions after which CERR will report any editing errors to the participant and will determine whether the participant's general free account contains a position sufficient to cover the instruction.[6] After the submitted information is verified, the participant will be required to transmit the information to DTC again. By transmitting the instruction the second time, the participant will be acknowledging that the information inputted is correct and that the participant agrees to maintain and submit, if requested within thirty months from the date of redemption, documentation supporting an exempt early redemption. If an issuer requires that documentation be submitted prior to early redemption, the participant must also acknowledge that it will provide such documentation to DTC within five business days from the date of the instruction.

Upon receipt of an electronic early redemption instruction, DTC will deduct the securities from the participant's general free account and add the securities to the participant's reorganization account. If the issuer requires the participant to submit documentation supporting an exempt early redemption, the instruction will spend until the fifth business day from the date of the instruction.[7] Participants may determine the status of an early redemption instruction by using an inquiry function on CERR PTS.

When DTC receives the proceeds of a CD early redemption, DTC will promptly credit the funds to the participant's settlement account and debit the participant's reorganization account. If the issuer rejects the presentment, DTC will endeavor to determine the reason for the rejection, convey this information to the participant, and restore the position to the participant's general free account.

All early redemption instructions, whether exempt or not, will be subject to acceptance by the issuer. Therefore, it is possible that a presentment could be rejected by the issuer because the CD does not provide for early redemption. If DTC is able to identify such CDs itself, the RIPS function will indicate that the CD does not have an early redemption privilege and will automatically prevent a participant from entering early redemption instructions for such CDs.

DTC does not believe that it is feasible to determine whether all of the 20,000 CDs currently eligible for services at DTC provide for early redemption. Therefore, a participant's early redemption instruction ultimately may be rejected by the issuer even if it initially is accepted for processing by CERR. When such a rejection occurs, DTC will convey the reason for the rejection to the participant and will restore the position to the participant's general free account.

DTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act[8] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has not solicited or received any comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(e)(4) thereunder[10] because it effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–97–10 and should be submitted by October 10, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[5] Under the existing system, participants must submit any documentation required to support as exempt early redemption in hardcopy along with the early redemption instruction. However, under the CERR PTS function the participant requesting early redemption will not be required to submit such documentation in hardcopy at the time of the early redemption instruction but must agree to supply such information to DTC if requested by the issuer within thirty months of the early redemption. If a participant fails to provide such documentation to DTC when requested to do so within such thirty-month period, DTC will charge the participant the amount of the nonexempt early redemption fee and will remit the proceeds to the issuer.

[6] If the participant does not have a position sufficient to support the instruction, the instruction will be dropped because instructions submitted through the CERR PTS function are not subject to DTC's recycle procedures. Accordingly, participants will be required to monitor their general free account and enter a new instruction once a position sufficient to satisfy the instruction is available.

[7] If DTC has not received the required supporting documents by the end of the fifth business day, the instruction will be dropped.

[8] 15 U.S.C. 78q–1(b)(3)(A).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(e).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39071; File No. SR–DTC–97–09]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change Regarding the Custody Service for Non-Depository Eligible Securities

September 12, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 4, 1997, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow DTC to enter into contracts with individual participants to provide customized custodian, transaction, and related processing services under DTC's custody service for certain securities which are not depository eligible (''custody service'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule change

DTC's custody service, which has been approved by the Commission, currently offers custodian, transaction, and related processing services to participants in connection with certain securities which are not depository eligible (*i.e.*, securities with certain transfer restrictions).[3] DTC has advised the Commission that some participants that have shown an interest in the custody service have requested customization of the custody service in order to meet their individual needs.[4] The purpose of the proposed rule change is to permit DTC to enter into contracts with individual participants to provide such customized processing services under the custody service. However, under the proposed rule change DTC would not be obligated to enter into any such contracts with participants or to offer the same terms under any such contracts to all participants.[5]

DTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act[6] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

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 DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–97–09 and should be submitted by October 10, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24859 Filed 9–18–97; 8:45 am]

BILLING CODE 8010–01–M

[1] 1 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For a more detailed description of DTC's custody service, refer to Securities Exchange Act Release Nos. 38561 (April 30, 1997), 62 FR 25008 [File No. SR–DTC–97–01] (order approving proposed rule change implementing the dividend processing phase of DTC's custody service) and 37314 (June 14, 1996) 61 FR 31989 [File No. SR–DTC–96–08] (order approving proposed rule change establishing DTC's custody service).

[4] For example, DTC has advised the Commission that one participant has requested that DTC develop a certain imaging functionality in connection with that participant's use of the custody service. However, that specific service would not be used by other participants that utilize the custody service.

[5] DTC has advised the Commission that it will charge fees for customization of custody service based on a consistently applied methodology

[6] 15 U.S.C. 78q–1(b)(3)(A).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39075; File No. SR–DTC–97–13]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change Regarding the Branch Deposit Service

September 12, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] notice is hereby given that on June 30, 1997, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow DTC to enter into contracts with individual participants to provide customized processing services under DTC's branch deposit service (''BDS'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

BDS currently allows DTC participants to route securities certificates and related documentation from their branches and other satellite offices directly to DTC rather than to the participants' own central locations for processing before being deposited at DTC.[3] DTC has advised the Commission that some participants have requested customization of BDS in order to suit their individual needs.[4] The purpose of the proposed rule change is to permit DTC to enter into contracts with individual participants to provide such customized processing services under BDS. Under the proposed rule change, however, DTC would not be obligated to enter into any such contracts with participants or to offer the same terms under any such contracts to all participants.[5]

DTC believes that the proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act[6] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

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 DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–97–13 and should be submitted by October 10, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24969 Filed 9–18–97; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For a complete description of BDS, refer to Securities Exchange Act Release No. 34600 (August 25, 1994), 59 FR 45317 [File No. SR–DTC–94–05] (order approving proposed rule change).

[4] For example, DTC has advised the Commission that one participant has requested that DTC develop a certain imaging functionality for BDS. That specific service, however, would not be used by other participants that utilize BDS.

[5] DTC has advised the Commission that it will charge fees for customization of BDS based on a consistently applied methodology.

[6] 15 U.S.C. 78q–1(b)(3)(A).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39066; File No. SR–GSCC–97–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change To Modify Rules Relating to the Loss Allocation Process

September 12, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 8, 1997, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') and on July 23, 1997, amended the proposed rule change (File No. SR–GSCC–97–05) as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify GSCC rules relating to its loss allocation process.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries submitted by GSCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC's loss allocation process is designed to provide members with incentives to assess the creditworthiness of their counterparties. Thus, to the extent that GSCC, using its own capital, does not absorb the loss that results from a member default, it allocates the loss among members pro rata based on the extent of their recent activity with the defaulting member. In order to determine which members will be subject to loss allocation, GSCC will look at trading activity that entered GSCC's netting system during as many days as is necessary to reach a level of activity that is equal to or greater than five times the dollar value of the liquidated positions.

Over the years, a number of members and prospective members have raised an issue regarding the application of the loss allocation process for losses arising from blind brokered transactions. Their concern is that members that are not interdealer brokers neither have knowledge nor have control over whether they may be matched against any other member. Thus, they have no ability to limit the amount of trading that they do on a blind basis against a member on which they would otherwise place trading limits for credit or other reasons. The concern by a dealer firm over the inability to exercise control from a credit perspective over its trading activity with particular counterparties has been heightened with last year's introduction of blind brokering activity involving repurchase agreement transactions.

GSCC believes that while the possibility of a loss allocation occurring is de minimis the concern over bearing a disproportionate amount of loss is a legitimate one that needs to be addressed. Among other methods, GSCC considered simply mutualizing among all netting members, either in an equal or pro rata manner, any loss allocation arising from blind brokered activity. The disadvantage of this approach is that it removes any incentive for a member to assess the creditworthiness of one's counterparties. GSCC believes that the loss allocation process should continue to function in a manner that preserves to some extent this incentive.

In order to balance these considerations, GSCC is seeking authority to cap at a preset level the degree to which any netting member that is not an interdealer broker is liable for loss allocation arising from blind brokered activity.[3] The proposed cap per loss event will be equal to the lesser of $5 million or five percent of the total loss amount arising from blind brokered activity that is allocated to members that are not interdealer brokers as a group. To the extent that this cap is applicable, any amounts not collected from individual netting members will be reallocated to the entire netting membership pro rata based on each member's average daily clearing fund deposit requirement over the twelve month period prior to the insolvency.

GSCC believes that the $5 million cap will provide to all members the same level of protection that interdealer broker members currently have for blind brokered activity. GSCC also states that because dealer members do not control the degree to which they may be matched by interdealer brokers against other members, the number of trades that they engage in with an insolvent member is outside of their control. The 5% limit is intended to compensate for this lack of control by ensuring that no single member will be liable for an amount of loss for blind brokered activity that is significantly greater than the amount of loss allocated to other dealer members.

GSCC believes the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because the rule proposal will promote the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds in the custody or control of GSCC or for which GSCC is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

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 GSCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submission should refer to the file number SR–GSCC–97–05 and should be submitted by October 10, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24860 Filed 9–18–97; 8:45 am]

BILLING CODE 8010–01–M

[3] Interdealer broker netting members already have a $5 million cap per loss event on their liability for loss allocation.

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39054; File No. SR–GSCC–97–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Implementation of a Fine Schedule

September 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] notice is hereby given that on May 21, 1997, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–GSCC–97–04) as described in Items I, II, and II below, which items have been prepared primarily by GSCC. 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 proposed rule change will implement a fine schedule in order to ensure compliance by members with deadlines for payment of funds settlement debts and satisfaction of clearing fund deposit deficiency calls. The fine schedule is attached as Exhibit 1 to this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of the 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. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC believes that the most critical elements of its risk management process are the timely collections of mark-to-market and clearing fund margin amounts. Therefore, it is essential for GSCC to ensure the compliance by netting members with GSCC's deadlines for payment of funds settlement debits and satisfaction of clearing fund deposit deficiency calls. Failures to meet these deadlines result in increased exposure as well as potentially higher costs to GSCC and its members.

Currently, members must pay funds-only settlement obligations via GSCC's designated depository institution in Fed funds by 10:00 a.m. In addition, members must satisfy clearing fund deficiencies within two hours after notification from GSCC. Typically, GSCC telephones its members by 8:30 a.m. to notify members of a call for an additional clearing fund deposit. The telephone call is followed up by telefax. The exact time that the telephone call is made is recorded and becomes the formal time that the call is made. Therefore, the usual deadline for satisfaction of a clearing fund deficiency is around 10:30 a.m.[3]

In order to promote greater compliance with GSCC's funds debit and deficiency call deadlines, the proposed rule change will implement a fine schedule.[4] According to GSCC, the fine schedule will enable it to assess predetermined monetary penalties against members who fail to meet their financial responsibilities on a timely basis. The severity of any fine will be a function of the magnitude and recent history of the subject member's late payments. In addition, the proposed rule change will eliminate the current limitation of $5,000 on the maximum size of any single fine GSCC may impose.

GSCC proposes to implement the fine schedule as it relates to late payment of a funds-only settlement obligation concurrently with the establishment of an ''autodebit'' arrangement, which will be the subject of a future rule filing. The autodebit arrangement involves an agreement between GSCC and participating banks that allows GSCC to use the banks to effect timely cash payments between it and participating netting members in settlement of their morning funds-only settlement obligations with GSCC. GSCC believes that this arrangement will being more certainty and will increase the timeliness of payment of funds-only settlement obligations with GSCC. Netting members that participate appropriately in the autodebit process will not be subject to fines for late payment of funds settlement obligations.

GSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[5] and the rules and regulations thereunder because it will assure the safeguarding of securities and funds which are in the custody or control of GSCC or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the filing of the proposed rule change and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

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 GSCC 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 submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of this submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–97–04 and should be submitted by October 10, 1997.

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] Recently, GSCC released a White Paper to its members and other interested parties that discussed various initiatives GSCC plans to implement in the coming years. Among other things, GSCC outlined future plans to enhance its risk management process by conducting a second afternoon funds-only settlement and by calculating and collecting clearing fund margin more dynamically.

[4] A copy of GSCC's fine schedule is attached as Exhibit A to the proposed rule change, which is available for inspection and copying at the Commission's Public Reference Room or through GSCC.

[5] U.S.C. 78q–1(b)(3)(F).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

Exhibit 1—GSCC Fine Schedule

LATE PAYMENT OF FUNDS SETTLEMENT DEBIT/LATE SATISFACTION OF CLEARING FUND DEFICIENCY CALL

Amount	First occasion	Second occasion	Third occasion	Any lateness more than 1 hour or fourth occasion
$1 to $100M	(1)	$100	$200	$500
Greater than $100M to $1MM	(1)	300	600	1,000
Greater than $100MM to $2MM	(1)	600	1,200	2,000
Greater than $2MM	$250	1,000	2,000	3,000

Notes

(1) A warning letter is sent to senior officials of the offender describing the nature of the violation and the consequences of successive violations.

(2) Each instance of late payment of a funds settlement debit or late satisfaction of a Clearing fund deficiency call is deemed to be a separate occasion. Such instances are combined, regardless of type, to determine the number of occasions.

(3) The number of occasions is determined over a moving 30 calendar-day period beginning with date of the first occasion.

(4) A specific determination will be made by the Membership & Standards Committee of the Board of Directors when the number of occasions exceeds four, or when the number of occasions of lateness of more than an hour exceeds two.

(5) The Membership & Standards Committee reserves the discretion to waive or reduce scheduled fines when a particular occasion is not deemed to be the fault of the affected member.

[FR Doc. 97–24862 Filed 9–18–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39060; File No. SR–GSCC–97–03]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Eligibility of Forward-Starting Repos for Netting and Guaranteed Settlement Prior to Their Scheduled Start Date

September 11, 1997.

On May 8, 1997, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') and on June 13, 1997, amended a proposed rule change (File No. SR–GSCC–97–03) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act).[1] Notice of the proposal was published in the **Federal Register** on July 30, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change amends several of GSCC's rules to make transactions in forward-starting repurchase agreements (''repos'') eligible for netting and guaranteed settlement before they reach their scheduled start date.[3] Previously, forward-starting repos were not eligible for netting and guaranteed settlement until they reach their scheduled settlement date.

Since November 1995, GSCC has provided netting services for repo transactions.[4] After GSCC nets repo transactions, it interposes itself between the submitting participants for transaction settlement purposes as it does for cash transactions. In doing so, GSCC guarantees settlement of all repos that enter its netting system. GSCC's guarantee for netted repos includes guaranteeing the return of repo collateral to repo participants, the return of principal (*i.e.*, repo start amount) to reverse participants, and the payment of repo interest to the full term of the repo to reverse participants.

Forward-starting repos generally are either: (1) ''specific collateral'' repos for which the underlying CUSIP is known from the date of execution of the repo, or (2) ''general collateral'' repos for which the specific security and par amount that will be transferred from the repo participant to the reverse participant on the start date are not known at the time of execution. Repo participants submitting to GSCC data on general collateral repo transactions will use one of the seventeen generic CUSIP numbers established by the CUSIP service bureau for identifying collateral. These CUSIP numbers identify the type of Government security (*e.g.*, bill, bond, or note) and indicate the remaining length to maturity for the issue. In addition, the par amount of the underlying collateral is no longer an item that must be included when the repo is submitted to GSCC. This will allow GSCC to match submitted trades in general collateral forward-starting repos upon their submission to GSCC without inclusion of the par amount. The parties to a general collateral forward-starting repo have the obligation to inform GSCC when the specific CUSIPs and associated par values that will be used for settlement purposes are determined. The notification must be made to GSCC no later than by the close of business on the business day prior to the date on which the repo is scheduled to start.[5]

Until a forward-starting repo actually starts, the forward margin and clearing fund requirements applied to it will differ from those applied to all other repos. With regard to forward margin, because a forward-starting repo that has not yet started presents only interest rate exposure and not exposure to movements in the value of the underlying collateral, only an interest

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38871 (July 24, 1997), 62 FR 40877.

[3] Forward-starting repo transactions are repo transactions that have start legs settling one or more business days in the future.

[4] Each business day, all eligible repo transactions are netted with regular cash activity and Treasury auction purchases in the same CUSIP to establish a single net position in the security for each netting member participating in the repo netting process. For netting purposes, the settlements associated with repo close legs and reverse start legs are treated as long positions. The settlements associated with repo start legs and reverse close legs are treated as short positions. The difference between a participant's total short activity and its total long activity within a CUSIP is the participant's net position in the CUSIP.

[5] The notification must be made by submitting an ''intent to substitute'' notification that provides specific collateral details to GSCC using an on-line function (*i.e.*, a screen input facility) provided by GSCC. If one of the members that has submitted the data on the repo is a broker, GSCC will accept the ''intent to substitute'' notification solely from that broker without the need for a matching notification from the dealer counterparty. If neither of the members that submitted the data on the repo are brokers, GSCC will accept the ''intent to substitute'' notification from the member in the short or delivering position without the need for a matching notification from the dealer counterparty. However, GSCC will attempt to verify manually with the other member the accuracy of the details of the notification from the member with the short position.

rate mark-to-market will be applied.[6] This interest rate mark component will be calculated by multiplying the principal value of the repo first by a factor equal to the absolute difference between the system and contract repo rates and then by a fraction where the numerator is the number of calendar days from the scheduled start date of the repo until the scheduled close date for the repo and the denominator is 360. The interest rate mark differs from the financing mark applied to repos that have already started in that, because the exposure presented to GSCC is a pure rate risk exposure, it can be a debit to either the short side or the long side.[7] The clearing fund requirement for a forward-starting repo during its forward-starting period will be based solely on the interest rate mark.

In addition to the changes relating to forward-starting repos, the proposal clarifies that a right of substitution continues after GSCC novates the trade. Section 4 to Rule 18 specifies the method of substituting collateral. Should a repo participant want to implement a substitution, either it or its broker must submit an ''intent to substitute'' notification to GSCC using GSCC's on-line collateral substitution function. For money fill substitutions, the par amount and/or CUSIP may change, and for par fill substitutions, the principal, CSUIP, and/or end money may change. GSCC does not review the appropriateness of the substitute collateral. All movements associated with the substitution will be made through GSCC.

Regardless of the type of substitution, GSCC will maintain accrued interest information throughout the life of the repo across multiple collateral substitutions as required. GSCC also will reverse any previous mark-to-market and clearing fund monies calculated for the collateral being replace. These amounts will be recalculated using the security information for the replacement collateral.

Finally, the proposal makes eligible for GSCC's netting system repos with underlying collateral that matures on or prior to the scheduled close date by eliminating from the list of requirements for netting-eligibility the requirement that the maturity date of the underlying securities be on or later than the scheduled settlement date of the close leg. Section 6 of Rule 18 requires that if a repo participant has transferred securities as underlying collateral that mature prior to the settlement date of the close leg, that participant must substitute equivalent securities with a later maturity date prior to the business day before the maturity date.

II. Discussion

Section 17A(b)(3)(F) requires that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to ensure the safeguarding of securities and funds which are in the custody and control of the clearing agency or for which it is responsible.[8] The Commission believes that proposal will enhance GSCC's ability to clear and to settle forward-starting repos. GSCC will be better able to evaluate participants' true positions by including more of participants' pending positions in the margin and clearing fund calculations. By collecting funds based on a more accurate reflection of a participant's actual risk, the proposal assists GSCC in safeguarding securities and funds. By guaranteeing forward-starting repos earlier in the process, the proposal increases the likelihood that these trades will eventually settle.

Furthermore, by making forward-starting repos eligible for netting and guaranteed settlement, the proposal should increases the number of repos that will be cleared and settled through GSCC and should increase the utility of GSCC's clearance system. By enhancing the settlement process, GSCC's proposal is consistent with the prompt and accurate clearance and settlement of securities.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–97–03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24866 Filed 9–18–97; 8:45 am]

BILLING CODE 8010–01–M

[6] As a part of the morning funds-only settlement process, GSCC collects and passes through on a daily basis forward margin based on its ongoing exposure on each forward net settlement position. For repos, the market value is subtracted from the repo's contract value (*i.e.,* the amount of money that was exchanged for the collateral), and a debit or credit is established depending upon the result of the calculation and whether or not the participant is on the reverse or repo side of the transaction. The forward margin calculation for repos differs from that for cash market trades in that there is an additional financing mark component. The financing mark component reflects the fact that, if GSCC replaced the reverse side of the repo by buying securities and putting them out on repo, a financing cost would be incurred. The financing mark is debited to the reverse side and credited to the repo side.

[7] For repos for which the underlying collateral has already been exchanged, each day GSCC guarantees to the reverse repo party the interest payment on the principal amount. However, until the repo begins, GSCC only guarantees the difference between the agreed upon repo rate and the rate the party could receive in the open market.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39063; File No. SR–NASD–97–64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Small Order Execution System Tier Size Classifications

September 12, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 4, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. 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 NASD is submitting this filing to effectuate The Nasdaq Stock Market, Inc.'s (''Nasdaq'') periodic reclassification of Nasdaq National Market (''NNM'') securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through Nasdaq's Small Order Execution System (''SOES''). Specifically, under the proposal, 537 NNM securities will be reclassified into a different SOES tier size effective October 1, 1997. Since the NASD's proposal is an interpretation of existing NASD rules, there are no language changes.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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 rule change is to effectuate Nasdaq's periodic reclassification of NNM securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through SOES. Nasdaq periodically reviews the SOES tier size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of June 30, 1997, pursuant to the following established criteria: [2]

NNM securities with an average daily non-block volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers are subject to a minimum quotation size requirement of 1,000 shares and a maximum SOES order size of 1,000 shares;

NNM securities with an average daily non-block volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers are subject to a minimum quotation size requirement of 500 shares and a maximum SOES order size of 500 shares; and

NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price less than or equal to $250, and less than two market makers are subject to a minimum quotation size requirement of 200 shares and a maximum SOES order size of 200 shares.

Pursuant to the application of this classification criteria, 537 NNM securities will be reclassified effective October 1, 1997. These 537 NNM securities are set out in the NASD's *Notice To Members 97–61* (September, 1997).

In ranking NNM securities pursuant to the established classification criteria, Nasdaq followed the changes dictated by the criteria with three exceptions. First, an issue was not moved more than one tier size level. For example, if an issue was previously categorized in the 1,000-share tier size, it would not be permitted to move to the 200-share tier even if the reclassification criteria showed that such a move was warranted. In adopting this policy, Nasdaq was attempting to maintain adequate public investor access to the market for issues in which the tier size level decreased and help ensure the ongoing participation of market makers in SOES for issues in which the tier size level increased. Second, for securities priced below $1 where the reranking called for a reduction in tier size, the tier size was not reduced. Third, for the top 50 Nasdaq securities based on market capitalization, the SOES tier sizes were not reduced regardless of whether the reranking called for a tier-size reduction.

The NASD believes that the proposed rule change in consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the rules of the NASD governing the operation of The Nasdaq Stock Market be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. The NASD believes that the reassignment of NNM securities within SOES tier size levels will further these ends by providing an efficient mechanism for small, retail investors to execute their orders on Nasdaq and by providing investors with the assurance that they can effect trades up to a certain size at the best prices quoted on Nasdaq.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective immediately pursuant to section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4 because the reranking of NNM securities into appropriate SOES tier sizes was done pursuant to the NASD's stated policy and practice with respect to the administration and enforcement of an existing NASD rule. Further, in the SOES Tier Size Order, the Commission requested that the NASD provide this information as an interpretation of an existing NASD rule under section 19(b)(3)(A) of the Act.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–64 and should be submitted by October 10, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24863 Filed 9–18–97; 8:45 am]

BILLING CODE 8010–01–M

[2] The classification criteria is set forth in NASD Rule 4613(a)(2) and the footnote to NASD Rule 4710(g).

[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39053; File No. SR–Phlx–97–29]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto, by the Philadelphia Stock Exchange, Inc. Relating to Tier I Listing Standards

September 11, 1997.

I. Introduction

On June 25, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 Thereunder,[2] a proposed rule change to amend its Tier I listing standards.

The proposed rule change was published in the **Federal Register** on July 16, 1997.[3] No comments were received on the proposal. On July 22, 1997, the Phlx submitted Amendment No. 1 to the proposed rule change.[4] This order approves the proposal, as amended, and solicits comment on Amendment No. 1.

II. Description of the Proposal

In October, 1996, the National Securities Markets Improvement Act of 1996 [5] was signed into law. Among other provisions, the law amended section 18 of the Securities Act of 1933 (''Securities Act'') [6] to provide for exclusive federal registration for ''covered securities'' which are those securities listed on the New York Stock Exchange (''NYSE''), American Stock Exchange (''Amex'') or the National Market System of the Nasdaq Stock Market (''Nasdaq/NMS'') or on any other national securities exchange designated by the Commission to have substantially similar listing standards to those markets. On March 31, 1997, the Phlx petitioned the Commission to adopt a rule that would find Phlx Tier I listing standards to be substantially similar to those of the NYSE, Amex or Nasdaq/NMS and, therefore, entitle its listed Tier I securities to be considered covered securities.

The Commission recently proposed Rule 146(b) under section 18 of the Securities Act, which would designate certain securities as ''covered securities'' for purposes of this federal registration scheme.[7] In order for the Commission to designate the Phlx's Tier I securities as covered securities, however, it must first determine that its Tier I listing and maintenance standards are substantially similar to those of either the NYSE, Amex or Nasdaq/NMS. The Commission has noted that it preliminarily believes that the Phlx's Tier I standards differ in three areas from those of the NYSE, Amex, or Nasdaq/NMS. By this filing, the Phlx is amending its rules to make them substantially similar to those of the Amex in those three specified areas as set forth below.

First, Phlx Rule 803(e) is being amended to adopt additional listing standards for index warrants, currency warrants and currency index warrants. New subsection (2) requires that warrants have a term of between one and five years from the date of issuance. New subsection (3) imposes a minimum public distribution and market value requirement of 1,000,000 warrants with at least 400 public warrant holders and a minimum aggregate market value of $4,000,000. Finally, new subsection (9) requires that index warrants, currency warrants and currency index warrants be cash-settled in U.S. dollars.[8]

Second, the pre-tax income requirement for issuers of ''other securities'' in Rule 803(f)(2) is increased from $100,000 in three of the four prior fiscal years to $750,000 in its last fiscal year or in two of its last three fiscal years.[9] Other securities are hybrid securities which have features common to both equity and debt securities, yet do not fit within the traditional definitions of either.

Finally, Exchange Rule 810(a), which contains the maintenance standards for Tier I securities, is amended to add maintenance standards for bonds, notes and debentures. The proposed Rule requires that debt securities maintain an aggregate market value or principal amount of bonds that are publicly held of $400,000 and requires the issuer to be able to meet its obligations in the listed debt securities. Also, for any debt security convertible into a listed equity security, the debt security will be reviewed when the underlying equity security is delisted and will be delisted when the underlying equity security is no longer subject to real-time trade reporting in the United States. In addition, if common stock is delisted for violation of any of the corporate governance criteria in Exchange Rules 812 through 899, the Exchange also will delist any listed debt securities convertible into the common stock.[10]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [11] and the rules and regulation thereunder. Specifically, the Commission finds that the proposed rule change is consistent with the section 6(b)(5) [12] requirement that the rules of an exchange be 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.[13]

The Commission believes that the amendments to the Phlx's listing and maintenance standards should protect investors in a number of ways. First, the addition of minimum distribution and aggregate market value requirements to the listing standards for currency, currency index and stock index warrants will help to ensure the depth and liquidity of the market for warrants listed on the Exchange. In addition, limiting the term of maturity of these products to no greater than five years should protect investors from the credit risk of the issuer's ability to pay at the expiration of the warrant term. Second, increasing the pre-tax income requirement for issuers of ''other securities'' will protect investors by increasing the minimum financial requirements for issuers of ''other securities,'' thus reducing the likelihood of default. Third, the addition of maintenance requirements for bonds, notes and debentures protects investors

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 38825 (July 9, 1997), 62 FR 38180 (July 16, 1997).

[4] *See* Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to David Sieradzki, Attorney, SEC (July 17, 1997) (''Amendment No. 1''). In Amendment No. 1, the Phlx added a new subsection (9) to Rule 803(e) requiring that currency, currency index and stock index warrants be cash-settled in U.S. dollars.

[5] Pub. L. 104–290, Stat. 3416 (1996).

[6] 15 U.S.C. 77s.

[7] Securities Exchange Act Release No. 38728, Securities Act Release No. 7422 (June 10, 1997), 62 FR 32705 (June 17, 1997).

[8] *See* Amendment No. 1, *supra* note 4. These provisions are substantially similar to sections 106 (b) and (c) of the Amex Company Guide.

[9] This provision is substantially similar to section 107 and, by reference, section 101(b) of the Amex Company Guide.

[10] These provisions are substantially similar to section 1003 (b)(iii) and (e) of the Amex Company Guide.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b) (5).

[13] In approving these rules, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation, 15 U.S.C. 78c(f).

by helping to ensure that issuers of such securities continue to meet minimum financial standards and maintain the ability to make interest and principal payments as they come due. Finally, the review of a convertible bond when the underlying security is delisted and the requirement that convertible debt be automatically delisted if the underlying security is delisted for violation of corporate governance rules will help to ensure that issuers will be unable to avoid the effect of a delisting of an equity security by continuing to list a bond convertible into the delisted security.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 does not change the nature of the proposal, but merely codifies a current Exchange practice of requiring that currency, currency index and stock index warrants be cash-settled in U.S. dollars. Further, the Commission notes that the original proposal was published for the full 21-day comment period and no comments were received by the Commission. Accordingly, the Commission believes it is consistent with sections 19(b)(2) and 6(b)(5) of the Act to approve Amendment No. 1 to the Exchange's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–97–29 and should be submitted by October 10, 1997.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Phlx–97–29) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24864 Filed 9–18–97; 8:45 am]

BILLING CODE 8010–01–M

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a) (12).

SMALL BUSINESS ADMINISTRATION

Region IV Jacksonville, Florida District; Advisory Council Meeting, Public Meeting

The U.S. Small Business Administration Jacksonville, Florida District Advisory Council will hold a public meeting from 12:00 p.m. to 2:00 p.m., October 9, 1997, at the District Office conference room, 7825 Baymeadows Way, Suite 100–B, Jacksonville, Florida, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Claudia D. Taylor, U.S. Small Business Administration, 7825 Baymeadows Way, Suite 100–B, Jacksonville, Florida 32256–7504, telephone (904) 443–1933.

Dated: September 12, 1997.

Eugene Carlson,

Associate Administrator, Office of Communications & Public Liaison.

[FR Doc. 97–24889 Filed 9–18–97; 8:45 am]

BILLING CODE 8025–01–U–M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Augusta, Maine, will hold a public meeting at 9:30am on Tuesday, September 23, 1997, in the Edmund S. Muskie Federal Building, Room 512, 40 Western Avenue, Augusta, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Roy Perry, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine, 04330, telephone number 207–622–8242.

Eugene Carlson,

Associate Administrator, Office of Communication & Public Liaison.

[FR Doc. 97–24888 Filed 9–18–97; 8:45 am]

BILLING CODE 8025–01–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee for Electronics and Instrumentation (ISAC 5)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee for Electronics and Instrumentation (ISAC 5) will hold a meeting on October 15, 1997 from 9:00 a.m. to 2:00 p.m. The meeting will be open to the public from 9:15 a.m. to 9:45 a.m. and closed to the public from 9:00 a.m. to 9:15 a.m. and 9:45 a.m. to 2:00 p.m.

DATES: The meeting is scheduled for October 15, 1997, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce in Room 1863, located at 14th Street and Constitution Avenue, NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Margaret Donnelly, Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230, (202) 482–5466 or Bill Daley, Office of the United States Trade Representative, 600 17th St. NW., Washington, DC 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC 5 will hold a meeting on October 15, 1997 from 9:00 a.m. to 2:00 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting in will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion

of such matters, the meeting will be closed to the public from 9:00 a.m. to 9:15 a.m. and 9:45 a.m. to 2:00 p.m. The meeting will be open to the public and press from 9:15 a.m. to 9:45 a.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Phyllis Shearer Jones,

Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 97–24901 Filed 9–18–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting cancellation.

SUMMARY: The FAA is issuing this notice to advise the public that the September 22 meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee (62 FR 47108, September 5, 1997) has been cancelled.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration (ARM–25), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean.Casciano@faa.dot.gov.

Issued in Washington, DC, on September 15, 1997.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–24856 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Technical Management Committee

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held October 6, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Consider and Approve: a Proposed Final Draft, Operational Concepts and Data Elements Required to Improve Air Traffic Management (ATM)-Aeronautical Operational Control (AOC) Ground-Ground Information Exchange to Facilitate Collaborative Decision Making, RTCA Paper No. 245–97/TMC–292, Prepared by SC–169; b. Proposed Change 2 to DO–204, Minimum Operational Performance Standards for 406 MHz Emergency Locator Transmitters (ELT), RTCA Paper No. 255–97/TMC–293; (4) Discuss/Take Position on: a. Finalized Terms of Reference for SC–191, RTCA Paper No. 251–97/TMC–290; b. Committee Milestones, RTCA Paper No. 257–97/TMC–294; (5) other Business; (6) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or hittp://www.rtca.org (web site). Members of the public many present a written statement to the committee at any time.

Issued in Washington, DC, on September 11, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–24855 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc. Joint Special Committee 190/EUROCAE Working Group 52

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Joint Special Committee 190/EUROCAE Working Group (WG) 52 meeting to be held October 7–10, 1997, starting at 8:00 a.m. The meeting will be held at EUROCAE, 17 Rue Hamelin, Paris.

The agenda will include the following: Tuesday, October 7: 8:00 a.m.–5:00 p.m. (1) Registration (8:00–8:30 a.m.); (2) Chairman's Opening Remarks and General Introductions; (3) Review and Approval of Summary of the Previous Meeting; (4) Non-airborne Software Discussions; (5) CAA/NATS; (6) Non-airborne Scope Expansion; (7) Progress Since Last Meeting (Executive Committee). Wednesday, October 8: 8:00 a.m.–3:30 p.m. (8) Issue Team Breakout Sessions; 3:30 p.m.–5:00 p.m. (9) Plenary Session Decisions (Executive Committee). Thursday, October 9: 8:00 a.m.–3:30 p.m. (10) Issue Team Breakout Sessions; 3:30–5:00 p.m. (11) Plenary Session Decisions (Executive Committee). Friday, October 10: 8:00 a.m.–12:00 noon (12) COTS Report; (13) Service History Report; (14) Structural Coverage Report; (15) Plenary Approvals; (16) Expectations and Plans for Next Meeting; (17) Meeting Review.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 12, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–24996 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc. Joint RTCA Special Committee-189/EUROCAE Working Group-53; Air Traffic Services Safety and Interoperability Requirements

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint RTCA Special Committee-189/EUROCAE Working Group (WG)–53 meeting to be held October 6–10, 1997, starting at 8:00 a.m. The meeting will be held at STNA, 1 Avenue Dr Maurice Grynfogel, BP 1084, 31035 Toulouse Cedex, France. Please confirm attendance with Madame Claudine Gamblin, STNA, 33–5–62–14–58–52 (phone), 33–5–62–14–58–53 (fax), by September 29 and indicate the sub-group (SG) in which you wish to participate.

The agenda will be as follows:

October 6, Plenary Morning Session: Review and Approval of Minutes of the Previous Plenary Meeting; Review and Approval of Agenda; Review and Status of Action Items; SG Program Updates and Status Reports (SG–1 Interoperability Requirements, SG–2

Safety Requirements, SG–3 Performance Requirements); SG Position Papers Submittal to the Plenary for Approval; Co-chair Summary and Action Item Review.

October 6 Afternoon through 9, Separate SG Meetings: SG–1 Interoperability Requirements; SG–2 Safety Requirements; SG–3 Requirements; CAA Advisory Group, as Necessary. October 10, Plenary Session/ Wrap-up: SG Reports (SG–1, SG–2, SG–3) and Work Program Updates; Summaries, Open Issues, and Action Item Review; Review of Preliminary Meeting Summary; Co-chair Wrap-up; Follow-on Meetings Venue and Schedules.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 11, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–24997 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Dallas-Fort Worth International Airport, Dallas-Fort Worth Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dallas-Fort Worth International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 20, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Executive Director of Dallas-Fort Worth International Airport at the following address: Mr. Jeffrey P. Fegan, Executive Director, Dallas-Fort Worth International Airport, P.O. Drawer 619428, DFW Airport, TX 75261–9428.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dallas-Fort Worth International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 27, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 18, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1998.

Proposed charge expiration date: August 31, 2001.

Total estimated PFC revenue: $245,619,028.

PFC application number: 97–03–C–00–DFW.

Brief description of proposed projects:

Projects to Impose and Use PFC'S— Reimburse Cost of Previously Implemented Eligible Work, Terminal 2W–A Gate Expansion, Renovation, and Associated Development, and General Aviation and 3W Hardstand Relocation

Projects to Impose PFC's— Runway 16/34 West Development

Proposed class or classes of air carriers to be exempted from collecting PFCs:

All Air Taxi/Commercial Operators operating under a certificate authorizing transport of passengers for hire under FAR 135 that file Federal Aviation Administration (FAA) Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Dallas-Fort Worth International Airport.

Issued in Fort Worth, Texas on September 9, 1997.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 97–24991 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue from a Passenger Facility Charge (PFC) at Phoenix Sky Harbor International Airport, Phoenix, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue from a PFC at the Phoenix Sky Harbor International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). On August 20, 1997, the FAA determined that the application to use the revenue from PFC submitted by the city of Phoenix was substantially complete within the requirements of

section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or part, no later than November 19, 1997.

DATES: Comments must be received on or before October 20, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Neilson A. Bertholf, Jr., Aviation Director, City of Phoenix, 3400 Sky Harbor Blvd., Phoenix, AZ 85034–4420. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Phoenix under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor Standards Section, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, Telephone (310) 725–3621. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Phoenix Sky Harbor International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). On August 20, 1997, the FAA determined that the application to use the revenue from a PFC submitted by the city of Phoenix was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 19, 1997.

The following is a brief overview of application No. AWP–97–04–U–00–PHX:

Level of the PFC: $3.00.

Actual Charge Effective Date: April 1, 1996.

Estimated Charge Expiration Date: July 31, 1998.

Total Approved Net PFC Revenue: $1,875,000.

Brief description of the project: Extend North Runway, West Class and classes of air carriers which the public agency has requested not be required to collect PFCs: ATCO Taxi/Commercial Operators; CAC, Commuters or Small Certificated Air Carriers with less than 7,500 enplanements each annually; CRAC, Large Certificated Route Air Carriers providing non-scheduled service with less than 7,500 enplanements each annually.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application, in person at the city of Phoenix Aviation Department.

Issued in Hawthorne, California, on September 3, 1997.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 97–24995 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Tucson International Airport, Tucson, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Tucson International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulation (14 CFR part 158). On August 20, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Tucson Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 19, 1997.

DATES: Comments must be received on or before October 20, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Walter A. Burg, Chief Executive Officer, Tucson Airport Authority, 7005 South Plumer Ave., Tucson, AZ 85706. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Tucscon Airport Authority under § 158.23 of FAR Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor Standards Section, Airports Division, P.O. Box 92007, WPC, Los Angeles, CA 90009, Telephone: (310) 725–3621. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Tucson International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990), (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On August 20, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Tucson Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in Part, no later than November 19, 1997.

The following is a brief overview of the impose and use application No. AWP–97–01–C–00–TUS:

Level of the Proposed PFC:: $3.00

Proposed Charge Effective Date: February 1, 1998

Proposed Charge Expiration Date: November 30, 2002

Total Estimated PFC Revenue: $26,717,799.00

Brief description of the proposed impose & use projects:

Remodel Baggage Claim Area

Land Acquisition Expansion

Land Acquisition Noise

Land Acquisition (Section 27 & 33) (Reimbursement)

Terminal Entrance Improvements (Reimbursement)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Unscheduled Part 135 Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application, in person at the Tucson Airport Authority.

Issued in Hawthorne, California, on August 27, 1997.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 97–24852 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Cape Girardeau County, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed improvements to the transportation system in Cape Girardeau County, Missouri.

FOR FURTHER INFORMATION CONTACT: Donald Neumann, Programs Engineer, FHWA Division Office, P.O. Box 1787, Jefferson City, MO 65102, Telephone: (573) 636–7104 or Scott Meyer, District Engineer, Missouri Department of Transportation, P.O. Box 160, Sikeston, MO 63801, Telephone: (573) 472–5333.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an environmental impact statement (EIS) for a proposed project to improve the transportation system in the vicinity of Missouri Routes 34 and 72 in Cape Girardeau County, Missouri.

Improvements to the corridor are considered necessary to provide for a safe and efficient transportation network. Alternatives under consideration include (1) taking no action; (2) using alternate travel modes; (3) upgrading and improving the existing roadways; and (4) constructing a four-lane roadway on new or partially-new location. Design variations of grade and alignment will be incorporated into and studied with the various build alternatives. The proposed action will likely include transportation improvements from the intersection of Missouri Routes 34 and 72, west of Jackson, Missouri, to the Missouri Route K interchange with Interstate 55 in Cape Girardeau, Missouri.

The scoping process will involve all appropriate federal, state, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held to engage the regional community in the decision making process, and to obtain public comment. Public meetings are tentatively scheduled for fall, 1997 and for spring, 1998. In addition, a public hearing will be held to present the findings of the draft EIS (DEIS). Public notice will be given of the time and place of the meetings and hearing. The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: September 9, 1997.

Donald Neumann,

Programs Engineer, Jefferson City.

[FR Doc. 97–24891 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received requests for waivers of compliance with certain requirements of its safety standards. The individual petitions are described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioners' arguments in favor of relief.

The Bay Line Railroad, L.L.C.

(Waiver Petition Docket Number PB–97–2)

The Bay Line Railroad, L.L.C., seeks a permanent waiver of compliance from certain provisions of the Railroad Power Brakes and Drawbars regulations, 49 CFR part 232, Section 23, concerning the requirements of two-way end-of-train (EOT) devices. Specifically, the Bay Line Railroad seeks relief from requiring two-way EOT devices on any of its road trains.

The Bay Line Railroad operates only one road train daily, Sunday through Thursday. There are no trains on Friday or Saturday. The road train makes the scheduled round trip of 162 miles from Panama City, Florida, to Dothan, Alabama, using one train crew within an eight hour tour of duty. The maximum allowable speed for the train is 40 mph. The Bay Line Railroad reports that the average tonnage of the southbound train is 9,000 tons, and the northbound train averages 4,400 tons. The ruling grade on the railroad's main line is 0.833 percent, with the average grade over the entire line of 0.28 percent. The Bay Line Railroad has three one-way EOT's and would continue to use them on all road trains. The Bay Line Railroad states that it has not had a train accident in twenty years and has not had a loss time injury in the Operating Department in over seven years. The Bay Line Railroad also declares that there has not been a runaway train or crimped train line incident in the history of the railroad, and reasons that the type of accident which would require a two-way EOT device to apply the brakes from the rear of the train has never occurred and probably would never occur on the Bay Line Railroad. The Bay Line Railroad believes that reducing its track speed to 30 mph would reduce service to its customers and connecting railroads with no increase in safety.

CSX Transportation, Incorporated

(Waiver Petition Docket Number PB–97–10)

By letter dated August 29, 1997, CSX Transportation, Incorporated (CSX) seeks a temporary waiver of compliance from certain provisions of the Railroad Power Brake and Drawbars regulations, 49 CFR 232.25(d), concerning the calibration of the front unit of a two-way EOT device. Specifically, CSX wants relief from the calibration and labeling requirements for all front units until December 31, 1997.

Section 232.25(d) states: The telemetry equipment shall be calibrated for accuracy according to the manufacturer's specifications at least every 365 days. The date of the last calibration, the location where the calibration was made, and the name of the person doing the calibration shall be legibly displayed on a weather-resistant sticker or other marking device affixed to the outside of both the front unit and rear unit. The Two-Way EOT Device Final Rule was published on January 2, 1997, and became effective July 1, 1997. FRA provided a grace period until September 1, 1997, for railroads to accomplish the calibration and labeling requirements of front units.

CSX references a letter dated August 14, 1997, from the Association of American Railroads (AAR) to FRA

which states the industry's position that the front unit does not need calibration since the manufacturers do not believe front units require calibration. CSX requests a temporary waiver from the calibration and labeling requirement only if FRA does not accept the AAR's position. FRA has not accepted AAR's position.

CSX indicates that they did not receive specifications by which the calibration procedure could be performed on the front units until August 11, 1997. Therefore, CSX is not in a position to completely perform such functions by September 1, 1997. CSX also claims that they have placed an order for the weather-resistant labels, but will not receive them in time to comply with the requirement. CSX acknowledges that Pulse Electronics is currently developing an on-board head telemetry device (HTD) testing device to perform the required procedures.

CSX feels there is absolutely no reason to believe that any adverse effect on safety would result from granting this temporary waiver and that the waiver is necessary in order to permit implementation of a rational and efficient system for testing and labeling HTD's.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number PB–97–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, SW., Mail Stop 10, Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, NW., Room 7051, Washington, DC 20005.

Issued in Washington, DC on September 10, 1997.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 97–24895 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3435

Applicant: Union Pacific Railroad Company, Mr. P. M. Abaray, Chief Engineer-Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–0001.

The Union Pacific Railroad Company seeks approval of the proposed temporary suspension of the signal system, for approximately 90 days, during the track construction project between milepost 114.6 and milepost 115.0 on the Alexandria Subdivision, and between milepost 620.9 and milepost 621.0 on the Beaumont Subdivision, near Livonia, Louisiana, utilizing switch tenders to control switches while the signal system is suspended. The proposal consists of the removal of all power-operated switches and signals at the existing control points and interlocking, removal of the interlocking crossing frog, completion of major track construction, installation of two new control points, and restoration of the signal system to service.

The reason given for the proposed changes is to perform major track construction.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 within 45 calendar days of the date of publication of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on September 10, 1997.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 97–24896 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Notice of Applications for Modification of Exemption

AGENCY: Office of Hazardous Materials Safety, Research and Special Programs Administration, DOT.

ACTION: List of application for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office or Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions for facilitate processing.

DATES: Comments must be received on or before October 6, 1997.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the application are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application number	Docket number	Applicant	Modification of exemption
4661–M	.....	Cyprus Foote Mineral Co., Kings Mountain, NC (See Footnote 1)	4661
10365–M	.....	U.S. Enrichment Corporation, Bethesda, MD (See Footnote 2)	10365
11254–M	.....	Schlumberger Oilfield Services, Sugar Land, TX (See Footnote 3)	11254
11516–M	.....	Falcon Safety Products, Somerville, NJ (See Footnote 4)	11516
11536–M	.....	Hughes Space & Communications Co., Los Angeles, CA (See Footnote 5)	11536
11932–M	RSPA–97–2895	PEPCO Manufacturing Co., Inc., Portland, OR (See Footnote 6)	11932
11937–M	RSPA–97–2896	Puritan-Bennett Aero Systems Co., Lexena, KS (See Footnote 7)	11937

(1) To modify the exemption to provide for Class 3 material as an additional class for transportation in DOT Specification 4BA240 cylinders with alternative retest procedures.
(2) To modify the exemption to provide for 21PF–1A and 21PF–1B packages with gross weights greater than indicated in the specification and relief from marking requirement.
(3) To modify the exemption to provide for additional tool pallet models with a total explosive content not to exceed 200 pounds per pallet.
(4) To modify the exemption to provide for certain DOT Specification 2Q containers in size greater than presently authorized.
(5) To modify the exemption to provide for dry air, compressed, Division 2.2 as an alternative for the nitrogen purge of the shipping containers and provide for two additional containers.
(6) To reissue an exemption orginally issued on an emergency basis authorizing the transportation in commerce of oxygen generators in non-DOT specification bulk packaging when installed in depolyment modules and personal service units.
(7) To reissue an exemption originally issued on an emergency basis authorizing the transportation in commerce of an oxygen generator, chemical, with one of the two positive means of preventing unintentional actuation of generator consisting of a packaging feature.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on September 15, 1997.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 97–24965 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Notice of Applications for Exemptions

AGENCY: Office of Hazardous Materials Safety, Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before October 20, 1997.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, Room 8421, DHM–30, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on September 15, 1997.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
1941–N	RSPA–97–2897	Oxychem, Deer Park, TX.	49 CFR 173.31 Retest Table 1, 173.31(c).	To authorize alternative retesting criteria for tanks cars used in chlorine service. (mode 2)
11942–N	RSPA–97–2898	DowElanco, Indianapolis, IN.	49 CFR 172.203(a), 172.302(c), 173.227.	To authorize the transportation in commerce of a Division 6.1, liquid PIH material meeting Hazard Zone B, in DOT specifications 4BW cylinders authorized under Sec. 173.227, but do not meet the general packaging provisions for liquid poisonous materials in cylinders required under Sec. 173.40. (mode 1)
11944–N	RSPA–97–2899	Core Laboratories, Inc., Carrollton, TX.	49 CFR 173.302	To authorize the transportation in commerce of compressed natural gas in 4E240 cylinders. (modes 1, 4)

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11946–N	RSPA–97–2900	Regional Airline Association, Washington, DC.	49 CFR 173.34(e)	To authorize an alternative maintenance/inspection program in lieu of that required in 49 CFR 173.34(e) for certain DOT specification and non-DOT specification cylinders used as components in aircraft fire suppressant systems. (modes 1, 2, 3, 4, 5)
11947–N	RSPA–97–2901	Patts Fabrication & Services, Odessa, TX.	49 CFR 178.253	To authorize the manufacture, mark and sale of non-specification 60 gallon portable metal tanks designed and constructed in accordance with DOT-Specification 57, with certain exceptions, for use in transporting Flammable liquids, n.o.s., Class 3. (mode 1)
11948–N	RSPA–97–2902	Sumitomo Corporation, San Francisco, CA.	49 CFR 173, Subpart G	To authorize the transportation in commerce of non-specification cylinders manufactured and filled in Japan for use in transporting certain compressed gases. (modes 1, 2, 3)
11953–N	RSPA–97–2903	Manchester Tank, Brentwood, TN.	49 CFR 178.61(a)	To authorize the transportation in commerce of DOT 4B cylinders that are exempt from the maximum 1,000 pound water capacity requirement. (modes 1, 2, 3, 4)
11954–N	RSPA–97–2904	Republic Environmental Systems (PA), Inc., Hatfield, PA.	49 CFR 173.29, Part 178.	To authorize the transportation in commerce of reused UN 1A2/Y/1.2 drums that were previously used to transport lab pack quantities of waste without meeting the retesting and reconditioning requirements for use in transporting various classes of hazardous materials. (mode 1)

[FR Doc. 97–24964 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods by Air; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise persons that RSPA will conduct a public meeting to exchange views on proposals submitted to the sixteenth session of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) to be held in Montreal, Canada on October 20–31, 1997.

DATES: October 16, 1997 at 9:30 a.m.

ADDRESSES: Department of Transportation, Nassif Building, Room 8406A, 400 Seventh Street S.W., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, (202) 366–0656, International Standards Coordinator for Hazardous Materials Safety, RSPA, Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: This meeting will be held in preparation for the sixteenth session of the ICAO Dangerous Goods Panel Working Group. The primary purpose of the Panel meeting will be to discuss proposed amendments to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (the Technical Instructions). The Panel will consider possible amendments to resolve problems encountered with the use of the Technical Instructions, and amendments to the Technical Instructions on the basis of revisions to the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations).

The public is invited to attend without prior notification.

Documents

Documents submitted to the ICAO Dangerous Goods Panel may be reviewed between the hours of 8:30 and 5:00 in RSPA's Dockets Unit located in room 8419 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–5046. Copies of documents may also be ordered by contacting RSPA's Dockets Unit.

Issued in Washington, DC, on September 16, 1997.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–24975 Filed 9–18–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33458]

Cargill, Incorporated—Acquisition of Control Exemption—A&R Line, Inc. and J.K. Line, Inc.

Cargill, Incorporated (Cargill), a noncarrier, has filed a notice of exemption to acquire control, through stock purchase, of A&R Line, Inc., and J.K. Line, Inc. (rail lines), Class III railroads, operating in the State of Indiana.[1]

The earliest the transaction could be consummated is September 12, 1997,

[1] The rail lines will be purchased from Daniel R. Frick, the sole shareholder of the rail lines, and are part of a larger transaction involving the purchase of four facilities for the storage and distribution of bulk commodities, fertilizer and agricultural chemicals. The rail lines provide the transportation services to two of the four facilities being purchased by Cargill.

the effective date of the exemption (7 days after the exemption was filed).[2]

Cargill states that: (i) The rail lines do not connect; (ii) the transaction is not part of a series of anticipated transactions that would connect these railroads with each other or with any other railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33458, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John K. Maser, III, Esq., Donelan, Cleary, Wood & Master, P.C., 1100 New York Avenue, NW., Suite 750, Washington, DC 20005.

Decided: September 12, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–24963 Filed 9–18–97; 8:45 am]

BILLING CODE 4915–00–P

[2] Applicant indicates that consummation of the transaction will occur within 85 days after July 10, 1997.

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

September 9, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, 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: 1545–1544.

Form Number: IRS Form 11212.

Type of Review: Extension.

Title: Statement of Amendment of Employee Benefit Plan.

Description: Form 11212 is part of a voluntary outreach program designed to ensure that retirement and pension plans are amended to conform to certain law changes. Completion of three questions on Form 11212 indicates, but does not guarantee, that the plan document has been properly amended.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 10,900.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Other (one time).

Estimated Total Reporting Burden: 2,725 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. 97–24959 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 10, 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 conduct the opinion survey described below in October 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by September 23, 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 97–020–G.

Type of Review: Revision.

Title: Electronic Filing Program Opinion Survey.

Description: The purpose of this survey is to collect information to determine what tax practitioners (members of the National Society of Accountants (NSA) and the American Institute of Certified Public Accountants (AICPA)) like and dislike about the Electronic Filing Program. In addition, practitioners' suggestions on how to improve the program will help the IRS provide a more effective tool to the practitioners which should result in more returns filed electronically.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 45,000.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: Other (one time only).

Estimated Total Reporting Burden: 9,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 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. 97–24960 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

September 15, 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: 1545–0203.

Form Number: IRS Form 5329.

Type of Review: Revision.

Title: Additional Taxes Attributable to Qualified Retirement Plans (Including IRAs), Annuities, Modified Endowment Contracts, and MSAs.

Description: This form is used to compute and collect taxes related to distribution from individual retirement arrangements (IRAs) and other qualified plans. These taxes are for excess contributions to an IRA, premature distributions from an IRA and other qualified retirement plans, excess accumulations in an IRA and excess distributions from qualified retirement plans. The data is used to help verify that the correct amount of tax has been paid.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—40 minutes
Learning about the law or the form—22 minutes
Preparing the form—35 minutes
Copying, assembling, and sending the form to the IRS—35 minutes

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 2,190,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–24961 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Customs Service

Change of Address for Office of Regulations and Rulings

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of change of address.

SUMMARY: The Office of Regulations and Rulings of the U.S. Customs Service is relocating on or about September 26–29, 1997, to the Ronald Reagan Building and International Trade Center at 1300 Pennsylvania Avenue, NW, Washington, DC. Consequently, all correspondence directed to the Office of Regulations and Rulings, including ruling requests and comments regarding pending Customs regulatory proposals, should be sent to the new address indicated below. Further, anyone wishing to view comments on regulatory projects will need to come to the new address. The phone numbers of the Office of Regulations and Rulings will also change. This document gives notice of the new address and phone numbers.

FOR FURTHER INFORMATION CONTACT: Joseph Clark, Regulations Branch, (202) 482–6970.

SUPPLEMENTARY INFORMATION:

Background

The Office of Regulations and Rulings (OR&R) of the U.S. Customs Service is relocating on or about September 26–29, 1997, to the the Ronald Reagan Building and International Trade Center at 1300 Pennsylvania Avenue, NW. Anyone wishing to submit comments on a regulatory proposal or submit a ruling request to the United States Customs Service should address the correspondence to: U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, with either the Regulations Branch or other appropriate branch name inserted into the address.

Viewing Comments

As of September 29, 1997, anyone wishing to view comments that were addressed to the Regulations Branch of Customs on a proposal published in the **Federal Register** should come to the address set forth in the preceding paragraph. It is highly recommended that, until all offices at Customs have relocated, you call Joseph Clark at (202) 927–2340 before coming to schedule an appointment to view the comments.

Phone Numbers

The phone numbers for the Office of Regulations and Rulings as of September 26, 1997 are as follows:

Assistant Commissioner, OR&R—927–0760
Operational Oversight Division—927–0760
International Agreements Staff—927–2255
International Trade Compliance Division—927–2244
Regulations Branch—927–2340
Penalties Branch—927–2344
Entry Procedures and Carriers Branch—927–2320
Intellectual Property Rights Branch—927–2330
Value Branch—927–2399
Disclosure Law Branch—927–2333
Commercial Rulings Division 927–2244
Duty and Refund Determination Branch—927–2077
Textile Branch—927-2380
Special Classification and Marking Branch—927–2310
General Classification Branch—927–2388

Dated: September 15, 1997.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 97–24952 Filed 9–18–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–43 and Revenue Ruling 97–39

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–43, Procedures for Electing Out of Exemptions Under Section 1.475(c)–1, and Revenue Ruling 97–39, Mark to Market Accounting Method for Dealers in Securities.

DATES: Written comments should be received on or before November 18, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue

Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 97–43, Procedures for Electing Out of Exemptions Under Section 1.475(c)–1, and Revenue Ruling 97–39, Mark to Market Accounting Method for Dealers in Securities.

OMB Number: 1545–1558.

Revenue Procedure Number: Revenue Procedure 97–43.

Revenue Ruling Number: Revenue Ruling 97–39.

Abstract: Revenue Procedure 97–43 provides taxpayers automatic consent to change to mark-to-market accounting for securities after the taxpayer elects under regulation section 1.475(c)–1, subject to certain terms and conditions. Revenue Ruling 97–39 provides taxpayers additional mark-to-market guidance under section 475 of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure or revenue ruling at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 27 hours, 30 minutes.

Estimated Total Annual Burden Hours: 550,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 11, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–24999 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2063

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2063, U.S. Departing Alien Income Tax Statement.

DATES: Written comments should be received on or before November 18, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Departing Alien Income Tax Statement.

OMB Number: 1545–0138.

Form Number: 2063.

Abstract: Form 2063 is used by a departing resident alien against whom a termination assessment has not been made, or a departing nonresident alien who has no taxable income from United States sources, to certify that they have satisfied all U.S. income tax obligations. The data is used by the IRS to certify that departing aliens have complied with U.S. income tax laws.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 20,540.

Estimated Time Per Respondent: 54 min.

Estimated Total Annual Burden Hours: 18,691.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 9, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–25000 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form CT–2

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form CT–2, Employee Representative's Quarterly Railroad Tax Return.

DATES: Written comments should be received on or before November 18, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employee Representative's Quarterly Railroad Tax Return.

OMB Number: 1545–0002.

Form Number: CT–2.

Abstract: Employee representatives file Form CT–2 quarterly to report compensation on which railroad retirement taxes are due. The IRS uses this information to ensure that employee representatives have paid the correct tax. Form CT–2 also transmits the tax payment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 28.

Estimated Time Per Respondent: 1 hr., 28 min.

Estimated Total Annual Burden Hours: 164.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 9, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–25001 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 11–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 11–C, Occupational Tax and Registration Return for Wagering.

DATES: Written comments should be received on or before November 18, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Occupational Tax and Registration Return for Wagering.

OMB Number: 1545–0236.

Form Number: 11–C.

Abstract: Form 11–C is used to register persons accepting wagers, as required by Internal Revenue Code section 4412. The IRS uses this form to register the respondent, collect the annual stamp tax imposed by Code section 4411, and to verify that the tax on wagers is reported on Form 730, Tax on Wagering.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 11,500.

Estimated Time Per Respondent: 9 hr., 26 min.

Estimated Total Annual Burden Hours: 108,560.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 9, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–25002 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–GS(D–1)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–GS(D–1), Notification of Distribution From a Generation-Skipping Trust.

DATES: Written comments should be received on or before November 18, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Notification of Distribution From a Generation-Skipping Trust.

OMB Number: 1545–1143

Form Number: 706–GS(D–1)

Abstract: Form 706–GS(D–1) is used by trustees to provide information to the IRS and to distributees regarding generation-skipping distributions from trusts. The information is needed by distributees to compute the generation-skipping tax imposed by Internal Revenue Code section 2601. The IRS uses the information to verify that the tax has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 80,000.

Estimated Time Per Respondent: 4 hr., 16 min.

Estimated Total Annual Burden Hours: 340,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the 3 administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 12, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–25003 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–GS(T)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–GS(T), Generation-Skipping Transfer Tax Return For Terminations.

DATES: Written comments should be received on or before November 18, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Generation-Skipping Transfer Tax Return For Terminations.

OMB Number: 1545–1145.

Form Number: 706-GS(T).

Abstract: Form 706-GS(T) is used by trustees to compute and report the tax due on generation-skipping transfers that result from the termination of interests in a trust. The IRS uses the information to verify that the tax has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 6 hr., 53 min.

Estimated Total Annual Burden Hours: 689.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the 3 administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 11, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–25004 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–GS(D)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706-GS(D), Generation-Skipping Transfer Tax Return for Distributions.

DATES: Written comments should be received on or before November 18, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Generation-Skipping Transfer Tax Return for Distributions.

OMB Number: 1545–1144

Form Number: 706-GS(D)

Abstract: Form 706-GS(D) is used by persons who receive taxable distributions from a trust to compute and report the generation-skipping transfer tax imposed by Internal Revenue Code section 2601. IRS uses the information to verify that the tax has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 1 hr., 1 min.

Estimated Total Annual Burden Hours: 1,020.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 10, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–25005 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1138

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1138, Extension of Time for Payment of Taxes by a Corporation Expecting a Net Operating Loss Carryback.

DATES: Written comments should be received on or before November 18, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Extension of Time for Payment of Taxes by a Corporation Expecting a Net Operating Loss Carryback.

OMB Number: 1545–0135.

Form Number: 1138.

Abstract: Form 1138 is filed by corporations to request an extension of

time for the payment of taxes for a prior tax year when the corporation believes that it will have a net operating loss in the current tax year. The IRS uses Form 1138 to determine if the request should be granted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,033

Estimated Time Per Respondent: 4 hr., 37 min.

Estimated Total Annual Burden Hours: 9,392.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 12, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–25006 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 972

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 972, Consent of Shareholder To Include Specific Amount in Gross Income.

DATES: Written comments should be received on or before November 18, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Consent of Shareholder To Include Specific Amount in Gross Income.

OMB Number: 1545–0043.

Form Number: 972.

Abstract: Form 972 is filed by shareholders of corporations who agree to include a consent dividend in gross income as a taxable dividend. The IRS uses Form 972 as a check to see if an amended return is filed by the shareholder to include the amount in income and to determine if the corporation claimed the correct amount as a deduction on its tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 400.

Estimated Time Per Respondent: 1 hr., 1 min.

Estimated Total Annual Burden Hours: 408.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 12, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–25007 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8854

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning Form 8854, Expatriation Information Statement.

DATES: Written comments should be received on or before November 18, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Expatriation Information Statement.

OMB Number: To be assigned later.

Form Number: Form 8854.

Abstract: Internal Revenue Code Section 6039G requires persons who lose U.S. citizenship to provide information concerning citizenship, income tax liability, net worth, and net assets. Form 8854 is used to report this information.

Current Actions: This is a new collection of information.

Type of Review: New OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents—Part I: 10,000.

Estimated Number of Respondents—Parts I & II: 1,000.

Estimated Time Per Respondent—Part I: 1 hr. 38 min.

Estimated Time Per Respondent—Parts I & II: 8 hr. 53 min.

Estimated Total Annual Burden Hours: 25,180.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 12, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–25008 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2587

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2587, Application for Special Enrollment Examination.

DATES: Written comments should be received on or before November 18, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Special Enrollment Examination.

OMB Number: 1545–0949.

Form Number: Form 2587.

Abstract: Form 2587 is used by individuals to apply to take the Special Enrollment Examination to establish eligibility for enrollment to practice before the IRS. The information on the form is used by the Director of Practice to identify those individuals seeking to take the examination and to plan for the administration of the examination.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 8,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 15, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–25009 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–U

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 230 A&B of the Aerospace Building, L'Enfant Plaza, 901 D Street, SW., Washington, DC, on September 29, 1997, beginning at 8:30 a.m.

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).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been made that the subject of the meeting falls within the exception to the open meeting requirement set forth in title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: September 8, 1997.

Robert I. Brauer,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 97–24998 Filed 9–18–97; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register

Vol. 62, No. 182

Friday, September 19, 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 DEFENSE

48 CFR Parts 204 and 253

[DFARS Case 96-D315]

Defense Federal Acquisition Regulation Supplement; Contract Reporting for Fiscal Year 1997

Correction

In rule document 96–24839, beginning on page 51030, in the issue of Monday, September 30, 1996, make the following corrections:

204.670-6 [Corrected]

1. On page 51031, in the first column:

a. In 204.670-6(b)(1)(iii), in the first line, ''of'' should read ''or''.

b. In 204.670-6(b)(1)(iv):

(1) In the first line, ''Order'' should read ''Orders''.

(2) Also in the first line, ''place'' should read ''placed''.

(3) In the second line, ''commissary'' should read ''Commissary''.

253.204-70 [Corrected]

2. On page 51032, in the second column, in 253.204-70(b)(3)(ii), the second paragraph designated as ''(i)'', should read ''(ii)''.

3. On page 51032, in the third column:

a. In 253.204-70(b)(5)(i), in the second line from the top, ''solicitation/Modification'' should read ''Solicitation/Modification''.

b. In 253.204-70(b)(5)(ii)(C), in the third line, ''the'' should read ''that''.

4. On page 51033, in the first column:

a. In 253.204-70(b)(6)(i):

(1) In the fifth line, ''42.214-14'' should read ''52.214-14''.

(2) In the eigth line, ''date'' should read ''data''.

b. In 253.204-70(b)(6)(iv), in the second line, ''of'' should be added to read ''part of Block''.

5. On page 51033, in the second column:

a. In 253.204-70(b)(6)(iv)(B)(*1*), in the fourth line, ''he'' should read ''the''.

b. In 253.204-70(b)(6)(iv)(B)(*2*), in the first line, remove the word ''of''.

c. In 253.204-70(b)(6)(iv)(C), in the fourth line, ''B6B'' should read ''B6C''.

6. On page 51033, in the third column, in 253.204-70(b)(12)(i):

a. In the eighth line, ''so codes of'' should read ''of codes to''.

b. In the 11th line, ''case'' should read ''cases''.

7. On page 51034:

a. In the first column, in 253.204-70(b)(12)(i)(C), in the second line ''234.001'' should read ''235.001''.

b. In the second column, in 253.204-70(b)(13)(i)(B)(*5*), in the fifith line, ''excluded'' should read ''excludes''.

c. In the third column, in 253.204-70(b)(13)(i)(D), the paragraph designated ''D'' should read ''(D)''.

8. On page 51035:

a. In the second column, in 253.204-70(b)(13)(iv)(G), in the fourth line, ''Don'' should read ''Do''.

b. In the third column, in 253.204-70(c)(4)(iii), in the second line, ''COMPLETED'' should read ''COMPETED''.

c. In the third column, in 253.204-70(c)(4)(iii)(B)(*3*), in the third line, ''6.3022-'' should read ''6.302-''.

9. On page 51036, in the third column, in 253.204-70(c)(4)(viii)(B)(*3*), in the last line, ''6.11102(c).'' should read ''6.102(c).''.

10. On page 51037:

a. In the second column, in 253.204-70(c)(4)(xii)(B), in the second line, ''enter'' should read ''Enter''.

b. In the second column, in 253.204-70(c)(4)(xii)(F), in the second line, ''is'' should read ''if'.

c. In the third column, in 253.204-70(d)(3), in the third line, ''party'' should read ''part''.

11. On page 51038:

a. In the first column, in 253.204-70(d)(5)(i)(I), in the third line, ''institutional'' should read ''institution''.

b. In the second column, in 253.204-70(d)(5)(iii)(E);

(1) In the first line, add the letter ''Z'' to read *''Code Z Other''*.

(2) In the third line, add the word ''other'' to read ''any other reason''.

253.204-71 [Corrected]

12. On page 51040, in the third column, in 253.204-71(c)(1), in the first line, ''REPORTING'' should read ''REPORT''.

13. On page 51042:

a. In the first column, in 253.204-71(e)(2)(i)(B), in the first line, ''do'' should read ''Do''.

b. In the second column, in 253.204-71(g)(2)(ii)(A), in the first line line, ''block'' should read ''Block''.

c. In the second column, in 253.204-71(g)(2)(ii)(B)(2), in the first line, ''for'' should read ''of''.

d. In the third column, in 253.204-71(g)(3), in the fifth line, ''19.3304(a)'' should read ''19.304(a)''.

e. In the third column, in 253.204-71(g)(4), in the last line, ''NHCU/MIs'' should read ''HBCU/MIs''.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 96-D334]

Defense Acquisition Regulation Supplement; Restructuring Costs

Correction

In rule document 96–31100, beginning on page 64635, in the issue of Friday, December 6, 1996, make the following correction:

231.205-70 [Corrected]

On page 64636, in the first column, in paragraph (c)(3)(ii), the third line, ''defense'' should read ''Defense''.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Parts 249 and 252

[DFARS Case 96-D320]

Defense Federal Acquisition Regulation Supplement; Notice of Termination

Correction

In rule document 96–31099, beginning on page 64636, in the issue of Friday, December 6, 1996, make the following correction:

249.7003 [Corrected]

On page 64637, in paragraph (b)(2), in the fifth line, ''contracts)'' should read ''contracts--''

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 216

[DFARS Case 96-D327]

Defense Federal Acquisition Regulation Supplement; MILCON-Environmental Restoration

Correction

In rule document 97–381, appearing on page 1058, in the issue of Wednesday, January 8, 1997, make the following corrections:

216.306 [Corrected]

On page 1058, in the second column, in 216.306, in paragraph (c)(i), in the fourth line, ''cost-plus fixed-fee'' should read ''cost-plus-fixed-fee''.

In the third column, in paragraph (c)(ii)(*B*), in the third line, ''therefore'' should read ''therefor''.

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

48 CFR Part 239

[DFARS Case 96–D017]

Defense Federal Acquisition Regulation Supplement; Information Technology Management Reform Act (ITMRA)

Correction

In rule document 97–382, beginning on page 1058, in the issue of Wednesday, January 8, 1997, make the following correction:

239.7003 [Corrected]

On page 1059, in the third column, in 239.7003, in paragraph (f)(2)(iv), in the first line, ''of'' should read ''for''.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 244

[DFARS Case 96–D333]

Defense Federal Acquisition Regulation Supplement; Application of Berry Amendment

Correction

In rule document 97–3019, beginning on page 5779, in the issue of Friday, February 7, 1997, make the following corrections:

225.7002–1 [Corrected]

1. On page 5780, in the first column, in amendatory instruction 3, in the first line ''225.70002–1'' should read ''225.7002–1''.

244.403 [Corrected]

2. On the same page, in the second column, in 244.403, in the forth line, ''contract'' should read ''contracts''.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Parts 234, 242 and 252

[DFARS Case 96-D024]

Defense Federal Acquisition Regulation Supplement; Earned Value Management Systems

Correction

In final rule document 97–5362, beginning on page 9990, in the issue of Wednesday, March 5, 1997, make the following corrections:

234.005-71 [Corrected]

(1) On page 9991, in the second column, in 234.005-71(b), in the second line ''Systems'' should read ''System''.

(2) On the same page, in the third column:

242.1107-70 [Corrected]

(a) The section heading number should read as set forth above.

(b) In 242.1107-70(a), in the fourth line ''cost-schedule'' should read ''cost/schedule''.

252.234-7000 [Corrected]

(a) In 252.234-7000(a), in the sixth line ''5000.2'' should read ''5000.2-R''.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 235

[DFARS Case 96-D028]

Defense Federal Acquisition Regulation Supplement; Streamlined Research and Development Clause Lists

Correction

In rule document 97–8642, beginning on page 16099, in the issue of Friday, April 4, 1997, make the following corrections:

235.7006 [Corrected]

Exhibit—Research and Development Streamlined Contract Format

Part I—The Schedule

Section A [Corrected]

1. On page 16100, in the third column, in 235.7006 Section A (A.1)(v), in the seventh line, ''for'' should read ''For''.

Section B [Corrected]

2. On page 16101, in the first column, in 235.7006 Section B:

a. In (B.2), the fifth and sixth lines should be removed.

b. In (B.3), in the third line, insert ''is'' to read ''contract is''.

3. On the same page, in the second column in 235.7006 Section B, in (B.4)(iv)(B), in the fifth line from the bottom, in first ''intangible'' should read ''in tangible''.

Section F [Corrected]

4. On page 16102, in the second column, in 235.7006 Section F (F.3), in the first line, ''of'' should read ''for''.

Section G [Corrected]

5. On page 16102, in the second column, in 235.7006 Section G (G.3), in the sixth line, insert ''of'' to read ''of $''.

Part II—Contract Clauses

Section I [Corrected]

6. On page 16103, in 235.7006 Section I, in the clause entry (I.47), ''Data Modifications'' should read ''Data–Modifications''.

7. On page 16105, in 235.7006 Section I:

a. In the clause entry (I.158), ''Advanced'' should read ''Advance''.

b. In the clause entry (I.179), remove ''Alternate II''.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 252

[Defense Acquisition Circular 91-12]

Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments

Correction

In rule document 97–15821, beginning on page 34114, in the issue of Tuesday, June 24, 1997, make the following corrections:

252.228-7006 [Corrected]

1. On page 34132, in the second column, the third section heading ''252.8-7006'' should read ''252.228-7006''.

252.229-7003 [Corrected]

2. On page 34133, in the second column, paragraph (d)(1), in the first line, ''shall reflect''should read ''shall not reflect''.

252.234-7001 [Corrected]

3. On page 34135, in the first column, under section heading 252.234-7001, in the last line, after the word ''Systems'',

insert ''and inserting in its place the phrase ''Mandatory Procedures for Major Defense Acquisition Programs (MDAPs) and Major Automated Information System.''

252.246-7002 [Corrected]

4. On page 34135, in the second column, under the section heading 252.246-7002, in paragraph (c), in the sixth line, ''read'' should read ''real''.

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 97-D302]

Defense Federal Acquisition Regulation Supplement; Certification of Requests for Equitable Adjustment

Correction

In rule document 97–18218, beginning on page 37146, in the issue of Friday, July 11, 1997, make the following correction:

252.243-702 [Corrected]

On page 37147, in the third column, in the first paragraph, the third line, ''may'' should read ''my''.

BILLING CODE 1505-01-D

federal register

Friday
September 19, 1997

Part II

Department of Transportation

Coast Guard

46 CFR Parts 90, 98, et al.
Offshore Supply Vessels; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 90, 98, 125, 126, 127, 128, 129, 130, 131, 132, 134, 170, 174, and 175

[CGD 82–004 and CGD 86–074]

RIN 2115–AA77

Offshore Supply Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: In an interim rule published on November 16, 1995, the Coast Guard established a complete set of regulations (a new subchapter L) applicable to new offshore supply vessels (OSVs), including liftboats. This rule adopts the interim rule as final with a number of changes, and brings OSVs under a single, consistent regulatory regime.

DATES: This final rule becomes effective on October 20, 1997. OSVs certificated before March 15, 1996, may either comply with these regulations in their entirety or continue to comply with, and be certificated under, current regulations and policy. The Director of the Federal Register has approved as of November 16, 1995, the incorporation by reference of certain publications listed in the regulations.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: James M. Magill, Office of Operating and Environmental Standards (G–MSO–2), Room 1208c, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is (202) 267–1181.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 14, 1983, the Coast Guard published the first of two ANPRMs (48 FR 6636; CGD 82–004) in order to provide the public with an early opportunity to comment on a preliminary draft of the comprehensive set of requirements for inspection and certification applicable to new offshore supply vessels (OSVs). The Coast Guard received 24 comment letters addressing various technical aspects of the proposal. Many of the recommendations from those comments were incorporated into the subsequent notice of proposed rulemaking (NPRM) discussed below.

On April 16, 1987, the Coast Guard published the second ANPRM (52 FR 12439), which asked for specific information to help the Coast Guard in developing specialized regulations for self-elevating OSVs (liftboats). Many of the recommendations contained in the 14 comment letters received by the Coast Guard were incorporated into the subsequent NPRM discussed below.

On May 9, 1989, the Coast Guard published an NPRM (54 FR 20006). The original comment period was scheduled to end on September 6, 1989, but on August 31, 1989, it was extended until December 6, 1989 (54 FR 36040). Included with the extension of the comment period was notice of a public hearing on the proposed rule. The hearing took place at New Orleans, Louisiana on September 13, 1989. The Coast Guard received 20 letters containing a total of 194 comments on various technical aspects of the proposed rule. Many of the recommendations from those comments were incorporated into the interim rule.

On November 16, 1995, the Coast Guard published an interim rule, with a request for comments, entitled ''Offshore Supply Vessels'' in the **Federal Register** (60 FR 57630). No public hearing was requested, and none was held. On February 28, 1996, the Coast Guard published a notice in the **Federal Register** reopening the comment period until March 31, 1996 (61 FR 7425). The Coast Guard received 8 letters containing a total of 330 comments on the interim rule. Many of the recommendations from those comments were incorporated into this final rule.

Background and Purpose

Conventional OSVs have traditionally provided a wide range of supply and support to offshore industries extracting oil and minerals. Although these vessels historically operated almost exclusively in the Gulf of Mexico, they now operate worldwide.

Self-elevating OSVs, commonly known as liftboats, are more specialized in their service. These vessels have built-in jacking-systems which allow them to be ''jacked up'' above the ocean's surface and to become, in effect, stationary platforms for a temporary period. Once jacked up, these vessels render specific service, such as maintenance and construction, to adjacent offshore structures. New liftboats should enjoy a wider and less restrictive scope of operation than those certificated before the effective date of this final rule due to the structural strength and stability standards contained in this final rule.

The most significant aspect of the new 46 CFR, subchapter L, is its consolidation of requirements for OSVs. Prior to implementation of these regulations, existing OSVs had been inspected and certified under a number of regulations depending on their age and tonnage, such as 46 CFR subchapter I (Cargo and Miscellaneous Vessels) or subchapter T (Small Passenger Vessels). This led to uncertainty and inconsistency. Implementation of a new subchapter L removes this uncertainty and inconsistency by consolidating existing standards and policy into a single subchapter.

The requirements of the new subchapter L contained in the interim rule became effective on March 15, 1996. This final rule adopts the interim rule with a number of changes brought about primarily by the comments to the interim rule. This final rule applies to new OSVs contracted for after the effective date of these regulations and to OSVs that undergo major conversions after the effective date of these regulations. It also applies to existing OSVs, including pre-1979 OSVs, if the owners of these OSVs wish.

These regulations contain many changes to previous regulations and policies governing conventional OSVs, and include first-time regulations for previously uninspected liftboats. Many of the requirements in this final rule are similar to corresponding requirements in subchapters I and T.

Associated Regulatory Projects

Since the publication of the OSV interim rule, another interim rule entitled ''Lifesaving Equipment'' was published in the **Federal Register** (61 FR 25272; May 20, 1996). The latter interim rule governed lifesaving systems for OSVs, including liftboats, in 46 CFR part 133. Part 133 on lifesaving systems, which is part of subchapter L and of this interim rule, became effective on October 1, 1996. The final rule on lifesaving equipment should be published in the near future and should coincide closely with the publication of this final rule.

On February 13, 1990, the Coast Guard published an NPRM entitled ''Stability Design and Operational Regulations'' (55 FR 5120). On September 11, 1992, it published the final rule (57 FR 41812). Stability and operational requirements from that rule have been adopted here in §§ 131.220 (e), (f), and (g); 131.513; and 131.620(d). Both final rules incorporate, for inspected vessels, recently adopted

amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), and seek to reduce the potential for vessels to capsize because of defective designs or operations.

On December 18, 1996, the Coast Guard published a final rule entitled ''Offshore Supply Vessels; Alternative Tonnage'' (61 FR 66613). That rule, which was strictly interpretive, became effective on December 18, 1996, and established an alternative upper limit on tonnage for OSVs based on the International Convention Measurement System. That rule amended the definition of OSV in 46 CFR 125.160, and this final rule now employs the amended definition.

Discussion of Comments and Changes

The Coast Guard thanks the many interested parties who submitted comment letters to the public docket. It received 8 letters, containing 330 comments. These comments provided very useful information and afforded valuable assistance to the completion of this final rule. The Coast Guard evaluated all comments, and incorporated many of their recommendations into the final rule.

This section discusses the comments received and the Coast Guard's response to them. It is divided into two subsections. The first discusses comments and changes regarding the specific CFR sections, and the second discusses nonspecific comments concerning issues related to this rulemaking. This preamble does not discuss non-substantive or editorial comments.

Comments and Changes Relating to Specific CFR Sections

Comments and changes to each section of the interim rule are discussed within the following paragraphs, and the paragraphs are numbered in the order of their appearance in the interim rule.

1. 46 CFR 90.05–20(a)

Two comments suggested that the words ''the keel of which was laid (or that was at a similar stage of construction)'' should be substituted for the words ''contracted for'' so that a physical event, rather than a commercial event, would be available to gauge the applicability of grandfathering. These comments also pointed out that many OSV owners construct their own vessels, and that, therefore, a contract may not exist. Most owners will have a contract for the construction of their OSVs; hence the wording ''contracted for'' remains. However, wording to the effect of ''the keel of which was laid'' has been added to fix an alternative date of applicability for those owners who build their own OSVs.

One comment requested that the reference to 500 gross tons in § 90.05–20(a) be deleted since, by definition, OSVs are less than 500 gross tons. Lower limits on tonnage are necessary in this section, however, because only existing OSVs of 100 gross tons or more and less than 500 gross tons are inspected under subchapter I—not OSVs between 15 and 100 gross tons.

One comment suggested that the wording in § 90.05–20(a) be clarified since it implied that no OSV would be grandfathered regardless of the build date. The Coast Guard agrees, and has revised this section to distinguish between the rules that apply to existing OSVs and those that apply to new OSVs.

2. 46 CFR 90.10–40

The definition of ''Offshore supply vessel'' in § 90.10–40(a) has been changed to include the amendments of the December 18, 1996 interpretative rule ''Offshore Supply Vessels; Alternate Tonnage'' (61 FR 66613), similar to that in §§ 125.160 and 175.400. Two comments suggested adding ''the keel of which was laid'' to § 90.10–40 (b) and (c). The Coast Guard agrees, and has made this change. One comment expressed confusion as to whether or how subchapter L would be applied to existing OSVs and liftboats when undergoing modifications. The Coast Guard agrees that the rules do not adequately address modifications to existing vessels. Consequently, the definition of a new OSV in § 90.10–40(c) has been revised to include a vessel that undergoes a major conversion after March 15, 1996. The definition of a ''major conversion'', which appears in 46 U.S.C. 2101(14a), has been added to § 125.160. If the modification to the vessel constitutes a major conversion, then the entire vessel must be reviewed and inspected as a new vessel.

3. 46 CFR 98.31– 5, 10 and 15

Two comments pointed out that subpart 98.31 should still apply to existing OSVs and should be reinstated. The Coast Guard agrees and has reinstated subpart 98.31, but has revised the applicability in § 98.31–5 to apply only to existing vessels.

4. 46 CFR 125.100

One comment requested clarification on the scope of major conversions. The Coast Guard's internal guidance for determining what amounts to a major conversion appears in NVIC 10–81, chapter 1. The comment also recommended that, in the case of an existing vessel that undergoes a major conversion, subchapter L should apply only to the sections of the OSV that are altered. The Coast Guard disagrees and states that if a modification constitutes a major conversion, then the complete vessel must be reviewed and inspected as a new vessel.

Sections 125.100 (a) and (b) have been revised to include such wording as ''the keel of which was laid,'' similar to that added in § 90.05–20(a). A new paragraph (e) has also been added to clarify the term ''vessel that was contracted for''; it is similar to § 90.05–5 of this chapter pertaining to cargo or miscellaneous vessels.

5. 46 CFR 125.110

Three comments indicated that § 125.110 did not address the carriage of Grade-C flammable liquids in integral tanks. The carriage of Grade-C flammable liquids is allowed on a case-by-case basis with approval of the Commandant (G–MSE) under § 125.110(a).

6. 46 CFR 125.110(b) (1) and (2)

Two comments suggested the removal of the 20 percent deadweight restriction on the carriage of Grade-D and Grade-E combustible liquids in integral tanks because it imposes an unnecessary disadvantage on U.S.-flagged OSVs compared to foreign-flagged OSVs, which are governed by International Maritime Organization (IMO) Resolution A.673(16), Guidelines for the Transport and Handling of Limited Amounts of Hazardous and Noxious Liquid Substances in Bulk on Offshore Supply Vessels. They pointed out that, under IMO Resolution A.673(16), 40 percent deadweight was permitted. The Coast Guard does permit the carriage of greater than 20 percent deadweight of Grade-D and Grade-E combustible liquids in integral tanks on a case-by-case basis with approval of the Commandant under § 125.110(a).

7. 46 CFR 125.110(c)

Two comments thought that the carriage of liquids of Grade B and lower in fixed independent tanks on deck should be permitted without limit. The Coast Guard permits the carriage of greater than 20 percent deadweight of liquids of Grade B and lower in fixed independent tanks on deck under § 125.120(a) with the approval of the Commandant (G–MSE).

8. 46 CFR 125.120(b)

Two comments thought that the 20-percent deadweight restriction on the carriage of noxious liquid substances (NLSs) imposed an unnecessary disadvantage on U.S.-flagged OSVs as against foreign-flagged OSVs, which are governed by IMO Resolution A.673(16). They pointed out that, under IMO Resolution A.673(16), 40 percent deadweight was permitted, and recommended that IMO Resolution A.673(16) be adopted and used as an appropriate regulation under § 125.120. The Coast Guard does not agree that the adoption of IMO Resolution A.673(16) is appropriate, because it is too severe for typical OSVs operating in U.S. waters and the language of the guidelines is imprecise. The Coast Guard does permit the carriage of greater than 20 percent deadweight of NLS, with the approval of the Commandant (G–MSE), under § 125.120(a). The Coast Guard will also consider certificating vessels built to IMO Resolution A.673(16), on a case-by-case basis, with the approval of the Commandant (G–MSE), under § 125.120(a).

9. 46 CFR 125.140

Two comments suggested that, for clarity, the text in § 92.01–5 of this chapter should be substituted for this section. The Coast Guard has revised this section to make it similar to § 92.01–5.

10. 46 CFR 125.160

Two comments questioned the use of ''Accommodation'' in the singular. They pointed out that all seven spaces listed in the definition should count as accommodations. The Coast Guard agrees and has revised this definition.

Two comments also suggested that ''Quarters'' be replaced by ''Berthing spaces,'' as the latter better describes the use of the space in question. The Coast Guard recognizes that the term ''quarters'' is a well used and accepted term in the marine industry and has appropriately defined the term in this section.

Four comments thought that the definition for ''Crane'' was too broad and might encompass stores cranes, boat davits, and other lifting appliances. The comments asked that the definition be revised to exclude material-handling gear for general ship's service. The Coast Guard agrees, and has revised the definition to exclude such gear.

Two comments concerned the definition of ''Damp or Wet Space.'' This definition has been deleted since it is not used in this final rule.

Two comments suggested punctuation changes to the definition of ''Offshore Worker.'' The Coast Guard agrees with this suggestion and has removed the commas after ''master'' and ''crew.''

The definition of ''Offshore supply vessel'' in § 125.160 has been changed to include the amendments brought about by the December 18, 1996 interpretative rule ''Offshore Supply Vessels; Alternate Tonnage'' (61 FR 66613).

The Coast Guard has realized that definitions of ''New offshore supply vessel'', ''Existing offshore supply vessel'', and ''Major conversion'' should have been included in subchapter L. Consequently, definitions identical to those in § 90.10–40(b) and (c) have been included in § 125.160 for ''New offshore supply vessel'' and ''Existing offshore supply vessel''. The definition of ''Major conversion'' has also been included, which is similar to that in 46 U.S.C. 2101(14a).

11. 46 CFR 125.180

Two comments questioned the incorporation by reference of classification society rules. They argued that such practice may impose an undue burden on OSV owners who otherwise would not elect to ''class'' their vessels. The incorporation by reference of classification society rules does not mean that owners have to class their vessels. It is a procedure used by Federal agencies to regulate by reference to material already published and available elsewhere. It reduces the redundancy and bulk of the **Federal Register** and the CFR. An owner may elect not to class an OSV, but must use those rules as criteria where required by this subchapter.

12. 46 CFR 126.100

Two comments requested that the language in § 126.100 be replaced by that in § 91.25–50 of subchapter I. They pointed out that the standard should not be the inspector's determination as to ''suitability for intended service,'' but rather his or her determination of the ''safety and seaworthiness'' of the vessel. The Coast Guard agrees that the language in § 91.25–50 is more standard and suitable, and has changed the language in § 126.100 to be similar to that in § 91.25–50.

13. 46 CFR 126.110(b)(1)

Two comments requested that the language in § 126.110(b)(1) be replaced by that in § 91.30–1 of subchapter I. They pointed out that § 91.30–1 requires only that the survey after an accident ensure that repairs or renewals are effectively made, but does not require the inspector's determination as to what repairs or renewals must be made. The Coast Guard agrees and has revised the language in § 126.110(b)(1) to be similar to that used in § 91.30–1.

14. 46 CFR 126.120(a)

Two comments requested that the language in § 126.120(a) be replaced by that in § 91.05–1 of subchapter I. The comments pointed out that a Certificate of Inspection (COI) not complied with is not the same as one ''that is about to expire or has expired.'' The Coast Guard agrees that, for consistency, the language in the subchapters should be similar, and has revised the language in § 126.120(a) to be similar to that used in § 91.05–1.

15. 46 CFR 126.140(a)

Two comments recommended that § 126.140 allow the cognizant Officer in Charge, Marine Inspection (OCMI) to accept an ''Under-Water Inspection in Lieu of Drydocking'' (UWILD) for the intermediate drydocking. The Coast Guard accepts UWILDs in certain situations and by special approval of the Commandant (G–MSE), such as for mobile offshore drilling units (MODUs) under 46 CFR 107.265 and 107.267. This acceptance has been granted primarily because these vessels are so large that few drydocks are available to accommodate them. OSVs, including liftboats, are not so large as to present a problem for normal drydocking. Consequently, the recommendation has not been adopted.

16. 46 CFR 126.140(b)

Two comments pointed out that the requirement in § 126.140(b), to notify the cognizant OCMI when the OSV is drydocked for any reason, may be burdensome for the owner as well as the cognizant OCMI. They said that crewboats under 100 gross tons change out propellers 24 hours a day and that the cognizant OCMI or his representative may not always be available. This requirement is similar to that in 46 CFR 176.600(f) for subchapter T. If there is propeller damage, there may be other underwater damage; the cognizant OCMI, therefore, needs to be appraised of the extent of any damage.

17. 46 CFR 126.150

Two comments suggested that § 126.150(c) should be revised to allow repair work or alterations to begin upon oral approval of the cognizant OCMI, prior to the submission of approved drawings. It is a misunderstanding that repair work or alterations are permitted under subchapter I without advance approval of a cognizant OCMI under § 91.45–1(b). One comment added that often, in order to get a repair completed

in a timely fashion, work must start before a drawing can be completed or approved. The Coast Guard disagrees. The clear intent of § 91.45–1(b) is that drawings of alterations should be approved before work is started, and that drawings will not be needed if deemed unnecessary by the cognizant OCMI. Approval of drawings before work begins is of paramount importance, because any work done that does not match the approved drawings may have to be redone, with added expense and delay in the vessel's return to service. The Coast Guard encounters many instances of owners proceeding with non-emergency repairs or alterations before they obtain the approval of the cognizant OCMI and incurring rework and added expense. This paragraph remains unchanged apart from a sentence to give the OCMI the flexibility to determine whether drawings may not be necessary.

18. 46 CFR 126.160(c)(1)

Two comments urged that the second sentence of § 126.160(c)(1) be revised to exclude the phrase ''upon the recommendation of the contractor and the owner or operator of the OSV.'' The Coast Guard disagrees. The parties involved with the work being performed (the contractor, owner, or operator) must be comfortable with the person used in place of the certified marine chemist and, therefore, allowed some say in who is selected as a replacement.

19. 46 CFR 126.170

Three comments pointed out that § 126.170 imposes limits on the number of offshore workers permitted on liftboats. They explained that frequently liftboats are used as work platforms for construction and maintenance operations, and must be able to provide unspecified accommodations for industrial personnel when liftboats are in the elevated mode. The Coast Guard does not agree that liftboats that are certificated under this subchapter and that are in the elevated mode should be permitted to accommodate an unspecified number of offshore workers. In either the elevated or afloat mode, the total number of offshore workers accommodated cannot be greater than 36 as permitted under § 174.205. The fact that the vessel is in the elevated mode is not a valid argument for providing accommodations for a larger number of persons. Since, in the event of a storm, the liftboat may have to leave the site quickly and move to a harbor of safe refuge, the loading and stability of the vessel in the elevated mode must always be such that the vessel will meet the afloat-stability criteria. Changing of the elevated loading condition to meet the afloat stability criteria is not permitted, as a storm may develop quickly leaving no time for a change of loading.

However, if the permanent accommodation stated on the COI is less than 36, the cognizant OCMI may, on a case-by-case basis, permit the use of additional temporary quarters for offshore workers up to a total of 36 (not counting the crew quarters), in order to augment the permanent accommodation, provided the vessel is designed to meet the damaged stability requirements for more than 16 persons in § 174.205. The cognizant OCMI will make the judgment on the number of additional temporary quarters permitted, taking into consideration such things as the need for extra lifesaving equipment and the effects on stability of the added quarters. If a liftboat is intended to carry more than 36 offshore workers, the vessel cannot be certificated under subchapter L, and must be certificated and meet the rules of an appropriate vessel class under this chapter.

Two comments suggested that § 126.170(a) should permit the cognizant OCMI to raise the maximum number of offshore workers, given a vessel's compliance with other regulatory criteria, such as lifesaving equipment and stability. Subchapter L already permits the carriage of up to 36 offshore workers if a vessel meets more stringent damaged stability criteria. For Subchapter L to permit the carriage of even more offshore workers, other than in an emergency, would present a risk unacceptable to the Coast Guard, because subchapter L is less stringent than prior regulations in other respects. For example, new subchapter L allows the carriage of unlimited amounts of fuel for transfer to the platforms.

20. 46 CFR 126.170(a)

Two comments suggested that crewboats should be permitted to carry as many as 100 offshore workers, provided the boats meet the additional requirements of § 171.080(d)(3), and still be considered OSVs. The Coast Guard does not agree with this suggestion. Vessels carrying more than 36 offshore workers cannot be certificated under subchapter L, because, under § 126.170(a), an OSV is restricted to the carriage of no more than 36 offshore workers. Consequently, crewboats carrying 36 or more offshore workers may not be certificated under subchapter L, but must be certificated as small passenger vessels under subchapter T or K.

21. 46 CFR 126.230(b)

Two comments asked whether a vessel converted from another service (such as a freight vessel converted to an OSV) would require inspection under subchapter L. They recommended that an existing vessel, constructed prior to March 15, 1996, but subject to a ''change of service'' modification or alteration, be permitted to retain its status as an existing vessel within the scope of subchapter I or T. The Coast Guard agrees in part with this recommendation. If an existing vessel was converted or subject to a ''change of service,'' such as from freight vessel to OSV prior to March 15, 1996, it does not have to comply with subchapter L. Rather, it would have to, at the owner's discretion, comply with either the regulations in effect at that time (subchapter I or T), or the new subchapter L. If a vessel changes from another service to OSV or undergoes a major conversion on or after March 15, 1996, it must be reviewed and inspected as a new OSV under subchapter L. Major conversion and major or minor alteration are discussed in 46 CFR 90.10–40 (b) and (c), and 46 CFR 125.100. For clarity, § 126.230(b) substitutes ''undergoing a major conversion'' for ''being * * * converted.''

22. 46 CFR 126.350(b)(2)

One comment requested clarification regarding the manual test required on hydraulic steering systems in § 126.350(b)(2). The comment pointed out that many OSVs of less than 100 gross tons do not have the capability for manual operation and asked if the intention of the Coast Guard was to require a design change. Some servo-type power hydraulic steering systems have a manual operation that can meet the requirement in § 130.140(b)(15) or serve as the auxiliary means of steering. The wording in § 126.350(b)(2) has been revised to clarify that this test is required only if the system is fitted for manual operation.

23. 46 CFR 126.350(b)(3)

Two comments pointed out that subpart 94.35 did not address rescue boats and that § 126.350(b)(3) should not refer to rescue boats. On May 20, 1996, the Coast Guard published an interim rule entitled ''Lifesaving Equipment'' (61 FR 25272) that removed 46 CFR part 94 in its entirety, and placed tests and inspections of lifesaving equipment into part 133 (Lifesaving Systems) of subchapter L. At present, the initial inspection of lifesaving appliances, including rescue

boats, is addressed in § 133.45(a) and § 126.350(b)(3) has been removed.

24. 46 CFR 126.430

Two comments requested that the wording in the first paragraph of § 126.430 concerning ''fit for its intended use'' be changed to be similar to that in § 126.100. The Coast Guard agrees and has made this change.

25. 46 CFR 126.530(a)

Three comments argued that § 126.530 should not exclude liftboats from the alternative midperiod examination provisions permitted for conventional hull form OSVs of less than 400 gross tons. One comment also recommended that OSVs of 400 gross tons or more be included in the alternative midperiod examination provision.

On January 25, 1990, the Coast Guard published alternative provisions for reinspection of OSVs of less than 400 gross tons in foreign ports (55 FR 2522). These provisions were subsequently incorporated into the interim rule for OSVs and are now incorporated into this final rule as § 126.530. The Coast Guard initially excluded liftboats from the alternative midperiod examination provisions based on their casualty record, which was significantly worse than conventional hull form OSVs. In addition, the Coast Guard needed to gain experience with liftboat inspections, and was not aware of any U.S.-flag liftboats presently working overseas. However, a re-evaluation of the casualty record of liftboats from 1990 to 1995 has concluded that the casualty record for liftboats is about equal to that of conventional hull form OSVs. Consequently, the Coast Guard has decided that liftboats should be given the same opportunity for alternative midperiod inspection as conventional OSVs, and has deleted the words ''except a liftboat'' from § 126.530(a) to allow liftboats to participate in the alternative provisions for reinspection of OSVs of less than 400 gross tons in foreign ports.

Because the Coast Guard does not have the statutory authority to delegate authority over certificates under the International Oil Pollution Prevention (IOPP) to third parties, OSVs of 400 gross tons or more can not be included in the alternative midperiod inspection.

26. 46 CFR 127.110

The Coast Guard has found it unnecessary for certain plans to be submitted for approval under § 127.110 (a) and (b). Consequently, paragraphs (a)(4) and (b)(3) through (b)(6) of § 127.110 have been deleted. There is no added value for Marine Safety Center or OCMI plan review of these plans, as they can be handled during initial inspection by the Coast Guard marine inspector. Section 127.110(a)(1) has been changed to indicate that specifications are to be submitted for information only as the Coast Guard does not approve specifications. Section 127.110(a)(3) has been changed to indicate that the safety plan (fire-control plan) is to be submitted for OCMI review and approval. This plan is not technical in nature and basically requires the marine inspector to verify that the firefighting equipment on the vessel is as depicted on the plan, and meets the Coast Guard regulations.

27. 46 CFR 127.210(a)

Two comments suggested that the phrase ''equivalent to those'' be inserted in the first sentence between ''rules'' and ''established.'' The Coast Guard does not agree, because § 127.210(b) already permits the use of an approved alternative classification society, or any other established standard.

28. 46 CFR 127.220(d)

Two comments said that the A–60 class construction for bulkheads and decks required in § 127.220(d) would impose an undue economic burden on aluminum crewboats. The comments recommended adding a paragraph to allow aluminum crewboats to meet the requirements of subchapter T. Crewboats do not have to meet the requirements of subchapter L: They may be certificated under subchapter T or K. Therefore, this section is unchanged.

29. 46 CFR 127.240(a)

Four comments pointed out that the two means of escape required by § 127.240(a) would require all sizes of compartments, including small closets and deck lockers, to have two means of escape. The comments recommended that spaces with an area of 46.5 square meters (500 square feet) or less require only one means of escape. The Coast Guard agrees that a restriction on the size of a compartment requiring two means of escape is needed. A new section, § 127.240(l), has been added to allow one means of escape from spaces with a maximum area and greatest dimension of less than 28 square meters (300 square feet) and 6 meters (20 feet), respectively. The 28 square meter (300 square feet) area restriction is similar to that in § 92.10–35 of subchapter I. However, the Coast Guard has determined that whether a space should require two means of escape should depend on dimensions as well as on area. Therefore, it prohibits long narrow spaces without two means of escape, irrespective of their areas. Accordingly, the 6 meter (20 feet) restriction on the maximum dimension was also included in new § 127.240(l).

Three comments urged that windows and portholes should be permitted to serve as secondary means of escape. The Coast Guard disagrees. The crew and offshore workers may be wearing immersion suits, making escape through windows and portholes awkward if not impossible. However, the Coast Guard has added § 127.240(m) to allow the cognizant OCMI the latitude to accept other means of escape if the level of safety is not diminished.

30. 46 CFR 127.240(h)

One comment requested a minimum dimension be provided for the width of the passageways or stairways in § 127.240(h), similar to that provided in subchapter I. The Coast Guard is moving away from prescriptive regulations towards a goal-oriented approach. Goal-oriented requirements allow the designer to satisfy a safety goal in different ways as technology changes. The safety of the vessel is the responsibility of the owner and cannot always be described by prescriptive regulations. The Coast Guard has articulated a goal relative to the width, but the final width must be determined by the designer and owner. However, paragraph (i) requires interior stairways, other than those in machinery or cargo spaces, to be not less than 28 inches wide.

31. 46 CFR 127.240(k)

Four comments suggested that vertical ladders be permitted as access to the pilot house because, on small OSVs (less than 100 gross tons), inclined ladders were virtually impossible to use due to space limitations. The Coast Guard agrees that vertical ladders should be permitted as access to the pilot house and to other house tops not normally manned and used only as weather protection and has revised § 127.240(k) to reflect this change.

32. 46 CFR 127.270(a)

Two comments requested that ''quarters'' be replaced by ''berthing spaces,'' similar to the suggestion in § 125.160. The Coast Guard does not agree, for the reasons set forth in response to the comments on § 125.160.

33. 46 CFR 127.270(c) (2) & (3)

Three comments were confused by the description of the location of the vertical ladders in §§ 127.270(c)(2) and 127.270(c)(3). This confusion is understandable since language from the

NPRM was excluded from the interim rule. In any case, the Coast Guard has decided to drop the requirements in §§ 127.270(c)(2) and 127.270(c)(3) of the interim rule. These requirements were added after the ANPRM, and endeavored to link damaged stability with means of escape from damaged compartments. The Coast Guard has decided to drop any criteria linking damaged stability with providing means of escape from a damaged flooding compartment. A new § 127.270(c)(2) has been added that is similar to that in the ANPRM, and in § 92.20–10(a) of subchapter I. This permits an exception to § 127.270(b), provided that the damaged stability requirements in § 174.205 are met and that the deck head is not below the deepest load waterline.

34. 46 CFR 127.270(e)

Two comments stated that the wording of § 127.270(e) implies that accommodations for crew and offshore workers are to be separated. The comments suggested deleting the words ''for crew members or offshore workers.'' The Coast Guard did not intend to imply that the accommodations of crew and offshore workers should be separated and has revised this paragraph to adopt the recommendation.

35. 46 CFR 127.270(f)

Two comments stated that § 127.270(f) should permit access openings to fuel tanks. The comments pointed out that access to fuel tanks is needed during drydock and hull survey, and that access to double bottom fuel tanks located under accommodations may not be practicable any place other than in the accommodations. The comments recommended deleting the words ''access openings'' from this paragraph. The Coast Guard agrees in part, and has revised this paragraph to permit access openings to fuel tanks in accommodations, except in sleeping quarters. Manholes to fuel tanks in sleeping quarters would be disruptive to the crew and could potentially expose them to noxious fumes. A new paragraph banning access openings in sleeping quarters has been added as § 127.270(g). The material in the original § 127.270(g), as stated in the interim rule, has been redesignated as § 127.270(h).

36. 46 CFR 127.270(g)

Four comments argued that § 127.270(g), which requires separate accommodations for crew and offshore workers, is impracticable and unnecessary. The Coast Guard agrees in part. Accommodations for crew and offshore workers may be shared except for sleeping quarters. If the crew and offshore workers shared sleeping quarters, the crew's normal sleeping patterns could be interrupted by the offshore workers. Section 127.270(g), redesignated as § 127.270(h), has been revised to require that only the quarters of the crew and the offshore workers be separated.

37. 46 CFR 127.280(a)(1)

Two comments stated that there is no practical reason to limit the number of berths in a stateroom to four. The Coast Guard disagrees. Limiting the number of crew in a stateroom to four, limits the amount of sleep disruptions.

38. 46 CFR 127.280(b)(1)

Two comments suggested that a seating width criteria should be included. The Coast Guard agrees and has added a seating width of 400 millimeters (18 inches).

One comment thought that §§ 127.280(b) (1) and (2) required OSVs that carry offshore workers aboard for more than 24 hours to provide both fixed seating and berthing. This is not the case. Berths are required for offshore workers only when aboard for more than 24 hours. To accommodate offshore workers on a voyage of less than 24 hours, the aggregate of available berths and fixed seating may be used to equal the number aboard.

39. 46 CFR 127.280(d)

One comment thought that § 127.280(d) required ''A'' class bulkheads between accommodations for the crew members and those of the offshore workers. To clarify, § 127.280(d) requires ''A'' class bulkheads only between machinery spaces and accommodations for either the crew or the offshore workers.

40. 46 CFR 127.280(e)

Two comments asked whether the cognizant OCMI would separately stipulate the number of offshore workers permitted for a ''less than'' and ''over'' 24-hour voyage. The cognizant OCMI will stipulate on the COI the number of offshore workers permitted to be carried for both the ''less than 24 hours'' voyage and the ''over 24 hours'' voyage.

41. 46 CFR 127.420

One comment stated that the requirements for window and portlight strength were vague and should be removed and addressed later in an NVIC. The Coast Guard disagrees. Section 127.420 is a non-prescriptive regulation allowing the designer discretion to vary conditions and routes of the vessel.

42. 46 CFR 127.440

Four comments objected to the requirement that covers over windows and portlights be able to be removed or opened from the inside. They suggested that this section be removed, or at least revised to apply only to those windows or portlights designated as means of escape. The Coast Guard agrees in part. This section was added in the interim rule based on comments and recommendations by the National Transportation Safety Board (NTSB), which cited the case concerning the capsizing and sinking of the liftboat M/V TITAN on June 29, 1989. The vessel capsized to starboard in less than 1 minute and trapped four persons inside. They were not able to escape because their only means of escape, galley and mess room windows, were covered with protective metal plates secured from the outside. They were able to break the glass of the windows and could have escaped had it not been for the protective coverings. The Coast Guard agrees with the NTSB recommendation that these lives might have been saved if the covers could have been removed from the inside. The Coast Guard has revised this section so that it does not apply to small windows and portholes through which escape is not possible anyway, and has added a sentence that assumes that the glass in fixed windows can be broken, giving access to the outside.

43. 46 CFR 128.130(a)(9)

Section 128.130(a)(9) has been revised to clarify that only ship's service and emergency electrical-generation systems and their auxiliaries vital to the vessel's survivability and safety, constitute vital systems. Ship service and emergency systems, not vital to the vessel's survivability and safety are not vital systems.

44. 46 CFR 128.220(b)

Two comments pointed out that some OSV builders may opt to use non-ferrous piping materials, such as copper nickel (Cu-Ni) or glass reinforced piping (GRP), for salt-water piping systems. They recommended that the words ''and if ferrous'' be added after ''material'' in the first sentence to clarify that the requirement for galvanization applies to ferrous piping material. The Coast Guard agrees and has made this change.

45. 46 CFR 128.240(b)

Two comments stated that acceptance by the Coast Guard of non-standard hydraulic or pneumatic components

would raise concerns regarding legal exposure and may increase the cost of constructing an OSV. The Coast Guard does not agree. This requirement permits the use of non-standard hydraulic or pneumatic components only as an alternative; components complying with subchapter F (Marine Engineering) will be accepted. The Coast Guard is endeavoring to cooperate with industry to accept non-Coast Guard approved components, provided they meet an equivalent standard of safety.

46. 46 CFR 128.410

Two comments requested that ''self-contained'' be defined so as to eliminate confusion between the owner or builder and the cognizant OCMI. This requirement is meant to apply only to an air-conditioning or refrigeration unit designed and built as a single, self-contained unit.

47. 46 CFR 128.420(d)

Two comments requested that non-metallic flexible connections be permitted to serve as connections at the end of the non-metallic flexible hose used for keel-cooler connections to machinery, rather than metallic hose clamps. The Coast Guard agrees to the use of non-metallic hose-clamps but not to that of flexible connections, provided they can withstand vibration and high temperatures and do not become brittle. This section is modified to allow the use of non-metallic hose clamps, and a new paragraph (4) is added to address vibration, high temperature, and brittleness.

48. 46 CFR 129.320(a)

Section 129.320(a) has been revised to exempt submersible pump motors from its requirements.

49. 46 CFR 129.330

One comment pointed out that the American Bureau of Shipping (ABS) rules and the Coast Guard regulations in § 111.30–1 require 915 millimeters (36 inches) of working space in front of switchboards, but the interim rule required only 610 millimeters (24 inches). The Coast Guard based the 610-millimeter dimension on the fact that OSVs are smaller than cargo vessels and are more limited in space. Also, the switchboards are not as large as on cargo vessels. The 24-inch dimension is a minimum dimension, and does not prevent the designer from leaving more working space if needed. The Coast Guard's new interim rule for small passenger vessels (subchapters T and K) also requires only 610 millimeters (24 inches) of working space in front of switchboards. As previously stated, the Coast Guard is endeavoring to attain uniformity between these two rulemakings in areas where uniform treatment is warranted; thus, the 24-inch dimension remains unchanged.

The Coast Guard has revised the inaccessible restriction in this paragraph for clarity and to make it the same as the new subchapter T and K regulations.

50. 46 CFR 129.350(b)

Two comments expressed concern that this paragraph could be interpreted to mean that batteries must be located at the highest level of the vessel, and suggested that a specific distance above the bilge, 460 millimeters (18 inches), be used as an acceptable height. The intent of the regulation was to require that batteries be located as high above the bilge as possible. Additional wording has been added to the paragraph to clarify this.

51. 46 CFR 129.350(g)

One comment asked whether it was the intent of this regulation to require fuses for engine-start batteries. This section requires fuses only on the leads of batteries that distribute power to lighting, motor, and appliance circuits.

52. 46 CFR 129.390(d)

Two comments requested that this paragraph be modified to allow an OSV power source and shore power to operate simultaneously to prevent ''blackout'' when transferring power between the OSV's power source and the shore power. The Coast Guard agrees in part and has revised § 129.390(d) to permit momentary paralleling of the OSV power and the shore base power in cases where the system devices have this capability. However, the Coast Guard supports paragraph (d) as written for circuit breakers not designed for momentary paralleling, because prohibiting paralleling of the shore and OSV power sources will prevent problems due to improper phase sequencing and synchronizing.

53. 46 CFR 129.395

Two comments stated that providing a separate circuit with overcurrent protection at the switchboard for all radios would add undue complexity to the main switchboard. They pointed out that most radio installations are powered by batteries charged from the pilot house lighting panel circuit. The Coast Guard agrees in part and has revised this section so that only one radio installation needs to be powered by an entirely independent feeder circuit with overcurrent protection.

54. 46 CFR 129.560

Section 129.560 has been changed to reflect that not all OSVs need to carry an engine-order telegraph, provided the propulsion plant is controlled only from the wheelhouse.

55. 46 CFR 130.110

Two comments stated that the requirement for a fixed means of communication between the pilothouse and the auxiliary steering station for OSVs of less than 100 gross tons was unnecessary. The Coast Guard does not agree. When the main steering fails and auxiliary steering is being operated from a location without outside vision, it is imperative that the auxiliary steering operator be instructed by someone in a location with complete surrounding vision, such as the pilothouse.

56. 46 CFR 130.120(a)(2)

Two comments stated that § 130.120(a)(2) would impose additional requirements and would not be practicable for any OSV, let alone one under 100 gross tons. As stated in the interim rule, each OSV must have a means, at each propulsion engine, of readily disabling the propulsion-control system to permit local operation. It is imperative that engine control be ''locked out'' from the pilothouse and only local control be permitted when maintenance or adjustments are being performed to the engine. This is necessary to ensure that inadvertent operations are not engaged at the pilothouse controls, which might cause injury when a mechanic is working on the engine. The new interim rule for small passenger vessels subchapter T, at § 184.620(a)(1), has a requirement similar to that in § 130.120(a)(1). This paragraph remains unchanged.

57. 46 CFR 130.120(d)

Two comments suggested that this paragraph be deleted to avoid unnecessary redundancy. For safety reasons, however, this requirement is necessary to ensure that a failure in the propulsion control system will not cause the OSV to accelerate and move forward or aft uncontrollably into a fixed platform or pier. This paragraph has been modified. It now only requires the system be designed so that failure of an easily replaceable component of the propulsion engine will not cause the engine to overspeed or the pitch of the propeller to increase. This modification is in line with Coast Guard requirements for other similar vessels.

58. 46 CFR 130.130

Two comments recommended that the requirements in this section be replaced

by the old ones of subpart 182.30 for small passenger vessels. Subpart 182.30 has since been revised, and is now replaced by subpart F of the new subchapter T. The requirements in § 130.130 are similar to those in subpart F. Therefore, this section is unchanged.

59. 46 CFR 130.140(b)(9)

Two comments stated that this paragraph did not adequately address the varied steering system technologies currently in use aboard OSVs. Because a single rule cannot address all the new technologies being developed, the Coast Guard will accept any fittings, material, or equipment, that provide an equivalent level of safety under § 125.170.

60. 46 CFR 130.140(c)

Two comments suggested modifying § 130.140(c) by replacing the words ''one set of piping'' with ''a common piping system'', so as to eliminate the perception that separate piping might be implied for the pumps, helm, and cylinders. The Coast Guard agrees that this change would help clarify that a single piping system is acceptable for the pumps, helm, and cylinders, and has incorporated this change.

61. 46 CFR 130.230

In an effort to facilitate obtaining the required equipment and reduce the burden on the industry, the Coast Guard is moving toward accepting readily available equipment which is designed and used for purposes similar to those for which the Coast Guard has developed specific requirements. Consequently, the Coast Guard no longer performs type approval of self-contained breathing apparatus under 46 CFR part 160, subpart 160.011.

Paragraph (a) of § 130.230 has been revised to require each self-contained breathing apparatus to be approved by the National Institute for Occupational Safety and Health (NIOSH). This should make it easier to obtain the required self-contained breathing apparatus. Paragraph (d) of the interim rule has been deleted, and the old paragraph (e) changed to the new paragraph (d).

Two comments requested that the Coast Guard permit the self-contained breathing apparatus (SCBA) that is part of the fireman's outfit required in part 133 (Lifesaving Systems) to serve as the SCBA required by this section. A fireman's outfit containing a SCBA is not required in part 133, but may be fitted as an extra if the owner wishes. This paragraph has been revised to clarify that a SCBA, if fitted, may be used to meet the requirements of this section.

62. 46 CFR 130.240

One comment considered the incorporation of ABS Rules for anchors and chains excessive for domestic service because OSVs operating in the U.S. Gulf of Mexico are not subject to extreme weather conditions such as that in the North Sea. The Coast Guard does not agree. Hurricanes aside, the U.S. Gulf of Mexico can have thunderstorms with 60 to 70 mile per hour (mph) winds making it necessary for OSVs to have proper mooring equipment for emergencies. ABS Rules pertaining to length are necessary because OSVs, when moored or anchored close to offshore fixed platforms, are in dangerous surroundings. For example, storms often create a high risk for collisions between OSVs and offshore fixed platforms. OSVs may, however, comply with rules from other classification societies instead of ABS Rules, upon approval of the Commandant (G–MSE).

Three comments considered ABS Rules for anchors and chains excessive and impractical for OSVs of less than 100 gross tons. They requested that OSVs of 100 or less gross tons be permitted to meet the anchor and rope requirements of subchapter T. The Coast Guard agrees that for small vessels of less than 100 gross tons, the ABS requirements may be excessive and that the requirements of subchapter T are adequate. Section 130.240 has been revised and applies only to OSVs of 100 or more gross tons. A new section, § 130.250, has been added and applies only to OSVs of less than 100 gross tons.

63. 46 CFR 130.410(c)

Two comments considered § 130.410(c) excessive and suggested that periodic safety tests similar to those in § 61.40–6 be applied instead. The Coast Guard agrees in part. The responsibility to conduct, at periodic intervals, tests to confirm that automated systems continue to operate in a safe, reliable manner is the responsibility of the master and owner; additional regulations are not necessary. Section 130.410(c) has been deleted, and nothing has been added.

64. 46 CFR 130.460(a)(4)

Two comments suggested that the ''bilge alarm'' requirement of this paragraph be relocated to a general service alarm section. Section 130.460(a) requires visible and audible alarms to be installed in the pilothouse. They may be located in other panels, one of which may be a general service alarm panel, provided it is in the pilothouse.

65. 46 CFR 131.220(g)

Two comments requested that the draft-indicating system required by § 131.220(g) be deleted because OSVs are not commonly fitted with such devices. Although OSVs are not generally fitted with draft-indicating systems, all vessels must be designed so that draft marks may be read at sea in order to calculate the vessel's displacement and stability condition in an emergency. If draft marks are obscured, restricting determination of the draft from the weather deck or another easily accessible location, then an alternative reliable means of reading the drafts must be fitted.

66. 46 CFR 131.330

Two comments stated that it may not be practical for the master of an OSV to personally ''prepare and post'' placards and suggested that this section be revised to indicate that ''durable emergency instruction placards shall be posted in conspicuous locations.'' Although it is the master's responsibility to see that the placards are prepared and posted, it is not necessary that he or she personally perform the task; he or she may delegate the task to another member of the crew.

67. 46 CFR Part 131—Operations. Subpart D—Sufficiency and Supervision of Crew of Survival Craft

Two comments requested that subpart D be deleted in its entirety and that operational requirements be included in part 133 (Lifesaving Systems). Although part 133 contains the general and specific requirements for lifesaving equipment, such as the number and design criteria of survival craft, it does not address operational requirements. The Coast Guard contends that the operational requirements for survival craft are properly located within subpart D.

68. 46 CFR 131.510

Two comments stated that § 131.510 did not seem warranted and requested that it be removed. The Coast Guard disagrees. It is important that the drafts be recorded when leaving port because draft is one of the main parameters of the stability condition required by § 131.513. It is also important that the position of the loadline markings with respect to the waterline be recorded to verify that the vessel is not loaded deeper than the permitted loadline draft. Additionally, these recordings are necessary for accident investigations.

69. 46 CFR 131.513

Two comments stated that the requirements of § 131.513 were not

warranted. Section 131.513 is included because of its similarity to requirements in § 97.15–7 of subchapter I (Cargo and Miscellaneous Vessels), § 35.20–7 of subchapter D (Tank Vessels), and § 109.227 of subchapter I–A (Mobile Offshore Drilling Units), all of which were promulgated by the Coast Guard under a final rule entitled ''Stability Design and Operational Regulations (57 FR 41812; September 11, 1992). This final rule amended stability design and operational regulations for inspected vessels to incorporate recent amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS).

70. 46 CFR 131.530(d)(4)

Two comments stated that the inflation of a liferaft on a 4-month interval is not practical and suggested instead that a drill for those liferafts be completed prior to their inspection dates. The Coast Guard disagrees. It is important that training be performed so crew members are knowledgeable in the use of davit-launching inflatable liferafts. The regulation allows a training raft to be used instead of the vessel's own liferafts and also allows some leeway in when the inflation and lowering must be done. Training intervals coinciding with the reinspection of the vessel's liferafts can be used.

71. 46 CFR 131.545(e)

Two comments stated that this paragraph should not require OSVs in transit to carry 200 percent of lifeboats and rigid liferafts on board while maintaining or repairing primary lifeboats and liferafts as in § 94.10–10(a) for vessels of 500 gross tons and over. Rather the comments suggested that this paragraph require the carriage of 100 percent of lifeboats and rigid liferafts as in § 94.10–10(b) for vessels of less than 500 gross tons. The Coast Guard agrees and has changed this paragraph accordingly.

72. 46 CFR 131.580

The Coast Guard has modified § 131.580(a) to allow new inflatable liferafts and buoyant apparatus to be two years old before the first servicing is required.

Two comments questioned the requirement in § 131.580(e), that ''each repair, except an emergency repair made aboard an OSV'', must be made at servicing facilities approved by the Commandant (G–MSE). The comments stated that routine repairs of inflatable rescue boats made aboard OSVs by the crew are common industry practice. They should not be. Repairs and maintenance of rescue craft must be performed by approved servicing facilities to ensure that qualified personnel, familiar with the equipment, make the repairs and use the proper manufacturers' parts.

73. 46 CFR 131.730(b)

Two comments questioned why it was necessary to label each space containing work vests, as it is common practice aboard OSVs to stow the work vests either in a common area such as the passageway to the weather deck or in the staterooms of the individual crew members. The Coast Guard has reviewed this requirement and decided that it is not necessary to label each space where work vests are stowed since each vest must be labeled under § 160.053–5(b); therefore, § 131.730(b) has been deleted.

74. 46 CFR 131.855

This section has been revised to make it align with § 199.176 of the Lifesaving Equipment interim rule. The size of the lettering in paragraphs (a), (b) and (c) has been removed. The requirement to paint the name of the OSV on the oars and paddles has also been removed. Paragraph (e) is renamed (d) as old paragraph (d) has been removed. Paragraph (c)(1) has been revised to require the number of the boat, rather than the number of persons the boat will hold, to be marked on the lifeboat and rescue boat.

75. 46 CFR 131.885

Section 131.885 has been removed as portable magazine chests no longer are required by Coast Guard regulations.

76. 46 CFR 131.935

Two comments stated that the language in § 97.75–1 was preferable to that in this section. The Coast Guard agrees. It has reverted to language in § 97.75–1, similar to that used in the NPRM.

77. 46 CFR 131.860

This section, like that of § 131.855, has been revised to make it align with § 199.176 of the Lifesaving Equipment interim rule. The size of the lettering in paragraphs (a) and (b) has been removed. Paragraph (a)(2), concerning the requirements for the number of the rigid liferaft, has been removed. Paragraph (a)(3) has now been renumbered (a)(2) since old (a)(2) has been removed. Old paragraph (d), concerning the requirement to paint the OSV name on the oars and paddles, has been removed, and a new paragraph (d) added. New paragraph (d) requires rigid liferafts to be marked to show whether they are fitted with a ''SOLAS A pack'' or a ''SOLAS B pack''.

78. 46 CFR 131.960

Two comments stated that the language in § 97.16–1 was preferable to that in this section and questioned the need to redraft an existing regulation. The Coast Guard agrees. It has reverted to language in § 97.16–1, similar to that used in the NPRM.

One comment understood § 131.960 to require automatic pilot controls aboard OSVs. The comment recommended that this section be revised to read as follows: ''If a vessel is equipped with an automatic pilot and is operating with the automatic pilot in use, the master shall ensure * * *.'' To clarify, this section does not require that an automatic pilot be fitted aboard OSVs; however, if an automatic pilot is voluntarily fitted, it must comply with this section.

79. 46 CFR 132.120

One comment stated that the requirement for a self-priming, power-driven fire pump was in excess of requirements contained in subchapter I, ABS Rules, SOLAS, and International Association of Classification Societies (IACS) and suggested that it be deleted. Subchapter I vessels are permitted to carry much less oil (only 20 percent of their deadweight) than OSVs under subchapter L (unlimited amount). Unlike tank vessels, OSVs require no special or additional firefighting equipment. The Coast Guard has determined that self-priming, power-driven fire pumps are necessary to ensure that primary firefighting equipment will function in light of the greater risk of fire due to the greater amount of oil on board OSVs.

80. 46 CFR 132.120(g)

Two comments requested the inclusion of § 95.10–5(f) of subchapter I, which allows branch piping to be connected to the fire main for other purposes if ''specifically approved by the Commandant.'' Currently, § 132.120(g) permits branch lines to be connected to the fire main for the purpose of washing decks or anchors. Since, under subchapter L, OSVs may now carry both unlimited fuel oil without any special firefighting equipment and 36 offshore workers in addition to the crew, it is the Coast Guard's opinion that additional branch connections to the fire main would increase the probability that the fire main would not work when needed to fight a fire. This would introduce an unacceptable risk of death or injury to

the crew and offshore workers. This paragraph remains unchanged.

81. 46 CFR 132.120(k)

The Coast Guard has added a new paragraph (k) to § 132.120, which is similar to § 181.300(e) in subchapter T. This new paragraph requires that a fire pump have the capability to be operated either from a remote station or locally from the pump itself. This requirement was inadvertently omitted from the interim rule.

82. 46 CFR 134.140(a)

Several comments pointed out that NVIC 8–91 requires steady wind speeds of 70 knots for structural design criteria for liftboats while § 132.140(a) requires steady wind speeds of 100 knots. The comments pointed out that meeting the 100-knot criteria would result in larger hulls with heavier legs, thereby, so increasing the cost of a liftboat. The Coast Guard agrees that a 100 knot criteria for all structural calculations for liftboats in restricted areas of operations is excessive. A 70-knot criteria would serve under normal operating conditions, and a 100-knot criteria would serve under severe storm conditions. This is in line with the requirements for on-bottom stability for restricted service in § 174.255(c) and section 3/2.1.2 of ABS Rules.

The comments also pointed out that NVIC 8–91 permits a reduction in wind speed criteria for leg strength to 50 knots, provided this design limitation is highlighted in the operating manual. This reduction in NVIC 8–91 was designed to accommodate existing liftboats. However, it is inappropriate for new liftboats, because, even ignoring hurricanes, the Gulf of Mexico can have thunderstorms with 70 mph winds. This paragraph now allows a 70-knot criteria for liftboats in restricted areas under normal operating conditions, but requires a 100-knot criteria under severe storm conditions.

83. 46 CFR 134.140(a)(3)

One comment pointed out that the use of an effective-length factor (''K'') of not less than 2.0 could be overly conservative, depending on the complexity of the design. The Coast Guard agrees that if a detailed structural leg analysis is performed, taking into account all factors such as hull and sea bed fixity, a ''K'' factor of less than 2.0 may be used. This paragraph has been revised to allow the use of a ''K'' factor of less than 2.0, provided that both a detailed structural leg analysis is performed and prior approval has been granted by the Commandant (G–MSE).

84. 46 CFR 134.170(b)

The Coast Guard added items (15) and (16) to § 134.170(b) since they were inadvertently omitted from the interim rule. They are not additional or new requirements as they are required to be produced elsewhere in the regulations; they are needed for the master's use while calculating the vessel's stability.

85. 46 CFR 134.180(b)

Two comments pointed out that § 56.60–25(c) restricts the use of non-metallic hoses to lengths of 760 millimeters (30 inches), which is insufficient for fire pump suction lines outside the hull when a liftboat is in the jacked-up mode. The comments requested that this paragraph be revised to permit the use of non-metallic hoses with lengths greater than 760 millimeters (30 inches) outside the hull. The Coast Guard agrees and has revised paragraph (c) to permit the use of non-metallic hoses outside the hull in unlimited lengths.

86. 46 CFR 174.185(f)

One comment pointed out that this paragraph did not allow the righting arms of an OSV to be calculated using the fixed trim method although this method has been used for calculating the righting arms for OSVs for decades. The NPRM proposed allowing the righting arms values to be calculated using either the constant trim or the fixed trim method. This final rule allows the use of the two alternative methods as proposed in the NPRM, by revising § 174.185(f) and adding paragraph (g).

87. 46 CFR 174.195

One comment stated that meeting the requirement to keep ventilation trunks, above the main deck, inboard at least 760 millimeters (30 inches) from the vessel's side would be difficult and expensive. The comment suggested that this section be revised to allow ventilation trunks above the main deck to be located outboard of 760 millimeters (30 inches) from the vessel's side. The Coast Guard acknowledges that cargo space increases as the trunks are located outboard of 760 millimeters (30 inches); however, the added damaged stability criteria for OSVs requires a side penetration of 760 millimeters (30 inches) from baseline upwards without limit. Any trunk outboard of 760 millimeters (30 inches) would, if damaged, cause flooding into the machinery space. For this reason, all trunks must be inboard of the 760 millimeters (30 inches) line from the vessel's side.

88. 46 CFR 174.200 and 174.205

The Coast Guard received several comments from owners, industry, and designers concerning the damaged stability requirements in §§ 174.200 and 174.205 of the interim rule. It was stated that these sections are confusing and unclear as to the different requirements applicable between OSVs carrying 16 or less offshore workers and OSVs carrying more than 16 offshore workers. Although the Coast Guard agrees that the layout and presentation of the two sections could be revised for clarity, it contends that the requirements are sound. The layout and presentation of the damaged stability requirements has been revised by applying § 174.200 to all OSVs and applying § 174.205 only to OSVs carrying more than 16 offshore workers. A new § 174.207, stating the damaged stability criteria applicable to both sections, has also been added.

89. 46 CFR 174.200

One comment asked whether it was the intent of the interim rule to require a damaged stability analysis with the machinery space flooded. As stated in § 174.205(c) and Table 174.205(b) of the interim rule (Table 174.207(a) of the final rule), the permissible transverse extent of damage is 760 millimeters (30 inches). Therefore, if the machinery space has longitudinal wing bulkheads reaching at least 760 millimeters (30 inches) inboard from the outside shell, then the analysis need not consider damage to the complete machinery space, only damage to the wing spaces need be considered. Bottom damage inboard of these wing bulkheads is also not required.

A separate comment asked whether it was the intent of the interim rule to consider damage to a watertight bulkhead within a single machinery space rather than damage to a watertight bulkhead between two machinery spaces. To clarify, if a single machinery space has additional transverse bulkheads within its boundary transverse bulkheads, such as transverse bulkheads within outside wing spaces, then consider only the space between these bulkheads to be damaged. However, the bulkheads must be spaced far enough apart to comply with the longitudinal extent of damage stated in Table 174.205(b)of the interim rule (Table 174.207(a) of the final rule). If there are two machinery spaces with transverse watertight bulkheads spaced farther apart than the longitudinal extent of damage, then do not consider the bulkhead between them to be damaged.

90. 46 CFR 174.205(b)

One comment pointed out that the vertical extent of damage in Table 174.205(b) of the interim rule (Table 174.207(a) of the final rule) was in excess of IMO Resolution A.469, Guidelines for the Design and Operations of Offshore Supply Vessels. The comment argued that if ''it is the goal of this subchapter to eliminate an unwarranted differential between domestic rules and international standards,'' the criteria for OSVs carrying over 16 offshore workers should follow the guidelines in IMO Resolution A.469. Item 4 of the preamble to Resolution A.469, Guidelines for the Design and Construction of Offshore Supply Vessels, states ''Provisions for offshore supply vessels carrying more than 12 industrial personnel are not included in these Guidelines.'' Subchapter L facilitates the carriage of 36, not 12, offshore workers and some of its criteria may be proportionally more stringent than that in IMO A.469. Since the IMO guidelines are written for less than 12 industrial personnel there is no unwarranted differential.

91. 46 CFR 175.400 (46 CFR 175.10–40 of the Interim Rule)

Due to the changes brought about by the interim rule on subchapter T, the section number has been changed to § 175.400. The definition of ''Offshore supply vessel (OSV)'' in § 175.400 has been changed to include the amendments of the December 18, 1996 interpretative rule ''Offshore Supply Vessels; Alternate Tonnage'' (61 FR 66613), similar to the change in § 125.160. The definitions constituting ''Existing OSV'' and ''New OSV'' are identical to their counterparts in §§ 90.10–40 (b) and (c), and 125.160.

General Comments

Three comments discussed the Coast Guard's intention to use metric units in this final rule and recommended keeping British units, since they are customary within the OSV industry. The Coast Guard agrees in part. The final rule uses the ''soft metric'' conversion, in which the metric values appear first followed by the British system equivalent.

Many comments requested the inclusion of crew boats within subchapter L, and suggested requirements for crew boats different from those for OSVs. During the development of subchapter L, the Coast Guard received comments requesting the increase of the maximum number of offshore workers that an OSV may carry from 16 to 36. This final rule permits an OSV to carry 36 offshore workers in addition to the crew, provided additional damaged stability requirements are met. Previously, under 46 U.S.C. sections 2101 (22) and (35), an OSV could not be a passenger-carrying vessel, but because it was necessary for OSVs to carry 36 offshore workers, Congress changed the definition of ''passenger'' so as not to include offshore workers. The Passenger Vessel Safety Act of 1993 contains the new definition. However, OSVs may not carry ''passengers'' or more than 36 offshore workers. Crew boats carrying either ''passengers'' or more than 36 offshore workers will not be certificated as OSVs; and therefore, must be certificated as small passenger vessels under subchapters T or K.

As addressed under ''Associated Regulatory Projects'', the Coast Guard published, on December 18, 1996, an interpretative rule entitled ''Offshore Supply Vessels; Alternate Tonnage''. This rule established the use of a tonnage system under 46 U.S.C. 14302 based on the International Convention on Tonnage Measurement (convention measurement) as an alternative to the national tonnage system under 46 U.S.C. 14502 (regulatory measurement). However, in order to expedite the rulemaking, the Coast Guard established only an alternate tonnage for the maximum size OSV of 6,000 gross tons. The Coast Guard is considering a supplemental rulemaking to establish intermediate tonnage thresholds, and additional standards for the potentially larger OSVs.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 125.180 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Copies of the material are available from the sources listed in that section.

Metric (SI) Conversion

This final rule has been revised to include metric units using the International System of Units (SI), with the exception of nautical miles and knots. The metric value is immediately followed, in parenthesis, by the British value, throughout the rule.

Assessment

This final rule is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040, February 26, 1979). An Assessment is available in the docket for inspection and copying **ADDRESSES**. A summary of the Assessment follows.

As of April 1996, according to the U.S. Coast Guard Marine Safety Management System (MSMS) databases, there were 584 OSVs certificated, 407 of which were of 100 or more gross tons. In evaluating the effect of this final rule, the Coast Guard considered all costs and benefits of this final rule in present value dollars.

The direct monetary benefits determined for this rule have been based upon the dollar values from casualty reports associated with causal factors for OSV (including liftboat) casualties occurring from 1985 to 1995, combined with the costs saved on requirements that have been relaxed in the regulation. This final rule will eliminate requirements that create an unwarranted differential between domestic rules and international standards.

The regulatory changes made by this final rule will reduce the burden of compliance and therefore the cost of this rulemaking. Because the cost reductions are not considered significant, these were not included in the regulatory evaluation addendum adopted as final.

For conventional OSVs and liftboats, the Coast Guard estimates that the 11-year undiscounted costs attributable to compliance with this rule will total $91,281,190. The 11-year present-value costs, discounted at 7 percent, will total $62,226,174. Annually, the one-time costs for newly-built conventional OSVs of less than 100 gross tons are estimated at $760,320, based on 16 newly-built OSVs per year. For each OSV of less than 100 gross tons, the additional cost to comply with subchapter L requirements is estimated at $47,520. Annually, the one-time costs for newly-built conventional OSVs of more than 100 gross tons are estimated at $3,137,970, based on 37 newly-built OSVs per year. For each OSV of more than 100 gross tons, the additional cost to comply with subchapter L therefore the cost of this rulemaking. Because the cost reductions are not considered requirements is estimated at $84,810.

Requirements for liftboats associated with this final rule include the following:

1. Submittal of plans to the Coast Guard.

2. Preparation and submittal of a comprehensive operating manual to the Coast Guard.

3. Design and construction of a fail-safe jacking-system.
4. Piping for fire-main suction while the liftboat is elevated.
5. Compliance with stricter requirements for lifesaving equipment.
6. Compliance with engineering costs associated with leg design.
7. Compliance with engineering costs associated with intact and damaged stability.

Annually, the one-time costs for newly-built liftboats of less than 100 gross tons are estimated at $1,430,000, based on 13 newly-built liftboats per year. For each liftboat of less than 100 gross tons, the additional cost to comply with subchapter L requirements is estimated at $110,000. Annually, the one-time costs for newly-built liftboats of 100 or more gross tons are estimated at $2,970,000, based on 9 newly-built liftboats per year. For each liftboat of 100 or more gross tons, the additional cost to comply with subchapter L requirements is estimated at $330,000.

New liftboats would enjoy some benefits due to the acceptance of comments to the interim rule, such as the allowance of 70-knot wind criteria in the calculation of stability, and accepting smaller anchors and chains for vessels of 100 gross tons and less. These cost reductions have not been included in the regulatory assessment, as they are minor and in some cases unquantifiable.

It should be noted that the benefit estimates in this evaluation reflect certain simplifying assumptions that could be relaxed to provide more refined estimates. The subchapter L damage estimates (Appendix IV) reflect actual dollar values (1985–95) in the year of occurrence. They have not been inflated to reflect current (1997) dollar values. In addition, the aggregate benefit estimates implicitly assume the regulation would be 100 percent effective in reducing damages, deaths, and injuries of the kind that were incurred during 1985–95. Changes in these two assumptions would tend to raise and lower, respectively, the benefit estimates in this document.

It should also be noted that even if the rules were only 75 percent effective in reducing or eliminating the casualties of the type incurred during 1985–95, the rule would be cost-beneficial in that present value benefits would exceed present value costs.

The benefits, comprised of net cost savings attributable to the final rule combined with dollar values from casualties related to causal factors of OSVs and liftboats will total $144,818,410. The 11-year present value of the benefits will total $98,722,372. This figure reflects a 7-percent discount to 1996 of the projected future estimated benefits of this final rule.

The cost-benefit ratio attributable to the final rule is $62,226,174 of costs and $98,722,372 of benefits, which equates to $1.59 of benefits for each dollar of cost.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. No comments submitted to the public docket addressed small entities.

Whenever possible, requirements have been adjusted to the size of the vessel and, in some cases, a relaxation of requirements for smaller vessels (less than 100 gross tons) has been offered. Due to the flexibility of requirements in these rules and the reduction of regulatory burden, small entities involved in the building or ownership of OSVs should not be adversely affected by these rules and may experience increases in business opportunities.

Independent ownership of OSVs, by approximately 70 corporate persons, accounts for about 14 percent of existing conventional OSVs. The Coast Guard does not anticipate individual ownership of more than 20 new conventional OSVs. This figure comes from the assumption that those 20 will likewise account for about 14 percent of the anticipated 140 new conventional OSVs built within the next 3 years. Marginal, one-time, out-of-pocket expense for initial construction will not exceed 2.5 percent, as previously discussed, even if operational improvements in safety or flexibility are not realized.

Individual ownership of liftboats, by five corporate persons, accounts for about 2 percent of existing liftboats. The Coast Guard does not anticipate the individual ownership of more than one new liftboat. This figure comes from the assumption that they would likewise account for about 2 percent of the anticipated new liftboats built within the next 11 years. Marginal, one-time, out-of-pocket expense for initial construction will not exceed 10 percent even if operational improvements in safety or flexibility are not realized.

The Coast Guard anticipates that the additional expenses for initial construction would not exceed 2.5 percent, even if the operational flexibility or safety improvements for this regulation were not implemented. In the case of liftboats, the additional construction costs would be approximately 5 percent of the estimated initial construction cost for newbuilts. There are no recurring costs to liftboat operators based upon these regulations. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard will provide assistance to small entities to determine how this proposed rule applies to them. If you are a small business and need assistance understanding the provisions of the proposed rule, please contact Mr. James M. Magill, Vessel and Facility Operating Standards Division (G–MSO–2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–1082.

Collection of Information

This final rule contains collection-of-information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The section numbers are—

126.120
126.140
126.150
126.160
126.230
126.240
126.260
126.270
126.320
126.330
126.420
126.510
126.530
127.100
127.110
127.210
128.120
128.210
128.220
128.240
129.220
129.320
129.375
130.130
130.330

130.480
131.110
131.210
131.220
131.230
131.310
131.320
131.330
131.340
131.350
131.505
131.510
131.515
131.520
131.525
131.530
131.535
131.545
131.550
131.565
131.570
131.590
131.610
131.620
131.630
131.730
131.805
131.810
131.815
131.820
131.825
131.830
131.835
131.840
131.845
131.850
131.855
131.860
131.865
131.870
131.875
131.880
131.885
131.890
131.893
131.896
131.899
131.930
131.945
131.950
131.955
132.110
132.130
132.210
132.220
132.360
134.130
134.140
134.160
134.170
174.210
174.255

The corresponding OMB approval number is OMB Control Number 2115–0592. The Streamlined Inspection Program notice of proposed rulemaking (CGD 96–055) currently under development will be revising this information collection to implement technical corrections and to incorporate new information requirements.

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, the rule is categorically excluded from further environmental documentation. This final rule is a matter of editorial and procedural changes and of manning, documentation, admeasurement, inspection, and equipping of vessels within the meaning of subparagraphs (a) and (d) of 2.B.2.34(e) of Commandant Instruction M16475.1B, and clearly has no environmental impact. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Compatibility With International Standards

The Coast Guard has adopted a policy to evaluate current and new rules and, as far as possible, to eliminate requirements that create an unwarranted differential between domestic rules and corresponding responsible international standards. The Coast Guard has, accordingly, compared this final rule to corresponding international standards. The Coast Guard has determined that this final rule does not unnecessarily establish requirements in excess of international standards.

List of Subjects

46 CFR Part 90

Administrative practice and procedures, Authority delegation, Cargo vessels, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 98

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 125

Administrative practice and procedures, Authority delegation, Hazardous materials transportation, Incorporation by reference, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 126

Authority delegation, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 127

Authority delegation, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 128

Hazardous materials transportation, Main and auxiliary machinery, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 129

Electric power, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 130

Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels, Vessel control and automation.

46 CFR Part 131

Hazardous materials transportation, Marine safety, Navigation (water), Offshore supply vessels, Oil and gas exploration, Operations, Penalties, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 132

Fire prevention, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Vessels.

46 CFR Part 134

Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Provisions for liftboats, Vessels.

46 CFR Part 170

Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Stability, Vessels.

46 CFR Part 174

Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Stability, Vessels.

46 CFR Part 175

Administrative practice and procedures, Authority delegation, Hazardous materials transportation, Marine safety, Offshore supply vessels, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard adopts the interim rule amending 46 CFR parts 90, 98, 125, 126, 127, 128, 129, 130, 131, 132, 134, 170, 174, and 175 which was published at 60 FR 57630, Nov. 16, 1995 with the following changes:

PART 90—GENERAL PROVISIONS

1. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Revise § 90.05–20 to read as follows:

§ 90.05–20 Applicability to offshore supply vessels.

(a) Existing offshore supply vessels as defined by § 90.10–40(b), if they are of 100 or more but of less than 500 gross tons, are subject to inspection under this subchapter. New offshore supply vessels as defined by § 90.10–40(c), are subject to inspection under subchapter L of this chapter.

(b) Each offshore supply vessel permitted grandfathering under paragraph (a) of this section must complete construction and have a Certificate of Inspection by March 16, 1998.

3. Revise § 90.10–40 to read as follows:

§ 90.10–40 Offshore supply vessels.

(a) An offshore supply vessel is a vessel that is propelled by machinery other than steam, that is of 15 gross tons and less than 500 gross tons (as measured under the Standard, Dual, or Simplified Measurement System under part 69, subpart C, D, or E, of this chapter) or is less than 6,000 gross tons (as measured under the Convention Measurement System under part 69, subpart B, of this chapter) and that regularly carries goods, supplies or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

(b) An existing offshore supply vessel is one contracted for, or the keel of which was laid, before March 15, 1996.

(c) A new offshore supply vessel is one—

(1) That was contracted for, or the keel of which was laid, on or after March 15, 1996; or

(2) That underwent a major conversion initiated on or after March 15, 1996.

PART 98—SPECIAL CONSTRUCTION, ARRANGEMENT, AND OTHER PROVISIONS FOR CERTAIN DANGEROUS CARGOES IN BULK

4.–5. The authority citation for part 98 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

6. Add subpart 98.31, consisting of §§ 98.31–5, 98.31–10, and 98.31–15, to read as follows:

Subpart 98.31—Control of Pollution From NLS Cargoes on Oceangoing Offshore Supply Vessels

§ 98.31–5 Applicability.

This subpart applies to each offshore supply vessel contracted for, or the keel of which was laid, before March 15, 1996, that is oceangoing as defined in 33 CFR 151.05(j) and that carries noxious liquid substances (NLSs) as defined in § 153.2 of this chapter in bulk, including carriage in portable tanks.

§ 98.31–10 Certificate of inspection and NLS certificate endorsements.

(a) The Coast Guard issues the endorsed Certificate of Inspection or NLS Certificate required by § 98.31–15 for every vessel under this subpart to carry NLSs if the vessel—

(1) Has the Cargo Record Book prescribed in § 153.490(a)(1) of this chapter; and

(2) Unless it discharges no NLS residues as defined in § 153.2 of this chapter to the sea, meets the requirements in §§ 153.470 through 153.491 of this chapter.

(b) Each vessel under this subpart that does not meet the requirements in §§ 153.470 through 153.491 of this chapter must have a statement on its Certificate of Inspection or NLS Certificate stating that the vessel is prohibited from discharging NLS residues to the sea.

§ 98.31–15 Operating requirements.

No person may operate a vessel that carries a bulk liquid cargo of NLS unless the vessel—

(a) Has on board a Certificate of Inspection and, if it is a vessel making a foreign voyage, an NLS Certificate endorsed under § 98.31–10 with the name of the NLS cargo;

(b) Discharges no NLS residues to the sea unless the vessel meets—

(1) The equipment requirements in § 98.31–10(a)(2); and

(2) The operating requirements prescribed for oceangoing ships carrying NLSs in §§ 153.901, 153.903, 153.909, and 153.1100 through 153.1132 of this chapter.

7. Revise parts 125 through 132, and part 134 to read as follows:

Subchapter L—Offshore Supply Vessels

PART 125—GENERAL

Sec.
125.100 Applicability.
125.110 Carriage of flammable or combustible liquid cargoes in bulk.
125.120 Carriage of noxious liquid substances in bulk.
125.130 Carriage of packaged hazardous materials.
125.140 Loadlines.
125.150 Lifesaving systems.
125.160 Definitions.
125.170 Equivalents.
125.180 Incorporation by reference.
125.190 Right of appeal.

Authority: 46 U.S.C. 2103, 3306, 3307; 49 U.S.C. App. 1804; 49 CFR 1.46.

§ 125.100 Applicability.

(a) Except as provided by paragraph (c) of this section, this subchapter applies to each offshore supply vessel (OSV) of United States flag contracted for, or the keel of which was laid, on or after March 15, 1996.

(b) Each OSV contracted for, or the keel of which was laid, before March 15, 1996, must be constructed and inspected to comply with—

(1) The regulations in effect until March 15, 1996 (46

CFR subchapter I or subchapter T, as appropriate), as they existed at the time of construction; or

(2) The regulations in this subchapter.

(c) Each OSV permitted grandfathering under paragraph (b)(1) of this section must complete construction and have a Certificate of Inspection by March 16, 1998.

(d) Certain regulations in this subchapter apply only to limited categories of OSVs. Specific statements of applicability appear at the beginnings of those regulations.

(e) As used in this subchapter, the term ''vessels contracted for'' refers not only to the contracting for the construction of a vessel, but also to the contracting for a major alteration to a vessel, the contracting for the conversion of a vessel to an offshore supply vessel or liftboat, and the changing of service or route of a vessel if such changing increases or modifies the general requirements for the vessel or increases the hazards to which it might be subjected.

Note: Navigation and Vessel Inspection Circular 8–91, ''Initial and Subsequent

Inspection of Uncertificated Existing Offshore Supply Vessels, Including Liftboats'', contains guidance on how to apply the regulations in 46 CFR subchapters I and T to OSVs.

§ 125.110 Carriage of flammable or combustible liquid cargoes in bulk.

(a) Except as provided by this section, no OSV may carry flammable or combustible liquid cargoes in bulk without the approval of the Commandant (G–MSE).

(b) An OSV may carry the following in integral tanks:

(1) Grade-D combustible liquids listed by § 30.25–1 of this chapter, in quantities not to exceed 20 percent of the vessel's deadweight, except that the vessel may carry drilling fluids and excess fuel oil, Grade-E as well as Grade-D, without limit.

(2) Grade-E combustible liquids listed by § 30.25–1 of this chapter, in quantities not to exceed 20 percent of the vessel's deadweight, except that the vessel may carry drilling fluids and excess fuel oil, Grade-D as well as Grade-E, without limit.

(c) An OSV may carry the following in fixed independent tanks on deck: Grade-B and lower-grade flammable and combustible liquids listed by § 30.25–1 of this chapter, in quantities not to exceed 20 percent of the vessel's deadweight.

(d) An OSV may carry hazardous materials in portable tanks, in compliance with part 64 and subpart 98.30 of this chapter. A portable tank may be filled or discharged aboard the vessel if authorized by an endorsement on the vessel's Certificate of Inspection.

§ 125.120 Carriage of noxious liquid substances in bulk.

(a) Except as provided by this section, no OSV may carry a noxious liquid substance (NLS) in bulk without the approval of the Commandant (G–MSO).

(b) An OSV may carry in integral and fixed independent tanks NLSs listed by § 153.2 of this chapter, in quantities not to exceed 20 percent of the vessel's deadweight.

(c) Each OSV carrying NLSs in bulk in integral tanks or fixed independent tanks must—

(1) Meet the definition of oceangoing in 33 CFR 151.05;

(2) Have a Certificate of Inspection or NLS Certificate (issued by the Coast Guard) endorsed with the name of the NLS cargo; and

(3) Have the Cargo Record Book prescribed in § 153.490(a)(1) of this chapter.

(d) An OSV that does not meet the equipment requirements in §§ 153.470 through 153.491 of this chapter may not discharge NLS residues to the sea. The vessel's Certificate of Inspection or NLS Certificate will contain this restriction.

(e) Each OSV that discharges NLS residues to the sea must meet—

(1) The equipment requirements in §§ 153.470 through 153.491 of this chapter; and

(2) The operating requirements in §§ 153.901, 153.903, 153.909, and 153.1100 of this chapter.

§ 125.130 Carriage of packaged hazardous materials.

An OSV may carry packaged hazardous materials, or hazardous materials in portable tanks, if the materials are prepared, loaded, and stowed in compliance with 49 CFR parts 171 through 179, as applicable.

§ 125.140 Loadlines.

For an OSV assigned a loadline, see subchapter E (Load Lines) of this chapter, for special requirements on strength, loadline markings, closure of openings, and the like.

§ 125.150 Lifesaving systems.

Lifesaving appliances and arrangements must comply with part 133 of this subchapter.

§ 125.160 Definitions.

Each term defined elsewhere in this chapter for a particular class of vessel applies to this subchapter unless a different definition is given in this section. As used by this subchapter—

Accommodations includes spaces such as at least the following:

(1) A space used as a messroom.
(2) A lounge.
(3) A sitting area.
(4) A recreation room.
(5) Quarters.
(6) A toilet space.
(7) A shower room.

Anti-exposure suit means a protective suit designed for use by rescue boat crews and marine evacuation system parties.

Approval series means the first six digits of a number assigned by the Coast Guard to approved equipment. Where approval is based on a subpart of subchapter Q of this chapter, the approval series corresponds to the number of the subpart. A listing of approved equipment, including all of the approval series, is published periodically by the Coast Guard in Equipment Lists (COMDTINST M16714.3 series), available from the Superintendent of Documents.

Approved means approved by the Commandant, unless otherwise defined.

Bulkhead deck means the uppermost deck to which transverse watertight bulkheads and the watertight shell extend.

Coast Guard District Commander or *District Commander* means an officer of the Coast Guard designated by the Commandant to command activities of the Coast Guard within a Coast Guard district described by 33 CFR part 3, whose duties include the inspection, enforcement, and administration of laws for the safety and navigation of vessels. Coastwise refers to a route not more than 20 nautical miles offshore on any of the following waters:

(1) Any ocean.
(2) The Gulf of Mexico.
(3) The Caribbean Sea.
(4) The Gulf of Alaska.
(5) The Bering Sea.
(6) Such other, similar waters as may be designated by the District Commander.

Combustible liquid means the same as in subpart 30.10 of this chapter.

Commandant means the Commandant of the Coast Guard or an authorized staff officer at Coast Guard headquarters designated by § 1.01–05 of this chapter.

Commanding Officer, Marine Safety Center, means an officer of the Coast Guard designated by the Commandant to command activities of the Coast Guard within the Marine Safety Center, whose duties include review of plans for commercial vessels to ensure compliance with applicable laws and standards.

Crane means a revolving, gantry-mounted, or other type of fixed lifting device used for lifting or moving equipment or supplies. It does not include material handling equipment used for general ship's service, such as lifeboat davits, chain falls, come-alongs, or the like.

Crew means all persons carried on board the OSV to provide navigation and maintenance of the OSV, its machinery, systems, and arrangements essential for propulsion and safe navigation or to provide services for other persons on board.

Deadweight means, when measured in water of specific gravity 1.025, the difference in long tons between—

(1) The displacement of the vessel on even trim at ''lightweight'' as defined by subpart F of part 170 of this chapter; and

(2) The displacement of the vessel on even trim at the deepest load waterline.

Embarkation ladder means the ladder provided at survival craft embarkation stations to permit safe access to survival craft after launching.

Embarkation station means the place where a survival craft is boarded.

Existing offshore supply vessel is one contracted for, or the keel of which was laid, before March 15, 1996.

Flammable liquid means the same as in § 30.10–22 of this chapter.

Float-free launching means that method of launching a survival craft or lifesaving appliance whereby the craft or appliance is automatically released from a sinking vessel and is ready for use.

Gas-free means free from dangerous concentrations of flammable or toxic gases.

Hazardous material means the same as in § 153.2 of this chapter.

Immersion suit means a protective suit that reduces loss of body heat of a person wearing it in cold water.

Inflatable appliance means an appliance that depends upon nonrigid, gas-filled chambers for buoyancy and that is normally kept uninflated until ready for use.

Inflated appliance means an appliance that depends upon nonrigid, gas-filled chambers for buoyancy and that is kept inflated and ready for use at all times.

International voyage means a voyage between a country to which the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 74/83) applies and a port outside that country.

Jacking system means any type of mechanical (including hydraulic) or electrical system used for elevating a liftboat.

Launching appliance or *launching arrangement* means the method or devices for transferring a survival craft or rescue boat from its stowed position to the water. For a launching arrangement using a davit, the term includes the davit, winch, and falls.

Length, relative to a vessel, means the length listed on the vessel's certificate of documentation or the ''registered length'' as defined by § 69.53 of this chapter.

Lifejacket means a flotation device approved as a life preserver or lifejacket.

Liftboat means an OSV with movable legs capable of raising its hull above the surface of the sea.

Major conversion means a conversion of a vessel that, as determined by the Commandant—

(1) Substantially changes the dimensions or carrying capacity of the vessel;

(2) Changes the type of vessel;

(3) Substantially prolongs the life of the vessel; or

(4) Otherwise so changes the vessel that it is essentially a new vessel.

Marine evacuation system means an appliance designed to rapidly transfer large numbers of persons from an embarkation station by means of a passage to a floating platform for subsequent embarkation into associated survival craft, or directly into associated survival craft.

Marine inspector means any person authorized by the Officer in Charge, Marine Inspection (OCMI), to perform duties concerning the inspection, enforcement, and administration of laws for the safety and navigation of vessels.

Muster station means the place where the crew and offshore workers assemble before boarding a survival craft.

New offshore supply vessel is one—

(1) Contracted for, or the keel of which was laid, on or after March 15, 1996; or

(2) Which underwent a major conversion that was initiated on or after March 15, 1996.

Novel lifesaving appliance or arrangement means one that has new features not fully covered by the provisions of this part but that provides an equal or higher standard of safety.

Noxious liquid substance or *NLS* means the same as in § 153.2 of this chapter.

Ocean refers to a route more than 20 nautical miles offshore on any of the following waters:

(1) Any ocean.

(2) The Gulf of Mexico.

(3) The Caribbean Sea.

(4) The Gulf of Alaska.

(5) The Bering Sea.

(6) Such other, similar waters as may be designated by the District Commander.

OCMI means the same as Officer in Charge, Marine Inspection.

Officer in Charge, Marine Inspection means any person of the Coast Guard so designated by the Commandant, to be in charge of an inspection zone for the performance of duties concerning the inspection, enforcement, and administration of laws for the safety and navigation of vessels.

Offshore supply vessel means a vessel that—

(1) Is propelled by machinery other than steam;

(2) Does not meet the definition of a passenger-carrying vessel in 46 U.S.C. 2101(22) or 46 U.S.C. 2101(35);

(3) Is more than 15 but less than 500 gross tons (as measured under the Standard, Dual, or Simplified Measurement System under part 69, subpart C, D, or E, of this chapter) or is less than 6,000 gross tons (as measured under the Convention Measurement System under part 69, subpart B, of this chapter); and

(4) Regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

Offshore worker means an individual carried aboard an OSV and employed in a phase of exploration, exploitation, or production of offshore mineral or energy resources served by the vessel; but it does not include the master or a member of the crew engaged in the business of the vessel, who has contributed no consideration for carriage aboard and is paid for services aboard.

OSV means the same as *offshore supply vessel.*

Quarters means any space where sleeping accommodations are provided.

Rescue boat means a boat designed to rescue persons in distress and to marshal survival craft.

Restricted service means service in areas within 12 hours of a harbor of safe refuge or in areas where a liftboat may be jacked up to meet the 100-knot-wind severe-storm criteria of § 174.255(c) of this chapter.

Seagoing condition means the operating condition of the OSV with the personnel, equipment, fluids, and ballast necessary for safe operation on the waters where the OSV operates.

Survival craft means a craft capable of sustaining the lives of persons in distress from the time of abandoning the OSV on which the persons were originally carried. The term includes lifeboats, liferafts, buoyant apparatus, and lifefloats, but does not include rescue boats.

§ 125.170 Equivalents.

A substitution for fittings, materials, equipment, arrangements, calculations, information, or tests required by this subchapter may be accepted by the cognizant OCMI; by the Commanding Officer, Marine Safety Center; by the District Commander; or by the Commandant, if the substitution provides an equivalent level of safety.

§ 125.180 Incorporation by reference.

(a) Certain materials are incorporated by reference into this subchapter with the approval of the Director of the Federal Register in compliance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than the one listed in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved materials are on file for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Office of Operating and Environmental Standards, 2100 Second Street SW., Washington, DC 20593–0001, and are available from the sources indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this

subchapter, and the sections affected, are as follows:

American Bureau of Shipping (ABS):	
Two World-Trade Center, 106th Floor, New York, NY 10048	
Rules for Building and Classing Steel Vessels Under 61 Meters (200 Ft) in Length (1983)	127.210
Rules for Building and Classing Steel Vessels (1995)	127.210; 129.360
Rules for Building and Classing Aluminum Vessels (1975)	127.210
Rules for Building and Classing Mobile Offshore Drilling Units (1994)	133.140; 133.150
American National Standards Institute (ANSI):	
11 West 42nd St., New York, NY 10036	
B 31.1–1986, Code for Pressure Piping, Power Piping	128.240
Z 26.1–1977 (including 1980 Supplement), Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways.	127.430
American Society of Mechanical Engineers (ASME):	
345 East 47th St., New York, NY 10027	
Boiler and Pressure Vessel Code Section I, Power Boilers, July 1989 with 1989 addenda	128.240
American Society for Testing and Materials (ASTM):	
1916 Race St., Philadelphia, PA 19103	
D93–80, Standard Test Methods for Flash Point by Pensky-Martens Closed Tester	128.310
American Yacht and Boat Council, Inc. (AYBC):	
3069 Solomon's Island Rd., Edgewater, MD 21037–1416	
A–3–1993, Galley Stoves	129.550
A–7–1970, Recommended Practices and Standards Covering Boat Heating Systems	129.550
E–1–1972, Bonding of Direct-Current Systems	129.120
E–8–1994, Alternating-Current (AC) Electrical Systems on Boats	129.120
E–9–1990, Direct-Current (DC) Electrical Systems on Boats	129.120
Institute of Electrical and Electronics Engineers (IEEE):	
345 E. 47th St., New York, NY 10017	
No. 45–1977, Recommended Practice for Electric Installations on Shipboard	129.340
International Maritime Organization (IMO):	
Publications Section, 4 Albert Embankment, London SE1 7SR, England	
Resolution A.520(13), Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-saving Appliances and Arrangements, dated 17 November 1983.	133.40
Resolution A.658(16), ''Use and Fitting of Retro-Reflective Materials on Life-saving Appliances'', dated 20 November 1989.	131.855; 131.875; 133.70
Resolution A.760(18), ''Symbols Related to Life-Saving Appliances and Arrangements'', dated 17 November 1993.	131.875; 133.70; 133.90
International Convention for the Safety of Life at Sea (SOLAS), Consolidated Edition, 1992	126.170
National Fire Protection Association (NFPA):	
1 Batterymarch Park, Quincy, MA 02269–9101	
NFPA 70, National Electrical Code, 1993 Edition	129.320; 129.340; 129.370
NFPA 306, Control of Gas Hazards on Vessels, 1993 Edition	126.160
NFPA 1963, Fire Hose Connections, 1993 Edition	132.130
NFPA 10, Standard for Portable Fire Extinguishers, 1994 Edition	132.350
NFPA 302—Fire Protection Standard for Pleasure and Commercial Motor Craft, 1994 Edition	129.550
Underwriters Laboratories, Inc. (UL):	
333 Pfingsten Rd., Northbrook, IL 60062	
UL 19–1992, Lined Fire Hose and Hose Assemblies	132.130
UL 486A–1992, Wire Connectors and Soldering Lugs for Use with Copper Conductors	129.340
UL 489–1995, Molded-Case Circuit Breakers and Circuit-Breaker Enclosures	129.380
UL 57–1976, Electric Lighting Fixtures	129.410
UL 595–1991, Marine-Type Electric Lighting Fixtures	129.410
UL 1570–1995, Fluorescent Lighting Fixtures	129.410
UL 1571–1995, Incandescent Lighting Fixtures	129.410
UL 1572–1995, High Intensity Discharge Lighting Fixtures	129.410
UL 1573–1995, Stage and Studio Lighting Units	129.410
UL 1574–1995, Track Lighting Systems	129.410

§ 125.190 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal from the decision or action in compliance with subpart 1.03 of this chapter.

PART 126—INSPECTION AND CERTIFICATION

Subpart A—General

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126.100 Inspector not limited.
126.110 Inspection after accident.
126.120 Permit to proceed to another port for repairs.
126.130 Cranes.
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126.150 Repairs and alterations.
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126.460 Tanks for dry bulk cargo.
126.470 Marine-engineering systems.

Subpart E—Reinspection

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126.520 Scope.
126.530 Alternative midperiod examination.

Authority: 46 U.S.C. 3306; 33 U.S.C. 1321(j); E.O. 12777, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

Subpart A—General

§ 126.100 Inspector not limited.

Nothing in this part shall be construed as limiting the inspector from making such tests or inspections as he deems necessary to be assured of the safety and seaworthiness of the vessel.

§ 126.110 Inspection after accident.

(a) The owner or operator of an OSV shall make the vessel available for inspection by a marine inspector—

(1) Each time an accident occurs, or a defect is discovered that affects—

(i) The safety of the vessel; or

(ii) The effectiveness or completeness of its lifesaving, fire-fighting, or other equipment; or

(2) Whenever any important repairs or renewals are made.

(b) The inspection is to ensure that—

(1) The necessary repairs or renewals have been effectively made;

(2) The material and workmanship used to accomplish the repairs or renewals are satisfactory; and

(3) The OSV complies with the regulations in this subchapter.

§ 126.120 Permit to proceed to another port for repairs.

(a) The cognizant OCMI may issue a permit to proceed to another port for repair if in the judgment of this OCMI the vessel can complete the trip safely even though the Certificate of Inspection has expired or is about to expire.

(b) A ''Permit to Proceed to another Port for Repairs'', Form CG–948, will be issued by the cognizant OCMI to the owner, operator, or master of the OSV and states the conditions under which the vessel may proceed to another port. The Permit will be issued only upon the written application of the owner, operator, or master, and only after the surrender of the vessel's Certificate of Inspection to the cognizant OCMI.

(c) The Permit will state on its face the conditions under which it is issued and whether the OSV may carry cargo, goods, supplies, equipment, or offshore workers.

(d) The Permit must be readily available aboard the OSV.

§ 126.130 Cranes.

(a) Except as provided by paragraph (b) of this section, cranes, if installed, must comply with §§ 107.258 through 107.260, 108.601, 109.437, 109.439, 109.521, 109.525, and 109.527 of this chapter.

(b) The manufacturer of a crane may have tests and inspections conducted in compliance with § 107.259 of this chapter, if the surveyor conducting them for the American Bureau of Shipping or the International Cargo Gear Bureau certifies their conduct as required by § 107.259(c) of this chapter.

§ 126.140 Drydocking.

(a) Unless one or more extensions are authorized by the Commandant (G–MOC), each OSV must be placed in drydock or hauled out for examination twice each 5 years with no interval between examinations exceeding 3 years.

(b) The owner or operator shall notify the cognizant OCMI whenever the OSV is drydocked for any reason. This OCMI, upon notification, will determine whether to assign a marine inspector to examine the underwater hull of the vessel.

(c) The internal structural members of an OSV must be examined at the same intervals required for drydocking by paragraph (a) of this section.

(d) At each drydocking required by paragraph (a) of this section, for an OSV of 100 or more gross tons, a tailshaft survey must be conducted as required by § 61.20–15 of this chapter.

(e) At each drydocking required by paragraph (a) of this section, for an OSV of less than 100 gross tons, the propeller or tailshaft must be drawn for examination if the cognizant OCMI deems drawing it necessary.

§ 126.150 Repairs and alterations.

(a) Except in an emergency, no repairs or alterations to the hull or machinery, or to equipment that affects the safety of the OSV, may be made without notice to the cognizant OCMI in the inspection zone where the repairs or alterations are to be made. When the repairs or alterations have been made, notice must be given to this OCMI as soon as practicable.

(b) When emergency repairs or alterations have been made as permitted under paragraph (a) of this section, the master, owner, or operator must notify this OCMI as soon as practicable after the emergency.

(c) Except as provided by paragraphs (b) and (e) of this section, drawings of repairs or alterations must be approved, before work starts, by the cognizant OCMI or, when necessary, by the Commanding Officer, Marine Safety Center (CO, MSC). Drawings will not be needed if deemed unnecessary by this OCMI or by the CO, MSC.

(d) When the cognizant OCMI deems inspection necessary, the repairs or alterations must be inspected by a marine inspector.

(e) Submission of drawings is not required for repairs in kind, but the applicable drawings approved under subpart A of part 127 of this subchapter must be made available to the marine inspector upon request.

§ 126.160 Tests and inspections during repairs or alterations, or during riveting, welding, burning, or other hot work.

(a) NFPA 306 must be used as a guide in conducting the examinations and issuances of certificates required by this section.

(b) Until an examination has determined that work can proceed safely, no riveting, welding, burning, or other hot work may commence.

(c) Each examination must be conducted as follows:

(1) At any port or site inside the United States or its territories and possessions, a marine chemist certified by the NFPA must make the examination. If the services of such a chemist are not reasonably available, the cognizant OCMI, upon the recommendation of the contractor and the owner or operator of the OSV, may authorize another person to make the examination. If this indicates that a repair or alteration, or hot work, can be undertaken safely, the person performing the examination shall issue a certificate, setting forth the spaces covered and any necessary conditions to be met, before the work starts. These conditions must include any requirements necessary to maintain safe conditions in the spaces covered and must include any necessary further examinations and certificates. In particular the conditions must include precautions necessary to eliminate or minimize hazards caused by protective coatings or by cargo residues.

(2) At any port or site outside the United States or its territories and possessions, where the services of a certified marine chemist or other person

authorized by the cognizant OCMI are not reasonably available, the master, owner, or operator of the vessel shall make the examination and a proper entry in the OSV's logbook.

(d) The master shall obtain a copy of each certificate issued by the person making the examination described in paragraph (c)(1) of this section. The master, through and for the persons under his control, shall maintain safe conditions aboard the OSV by full observance of each condition to be met, listed in the certificate issued under paragraph (c)(1) of this section.

§ 126.170 Carriage of offshore workers.

(a) Offshore workers may be carried aboard an OSV in compliance with this subchapter. The maximum number of offshore workers authorized for carriage will be endorsed on the vessel's Certificate of Inspection; but in no case will the number of offshore workers authorized for carriage exceed 36.

(b) No more than 12 offshore workers may be carried aboard an OSV certificated under this subchapter when on an international voyage, unless the vessel holds a valid passenger-ship-safety certificate (Form CG–968) issued in compliance with the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 74/83).

§ 126.180 Carriage of passengers.

No passengers as defined by 46 U.S.C. 2101(21)(B) may be carried aboard an OSV except in an emergency.

Subpart B—Certificate of Inspection

§ 126.210 When required.

Except as provided by §§ 126.120 and 126.260, no OSV may be operated without a valid Certificate of Inspection.

§ 126.220 Description.

The Certificate of Inspection issued to an OSV specifies the vessel, the route it may travel, the minimum manning it requires, the minimum fire-extinguishing and lifesaving equipment it must carry, the maximum number of offshore workers and of total persons it may carry, the name of its owner and operator, and such other conditions as the cognizant OCMI may determine.

§ 126.230 How to obtain or renew.

(a) A builder, owner, master, or operator may begin to obtain or to renew a Certificate of Inspection by submitting an ''Application for Inspection of U.S. Vessel,'' Form CG–3752, to the OCMI of the marine inspection zone in which the inspection is to be made. Form CG–3752 is available from any Marine Safety or Marine Inspection Office of the U.S. Coast Guard.

(b) The application for initial inspection of an OSV being newly constructed or undergoing a major conversion must be submitted before the start of construction or conversion.

(c) The construction, arrangement, and equipment of each OSV must be acceptable to the cognizant OCMI for the issuance of the initial Certificate of Inspection. Acceptance depends on the information, specifications, drawings, and calculations available to this OCMI, and on the successful completion of the initial inspection for certification.

(d) A Certificate of Inspection is renewed by the issuance of a new Certificate of Inspection.

(e) The condition of the OSV and its equipment must be acceptable to the cognizant OCMI for the renewal of the Certificate of Inspection. Acceptance depends on the condition of the vessel as found at the periodic inspection for certification.

§ 126.240 Posting.

The Certificate of Inspection must be framed under glass or other suitable transparent material and posted in a conspicuous place aboard the OSV so that each page is visible.

§ 126.250 Period of validity.

(a) A Certificate of Inspection is valid for 2 years.

(b) A Certificate of Inspection may be suspended and withdrawn or revoked by the cognizant OCMI at any time for noncompliance with the requirements of this subchapter or other applicable laws.

§ 126.260 Temporary Certificate.

If necessary to prevent delay of the OSV, a ''Temporary Certificate of Inspection,'' Form CG–854, containing information listed by § 126.220 may be issued pending the issuance and delivery of the regular Certificate of Inspection. A Temporary Certificate must be carried in the same manner as the regular Certificate.

§ 126.270 Amendment.

(a) An amended Certificate of Inspection may be issued at any time by any OCMI. The amended Certificate of Inspection replaces the original, but the expiration date remains the same as that of the original. An amended Certificate of Inspection may be issued to authorize and record a change in the dimensions, gross tonnage, owner, operator, manning, offshore workers permitted, route permitted, conditions of operations, equipment, or the like from that specified in the current Certificate of Inspection.

(b) A request for an amended Certificate of Inspection must be made to the cognizant OCMI by the owner or operator of the vessel at any time there is a change in the character of a vessel or in its route, equipment, ownership, operation, or similar factors specified in its current Certificate of Inspection.

(c) The cognizant OCMI may require an inspection before issuing an amended Certificate of Inspection.

Subpart C—Initial Inspection

§ 126.310 Prerequisite to Certificate of Inspection.

The initial inspection is a prerequisite to the issuance of the original Certificate of Inspection.

§ 126.320 When made.

(a) No initial inspection occurs until after receipt of the written application of the owner or builder of the vessel to the OCMI in whose zone the vessel is located. The application must be on Form CG–3752, ''Application for Inspection of U.S. Vessel.''

(b) The initial inspection occurs at a time and place agreed to by the party requesting the inspection and by the cognizant OCMI. The owner or the builder, or a representative of either, must be present during the inspection.

§ 126.330 Plans.

Before construction starts, the owner, operator, or builder shall develop plans indicating the proposed arrangement and construction of the vessel. (The list of plans to be developed and the required disposition of these plans appears in part 127 of this subchapter.)

§ 126.340 Scope.

The initial inspection normally consists of a series of inspections conducted during the construction of the vessel. This inspection determines whether the vessel was built to comply with developed plans and in compliance with applicable law. Items normally included in this inspection are all the items listed in § 126.430 and in addition the marine inspector verifies that the arrangement of the vessel conforms to the approved plans, that acceptable material is used in the construction of the vessel, and that the workmanship meets required standards for marine construction. The owner or builder shall make the vessel available for inspection at each stage of construction specified by the cognizant OCMI.

§ 126.350 Specific tests and inspections.

(a) The applicable tests and inspections set forth in subpart D of this part must be made during the initial inspection.

(b) The following specific tests and inspections must also be conducted in the presence of the marine inspector:

(1) Installation of piping for gaseous fixed fire-extinguishing (see § 95.15–15 of this chapter).

(2) Hydraulic steering-systems. If fitted with manual operation, these systems must be tested in the manual mode, with the hydraulic pumps secured, for smooth, efficient operation by one person.

Subpart D—Inspection for Certification

§ 126.410 Prerequisite to reissuance of Certificate of Inspection.

An inspection for certification is a prerequisite to the reissuance of a Certificate of Inspection.

§ 126.420 When made.

No inspection for certification occurs until after receipt of the written application of the owner, builder, master, or operator of the vessel by the OCMI in whose zone the vessel is located. The application must be on the ''Application for Inspection of U.S. Vessel'', Form CG–3752.

§ 126.430 Scope.

The inspection for certification is made by a marine inspector to determine whether the vessel is in a safe and seaworthy condition. The owner or builder shall make the vessel and its equipment available for inspection, including the following items:

(a) Structure.

(b) Watertight integrity.

(c) Pressure vessels and their appurtenances.

(d) Piping.

(e) Main and auxiliary machinery.

(f) Steering apparatus.

(g) Electrical installations.

(h) Lifesaving equipment.

(i) Work vests.

(j) Fire-detecting and fire-extinguishing equipment.

(k) Pollution-prevention equipment.

(l) Sanitary condition.

(m) Fire hazards.

(n) Verification of validity of certificates required and issued by the Federal Communications Commission.

(o) Lights and signals as required by the applicable navigational rules.

(p) Tests and inspections of cranes in compliance with § 126.130.

§ 126.440 Lifesaving equipment.

At each inspection for certification, the tests and inspections specified by § 91.25–15 of this chapter must occur in the presence of a marine inspector, or as otherwise directed by the cognizant OCMI.

§ 126.450 Fire-extinguishing equipment.

At each inspection for certification, the marine inspector determines whether the tests and inspections required by § 132.350 of this subchapter have been performed.

§ 126.460 Tanks for dry bulk cargo.

The owner shall ensure that tanks for dry bulk cargo that are pressure vessels are inspected for compliance with § 61.10–5(b) of this chapter.

§ 126.470 Marine-engineering systems.

The inspection procedures for marine-engineering systems contained in subchapter F of this chapter apply.

Subpart E—Reinspection

§ 126.510 When made.

(a) Except as provided by § 126.530 of this subpart, at least one reinspection must be made of each vessel holding a Certificate of Inspection. The owner, master, or operator shall arrange for the reinspection between the tenth and fourteenth months of the period for which the Certificate of Inspection is valid.

(b) The owner, master, or operator shall make the vessel available for the reinspection at a time and place acceptable to the cognizant OCMI, but no written application is necessary.

§ 126.520 Scope.

In general, the reinspection goes into less detail than that described by § 126.430 of this part for the inspection for certification, unless the cognizant OCMI or marine inspector determines that a major change has occurred since the last inspection.

§ 126.530 Alternative midperiod examination.

(a) The owner, master, or operator of an OSV of less than 400 gross tons may ask the cognizant OCMI to arrange an alternative midperiod examination. The request must go to the cognizant OCMI assigned responsibility for inspections in the country in which the vessel is operating and will be examined. To qualify for the alternative midperiod examination, the vessel must meet the following requirements:

(1) The request must be in writing and be received by this OCMI before the end of the twelfth month of the period for which the Certificate of Inspection is valid.

(2) The vessel is likely to be continuously employed outside of the United States during the tenth through the fourteenth month of validity of its Certificate of Inspection.

(b) In determining whether to authorize the alternative midperiod examination, this OCMI considers the following:

(1) Information contained in previous examination reports on inspection and drydock, including the recommendation, if any, of the then cognizant OCMI for participation in the alternative midperiod examination.

(2) The nature, number, and severity of marine casualties or accidents, as defined by § 4.03–1 of this chapter, involving the vessel in the 3 years preceding the request.

(3) The nature, number, and gravity of any outstanding inspection requirements for the vessel.

(4) The owner's or operator's history of compliance and cooperation in such alternative midperiod examinations, including:

(i) The prompt correction of deficiencies.

(ii) The reliability of previously submitted reports on such alternative midperiod examinations.

(iii) The reliability of representations that the vessel would be, and was, employed outside of the United States for the tenth through the fourteenth month of validity of its Certificate of Inspection.

(c) This OCMI provides the applicant with written authorization, if any, to proceed with the alternative midperiod examination, including, when appropriate, special instructions.

(d) The following conditions must be met for the alternative midperiod examination to be accepted instead of the reinspection required by § 126.510 of this subpart:

(1) The alternative midperiod examination must occur between the tenth and fourteenth months of validity of the Certificate of Inspection.

(2) The reinspection must be of the scope detailed by § 126.520 of this subpart and must be made by the master, owner, or operator of the vessel, or by a designated representative of the owner or operator.

(3) Upon completion of the alternative midperiod examination, the person or persons making the examination shall prepare a comprehensive report describing the conditions found. This report must contain sufficient detail to let this OCMI determine whether the vessel is fit for the service and route specified on the Certificate of Inspection. This report must include subsidiary reports and receipts documenting the servicing of lifesaving and fire-protection equipment, and any photographs or sketches necessary to clarify unusual circumstances. Each person preparing this report shall sign it and certify that the information in it is complete and accurate.

(4) Unless the master of the vessel participated in the alternative midperiod examination and the preparation of the comprehensive report, the master shall review the report for completeness and accuracy. The master shall sign the report to indicate review and shall forward it to the owner or operator of the vessel, who asked for the examination.

(5) The owner or operator of a vessel examined under this section shall review and submit the comprehensive report, required by paragraph (d)(3) of this section, to this OCMI. The report must reach this OCMI before the first day of the sixteenth month of validity of the Certificate of Inspection. The forwarding letter or endorsement must be certified and must contain the following information:

(i) That the person or persons who made the alternative midperiod examination acted on behalf of the vessel's owner or operator.

(ii) That the report was reviewed by the owner or operator.

(iii) That the discrepancies noted during the reinspection have been corrected, or will be within a stated time.

(iv) That the owner or operator has sufficient personal knowledge of conditions aboard the vessel at the time of the reinspection, or has conducted inquiries necessary, to justify forming a belief that the report is complete and accurate.

(e) The form of certification required under this section, for the alternative midperiod examination, is as follows:

I certify that to the best of my knowledge and belief the above is complete and accurate.

(f) Deficiencies and hazards discovered during the alternative midperiod examination made pursuant to this section must be corrected if practicable, before the submittal of the report to this OCMI in compliance with paragraph (d)(5) of this section. Deficiencies and hazards not corrected by the time the report is submitted must be noted in the report as ''outstanding.'' Upon receipt of a report indicating any outstanding deficiency or hazard, this OCMI will inform the owner or operator of the OSV in writing of the time allowed to correct each deficiency and hazard and of the method for establishing that each has been corrected. When any deficiency or hazard remains uncorrected or uneliminated after this time allowed, this OCMI will initiate appropriate enforcement.

(g) Upon receipt of the report, this OCMI will evaluate it and determine:

(1) Whether the cognizant OCMI accepts the alternative midperiod examination instead of the reinspection required by § 126.510 of this subpart.

(2) Whether the vessel is in satisfactory condition.

(3) Whether the vessel continues to be reasonably fit for its intended service and route.

(h) This OCMI may require further information necessary for the determinations required by this section. He or she will inform the owner or operator of the vessel in writing of these determinations.

(i) If this OCMI, in compliance with paragraph (g) of this section, does not accept the alternative midperiod examination instead of the reinspection required by § 126.510 of this subpart, he or she will require reinspection of the vessel as soon as practicable. He or she will inform the owner or operator of the vessel in writing that the examination is not acceptable and that a reinspection is necessary. The owner, master, or operator shall make the vessel available for the reinspection at a time and place agreeable to this OCMI.

PART 127—CONSTRUCTION AND ARRANGEMENTS

Subpart A—Plan Approval

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127.100 General.
127.110 Plans and specifications required for new construction.
127.120 Procedure for submittal of plans.

Subpart B—Particular Construction and Arrangements

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127.220 General fire protection.
127.230 Subdivision and stability.
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127.250 Ventilation for enclosed spaces.
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127.270 Location of accommodations and pilothouse.
127.280 Construction and arrangement of quarters for crew members and accommodations for offshore workers.

Subpart C—Rails and Guards

127.310 Where rails required.
127.320 Storm rails.
127.330 Guards in dangerous places.

Subpart D—Construction of Windows, Visibility, and Operability of Coverings

127.410 Safety-glazing materials.
127.420 Strength.
127.430 Visibility from pilothouse.
127.440 Operability of window coverings.

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart A—Plan Approval

§ 127.100 General.

Plans listed by § 127.110 of this subpart must be submitted for approval after the owner or builder applies for inspection in compliance with § 126.320 of this subchapter.

§ 127.110 Plans and specifications required for new construction.

Each applicant for approval of plans and for an original Certificate of Inspection shall submit three copies of the following:

(a) *General.*

(1) Specifications (information only).

(2) General Arrangement Plans.

(3) Safety Plan (Fire-Control Plan), for OCMI review and approval.

(b) *Hull structure.*

(1) Midship Section.

(2) Booklet of Scantling Plans.

(c) *Subdivision and stability.* [For plans required for subdivision and stability, see subchapter S of this chapter.]

(d) *Marine engineering.*

(1) Piping diagrams of each Class I systems.

(2) Piping diagrams of the following Class II systems (the builder's certification of Class II non-vital piping systems must accompany the piping diagrams in compliance with § 128.220(c) of this subchapter):

(i) Systems for fill, transfer, and service of fuel oil.

(ii) Fire-main and fixed gaseous fire-extinguishing systems.

(iii) Bilge systems.

(iv) Ballast systems.

(v) Fluid-driven power and control systems.

(vi) Through-hull penetrations and shell connections.

(vii) Sanitary systems.

(viii) Vents, sounding tubes, and overflows.

(ix) Compressed-air systems.

(3) Steering and steering-control systems.

(4) Propulsion and propulsion-control systems.

(5) Piping diagrams of each system containing any flammable, combustible, or hazardous liquid including—

(i) Cargo-oil systems;

(ii) Systems for combustible drilling-fluid (such as oil-based liquid mud); and

(iii) Cargo-transfer systems for fixed independent or portable tanks.

(e) *Electrical engineering.*

(1) For each vessel of less than 100 gross tons, the following plans must be submitted:

(i) Arrangement of electrical equipment (plan and profile) with equipment identified as necessary to show compliance with this subchapter.

(ii) Electrical one-line diagram that includes wire types and sizes, overcurrent-device rating and setting, and type of electrical-equipment

enclosure (drip-proof, watertight, or the like).

(iii) Switchboard plans required by paragraphs (e) and (f) of § 110.25–1 of this chapter.

(2) For each vessel of 100 or more gross tons, the plans required by § 110.25 of this chapter must be submitted.

(f) *Automation*. For each vessel of 100 or more gross tons, where automated systems are provided to replace specific personnel in the control and observation of the propulsion systems and machinery spaces, or to reduce the level of crew associated with the engine department, the following plans must be submitted:

(1) Plans necessary to demonstrate compliance with subpart D of part 130 of this subchapter.

(2) Automation-test procedure.

(3) Operations manual.

§ 127.120 Procedure for submittal of plans.

If a vessel is to be constructed, altered, or repaired, the plans, information, and calculations required by this part must be submitted to—

(a) The OCMI in the zone where the vessel is to be constructed, altered, or repaired; or

(b) The Commanding Officer, Marine Safety Center, 400 Seventh Street SW., Washington, DC 20590–0001.

Subpart B—Particular Construction and Arrangements

§ 127.210 Structural standards.

(a) Except as provided by paragraphs (b) and (c) of this section, compliance with the construction and structural rules established by the American Bureau of Shipping and incorporated by reference in § 125.180 is acceptable for the design and construction of an OSV.

(b) The current standards of other recognized classification societies, or any other established current standard, may also be used upon approval by the Commandant (G–MSE).

(c) If no established current standard for design is used, detailed design calculations must be submitted with the plans required by § 127.110 of this part.

(d) The plans required by § 127.110 of this part should specify their standard for design.

§ 127.220 General fire protection.

(a) Each vessel must be designed and constructed to minimize fire hazards, as far as reasonable and practicable.

(b) Exhausts of internal-combustion engines, galley uptakes, and similar sources of ignition must be kept clear of and insulated from woodwork and other combustible matter.

(c) Paint lockers and similar compartments must be constructed of steel or be wholly lined with steel.

(d) Except as provided by paragraph (e) of this section, when a compartment containing the emergency source of electric power, or vital components of that source, adjoins a space containing either the ship's service generators or machinery necessary for the operation of the ship's service generators, each common bulkhead and deck must be of ''A–60'' Class construction as defined by § 72.05–10 of this chapter.

(e) The ''A–60'' Class construction required by paragraph (d) of this section is unnecessary if the emergency source of electric power is in a ventilated battery locker that—

(1) Is located above the main deck;

(2) Is located in the open; and

(3) Has no boundaries contiguous with other decks or bulkheads.

§ 127.230 Subdivision and stability.

Each vessel must meet the applicable requirements in subchapter S of this chapter.

§ 127.240 Means of escape.

(a) Except as provided by paragraphs (l) and (m) of this section, there must be at least two means of escape, exclusive of windows and portholes, from each of the following spaces:

(1) Each space accessible to offshore workers.

(2) Crew accommodations and each space where the crew may normally be employed.

(b) At least one of the two means of escape must—

(1) Be independent of watertight doors in bulkheads required by part 174 of this chapter to be watertight; and

(2) Lead as directly to the open deck as practicable.

(c) The two means of escape required by paragraph (a) of this section must be widely separated and, if possible, at opposite ends or sides of the space, to minimize the possibility that one incident will block both escapes.

(d) Except as provided by paragraph (e) of this section, a vertical ladder ending at a deck scuttle may not be either of the means of escape required by paragraph (a) of this section.

(e) A vertical ladder ending at a deck scuttle may be the second means of escape if the—

(1) Primary means of escape is a stairway or passageway;

(2) Installation of another stairway or passageway is impracticable;

(3) Scuttle is located where stowed deck cargo could not interfere;

(4) Scuttle is fitted with a quick-acting release, and with a hold-back device to hold it open; and

(5) Scuttle meets the requirements for location, strength, and height of coaming in subchapter E of this chapter.

(f) Each vertical ladder must—

(1) Have rungs that are—

(i) At least 410 millimeters (16 inches) long;

(ii) At most 300 millimeters (12 inches) apart, uniform for the length of the ladder; and

(iii) At least 180 millimeters (7 inches) from the nearest permanent object in back of the ladder;

(2) Have at least 115 millimeters (4½ inches) of clearance above each rung;

(3) Be made of incombustible materials; and

(4) Have an angle of inclination with the horizontal, greater than 70 degrees but not more than 90 degrees.

(g) No means may be provided for locking any interior door giving access to either of the two required means of escape, except that a crash door or locking-device, capable of being easily forced in an emergency, may be employed if a permanent and conspicuous notice to this effect is attached to both sides of the door. A means may be provided for locking an exterior door to a deckhouse if the door is—

(1) Locked only by a key under the control of one of the OSV's officers; and

(2) Always operable from the inside.

(h) Each passageway or stairway must be wide enough to provide an effective means of escape for the number of persons having access to it even if each person is wearing a lifejacket. There must be no protrusions in the means of escape that could cause injury, ensnare clothing, or damage lifejackets.

(i) No interior stairway, other than within the machinery spaces or cargo holds, may be less than 710 millimeters (28 inches) wide. The angle of inclination of each stairway with the horizontal must not exceed 50 degrees.

(j) No dead-end passageway, or equivalent, may be more than 13.1 meters (40 feet) in length.

(k) Vertical access must be provided between the various weather decks by means of vertical or permanently inclined ladders. The angles of inclination of the inclined ladders with the horizontal must not exceed 70 degrees, except that vertical ladders may be used for access to pilot-house tops and other house tops used only for weather protection.

(l) Only one means of escape need be provided from each of the spaces stipulated in paragraph (a) of this section, provided the maximum area of each space is less than 28 square meters (300 square feet) and the maximum dimension (length, breadth, or depth) of

each space is less than 6 meters (20 feet).

(m) Alternative means of escape from spaces may be provided if acceptable to the cognizant OCMI.

§ 127.250 Ventilation for enclosed spaces.

(a) Each enclosed space within the vessel must be properly vented or ventilated. Means must be provided for closing each vent and ventilator.

(b) Means must be provided for stopping each fan in a ventilation system serving machinery and cargo spaces and for closing, in case of fire, each doorway, ventilator, and annular space around funnels and other openings into such spaces.

§ 127.260 Ventilation for accommodations.

(a) Each accommodation space must be adequately ventilated in a manner suitable for the purpose of the space.

(b) Each vessel of 100 or more gross tons must be provided with a mechanical ventilation system unless the cognizant OCMI is satisfied that a natural system, such as opening windows, portholes, or doors, will accomplish adequate ventilation in ordinary weather.

§ 127.270 Location of accommodations and pilothouse.

(a) Neither quarters for crew members or offshore workers nor the pilothouse may be located forward of the collision bulkhead required by § 174.190 of this chapter.

(b) Except as provided in paragraph (c) of this section, no part of any deck with accommodations for crew members or offshore workers may be below the deepest load waterline.

(c) Any deck with accommodations for crew members or offshore workers may be below the deepest load waterline if—

(1) The vessel complies with the damage-stability requirements in § 174.205 of this chapter; and

(2) The deck head of the space is not below the deepest load waterline.

(d) No hawse pipe or chain pipe may pass through accommodations for crew members or offshore workers.

(e) There must be no direct access, except through solid, close-fitted doors or hatches, between accommodations and chain lockers, cargo spaces, or machinery spaces.

(f) No sounding tubes, or vents from fuel-oil or cargo-oil tanks may open into accommodations for crew members or offshore workers, except that sounding tubes may open into passageways.

(g) No access openings from fuel-oil or cargo-oil tanks may open into quarters for crew members or offshore workers.

(h) Quarters for crew members must be separate from and independent of those for offshore workers unless the cognizant OCMI approves an alternative arrangement.

§ 127.280 Construction and arrangement of quarters for crew members and accommodations for offshore workers.

(a) The following requirements apply to quarters for crew members on each vessel of 100 or more gross tons:

(1) Quarters for crew members must be divided into staterooms none of which berths more than four members.

(2) Each stateroom for use by crew members must—

(i) Have clear headroom of at least 1.9 meters (6 feet, 3 inches); and

(ii) Contain at least 2.8 square meters (30 square feet) of deck and at least 6 cubic meters (210 cubic feet) of space for each member accommodated. The presence in a stateroom of equipment for use by the occupants does not diminish the area or volume of the room.

(3) There must be at least one toilet, one washbasin, and one shower or bathtub for every eight or fewer crew members who do not occupy a stateroom to which a private or a semiprivate facility is attached.

(b) The following requirements apply to accommodations for offshore workers on each vessel of 100 or more gross tons:

(1) Each offshore worker aboard must be provided with adequate fixed seating. The width of each seat should be at least 460 millimeters (18 inches). The spacing of fixed seating must be sufficient to allow ready escape in case of fire or other emergency. The following are minimal requirements:

(i) Aisles 4.6 meters (15 feet) in length or less must not be less than 610 millimeters (24 inches) wide.

(ii) Aisles more than 4.6 meters (15 feet) in length must not be less than 760 millimeters (30 inches) wide.

(iii) Where the seating is in rows, the distance from seat front to seat front must not be less than 760 millimeters (30 inches).

(2) If the intended operation of a vessel is to carry offshore workers aboard for more than 24 hours, quarters for them must be provided. Each stateroom for use by them must—

(i) Berth no more than six workers;

(ii) Have clear headroom of at least 1.9 meters (6 feet, 3 inches); and

(iii) Contain at least 1.9 square meters (20 square feet) of deck and at least 4 cubic meters (140 cubic feet) of space for each worker accommodated. The presence in a stateroom of equipment for use by the occupants does not diminish the area or volume of the room.

(3) Toilets and washbasins for use by offshore workers must meet the requirements of paragraph (a)(3) of this section.

(c) Each crew member and offshore worker aboard a vessel of less than 100 gross tons must be provided with accommodations of adequate size and construction, and with equipment for his or her protection and convenience suitable to the size, facilities, and service of the vessel.

(d) For each vessel of 100 or more gross tons, the bulkheads and decks separating accommodations for crew members and offshore workers from machinery spaces must be of ''A'' Class construction as defined by § 92.07–5 of this chapter.

(e) After reviewing the arrangement drawings required by § 127.110 of this part, the cognizant OCMI will determine, and record on the vessel's Certificate of Inspection, the number of offshore workers that the vessel may carry.

Subpart C—Rails and Guards

§ 127.310 Where rails required.

(a) Each vessel must have permanently installed efficient guard rails or bulwarks on decks and bridges. Each rail or bulwark must stand at least 1 meter (39–½ inches) from the deck except that, where this height would interfere with the normal operation of the vessel, the cognizant OCMI may approve a lesser height.

(b) At exposed peripheries of the freeboard and superstructure decks, each rail must consist of at least three courses, including the top. The opening below the lowest course must be no more than 230 millimeters (9 inches) with courses no more than 380 millimeters (15 inches) apart. On other decks and bridges each rail must consist of at least two courses, including the top, approximately evenly spaced.

(c) If satisfied that the installation of any rail of the required height would be impracticable, the cognizant OCMI may accept hand grabs or a rail of a lesser height in its place.

§ 127.320 Storm rails.

Suitable storm rails must be installed in each passageway and at the deckhouse sides, including in way of inclined ladders, where persons aboard have normal access. They must be installed on both sides of passageways which are more than 1.8 meters (6 feet) wide.

§ 127.330 Guards in dangerous places.

Suitable hand covers, guards, or rails must be installed on each exposed and

dangerous place, such as gears of rotating machinery, and hot surfaces.

Subpart D—Construction of Windows, Visibility, and Operability of Coverings

§ 127.410 Safety-glazing materials.

Glass and other glazing material used in windows must be material that will not break into dangerous fragments if fractured.

§ 127.420 Strength.

Each window or porthole, and its means of attachment to the hull or the deckhouse, must be capable of withstanding the maximum expected load from wind and waves, due to its location on the vessel's and the authorized route of the vessel.

§ 127.430 Visibility from pilothouse.

(a) Windows and other openings at the pilothouse must be of sufficient size and properly located to provide adequate view for safe operation in any condition.

(b) Glass or other glazing material used in windows at the pilothouse must have a light transmission of at least 70 percent according to Test 2 of ANSI Z26.1, ''Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways,'' and must comply with Test 15 of ANSI Z26.1 for Class I Optical Deviation.

§ 127.440 Operability of window coverings.

Any covering or protection placed over a window or porthole that could be used as a means of escape must be able to be readily removed or opened. It must be possible to open or remove the covering or protection without anyone's having to go onto a weather deck. It may be necessary to break the glass of a window or porthole before removing or opening the covering or protection.

PART 128—MARINE ENGINEERING: EQUIPMENT AND SYSTEMS

Subpart A—General

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128.220 Class II non-vital systems—materials and pressure design.
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128.450 Liquid-mud systems.

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart A—General

§ 128.110 Equipment and systems.

(a) Except as provided by this part, the design, installation, testing, and inspection of materials, machinery, pressure vessels, and piping must comply with subchapter F of this chapter.

(b) This part contains requirements for equipment and systems commonly found on an OSV. If additional or unique systems, such as for low-temperature cargoes, are to be installed, they too must comply with subchapter F of this chapter.

§ 128.120 Plan approval.

The plans required by subchapter F of this chapter need not be submitted if the plans required by § 127.110(d) of this subchapter have been.

§ 128.130 Vital systems.

(a) Vital systems are those systems that are vital to a vessel's survivability and safety. For the purpose of this subchapter, the following are vital systems:

(1) Systems for fill, transfer, and service of fuel oil.

(2) Fire-main systems.

(3) Fixed gaseous fire-extinguishing systems.

(4) Bilge systems.

(5) Ballast systems.

(6) Steering systems and steering-control systems.

(7) Propulsion systems and their necessary auxiliaries and control systems.

(8) Systems for transfer and control of cargo, for integral tanks or fixed independent tanks, in compliance with § 125.110 of this subchapter.

(9) Ship's service and emergency electrical-generation systems and their auxiliaries vital to the vessel's survivability and safety.

(10) Any other marine-engineering system identified by the cognizant OCMI as crucial to the survival of the vessel or to the protection of the personnel aboard.

(b) For the purpose of this subchapter, a system not identified by paragraph (a) of this section is a non-vital system.

Subpart B—Materials and Pressure Design

§ 128.210 Class II vital systems—materials.

Except as provided by §§ 128.230 and 128.240 of this subpart, instead of complying with part 56 of this chapter, materials used in Class II vital piping-systems may be accepted by the cognizant OCMI or the Commanding Officer, Marine Safety Center, if shown to provide a level of safety equivalent to materials in subpart 56.60 of this chapter.

§ 128.220 Class II non-vital systems—materials and pressure design.

(a) Except as provided by §§ 128.230, 128.240, and 128.320 of this subpart, a Class II non-vital piping-system need not meet the requirements for materials and pressure design of subchapter F of this chapter.

(b) Piping for salt-water service must be of a corrosion-resistant material and, if ferrous, be hot-dip galvanized or be at least of extra-heavy schedule in wall thickness.

(c) Each Class II non-vital piping-system must be certified by the builder as suitable for its intended service. A written certificate to this effect must be submitted with the plans required by § 127.110(d) of this subchapter.

(d) The cognizant OCMI will review the particular installation of each system for the safety hazards identified in paragraphs (a), (b)(1), and (c) through (k) of § 56.50–1 of this chapter, and will add requirements as appropriate.

§ 128.230 Penetrations of hulls and watertight bulkheads— materials and pressure design.

(a) Each piping penetration, in each bulkhead required by this subchapter to be watertight, must meet the requirements for materials and pressure design of subchapter F of this chapter.

(b) Each overboard discharge and shell connection, up to and including required shut-off valves, must meet the requirements for materials and pressure design of subchapter F of this chapter.

§ 128.240 Hydraulic or pneumatic power and control—materials and pressure design.

(a) Each standard piping component (such as pipe runs, fittings, flanges, and standard valves) for hydraulic or pneumatic power and control systems must meet the requirements for materials and pressure design of § 128.110, 128.210, or 128.220 of this part, as appropriate.

(b) Any non-standard hydraulic or pneumatic component (such as control valves, check valves, relief valves, and

regulators) may be accepted by the cognizant OCMI or the Commanding Officer, Marine Safety Center, if the component is certified by the manufacturer as suitable for marine service and if—

(1) The component meets each of the requirements for materials and pressure design of subparts 56.60 and 58.30 of this chapter and if its service is limited to the manufacturer's rated pressure; or

(2) The service of the component is limited to ½ the manufacturer's recommended maximum allowable working pressure (MAWP) or 1/10 the component's burst pressure. Burst-pressure testing is described in ANSI B 31.1, Paragraph 104.7.A, and must be conducted to comply with Paragraph A–22, Section I, ASME Boiler and Pressure Vessel Code. Written certification of results of burst-pressure testing must be submitted with the plans required by § 127.110(d) of this subchapter.

Subpart C—Main and Auxiliary Machinery

§ 128.310 Fuel.

(a) Except as provided by paragraph (b) of this section, each internal-combustion engine installed on an OSV, whether for main propulsion or for auxiliaries, must be driven by a fuel having a flashpoint of not lower than 43 °C (110 °F) as determined by ASTM D93.

(b) The use of a fuel with a flashpoint of lower than 43 °C (110 °F) must be specifically approved by the Commandant (G–MSE), except in an engine for a gasoline-powered rescue boat.

§ 128.320 Exhaust systems.

No diesel-engine exhaust system need meet the material requirements in § 58.10–5(d)(1)(i) of this chapter if the installation is certified as required by § 128.220(c) of this part.

Subpart D—Design Requirements for Specific Systems

§ 128.410 Ship's service refrigeration systems.

No self-contained unit either for air-conditioning or for refrigerated spaces for ship's stores need comply with § 58.20–5, 58.20–10, 58.20–15, 58.20–20(a), or 58.20–20(b) of this chapter if—

(a) The unit uses a fluorocarbon refrigerant allowed by part 147 of this chapter;

(b) The manufacturer certifies that the unit is suitable for its intended purpose; and

(c) Electrical wiring meets the applicable requirements in subchapter J of this chapter.

§ 128.420 Keel-cooler installations.

(a) Except as provided by this section, each keel-cooler installation must comply with § 56.50–96 of this chapter.

(b) Approved metallic flexible connections may be located below the deepest-load waterline if the system is a closed loop below the waterline and if its vent is located above the waterline.

(c) Fillet welds may be used in the attachment of channels and half-round pipe sections to the bottom of the vessel.

(d) Short lengths of approved non-metallic flexible hose fixed by metallic or non-metallic hose-clamps may be used at machinery connections if—

(1) The clamps are of a corrosion-resistant material;

(2) The clamps do not depend on spring tension for their holding power; and

(3) Two of the clamps are used on each end of the hose, except that one clamp may be used on an end expanded or beaded to provide a positive stop against hose slippage.

(4) The clamps are resistant to vibration, high temperature, and brittleness.

§ 128.430 Grid-cooler installations.

(a) Each hull penetration for a grid-cooler installation must be made through a cofferdam or at a seachest and must be provided with isolation valves fitted as close to the sea inlet as possible.

(b) Each grid cooler must be protected against damage from debris and grounding by protective guards or by recessing the cooler into the hull.

§ 128.440 Bilge systems.

(a) Except as provided by this section, each bilge system must comply with §§ 56.50–50 and 56.50–55 of this chapter.

(b) If the steering room, engine room, centerline passageway, forward machinery space, and compartment containing the dry-mud tanks are the only below-deck spaces that must be fitted with bilge suctions, the vessel may be equipped to the standards of §§ 56.50–50 and 56.50–57 of this chapter applicable to a dry-cargo vessel of less than 55 meters (180 feet) in length.

§ 128.450 Liquid-mud systems.

(a) Liquid-mud piping systems may use resiliently seated valves of Category A to comply with §§ 56.20–15 and 56.50–60 of this chapter.

(b) Tanks for oil-based liquid mud must be fitted with tank vents equipped with flame screens. Vents must not discharge to the interior of the vessel.

PART 129—ELECTRICAL INSTALLATIONS

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Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart A—General Provisions

§ 129.100 General.

This part contains requirements for the design, construction, and installation of electrical equipment and systems including power sources, lighting, motors, miscellaneous equipment, and safety systems.

§ 129.110 Applicability.

Except as specifically provided in this part, electrical installations on OSVs must comply with subchapter J of this chapter.

§ 129.120 Alternative standards.

(a) An OSV of 19.8 meters (65 feet) in length or less may meet the following

requirements of the American Yacht and Boat Council Projects, where applicable, instead of § 129.340 of this part:

(1) E–1, Bonding of Direct Current Systems.

(2) E–8, AC Electrical Systems on Boats.

(3) E–9, DC Electrical Systems on Boats.

(b) An OSV with an electrical installation operating at a potential of less than 50 volts may comply with 33 CFR 183.430 instead of § 129.340 of this part.

Subpart B—General Requirements

§ 129.200 Design, installation, and maintenance.

Electrical equipment on a vessel must be designed, installed, and maintained to—

(a) Provide services necessary for safety under normal and emergency conditions;

(b) Protect crew members, offshore workers, and the vessel from electrical hazards, including fire, caused by or originating in electrical equipment and electrical shock;

(c) Minimize accidental personal contact with energized parts; and

(d) Prevent electrical ignition of flammable vapors.

§ 129.210 Protection from wet and corrosive environments.

(a) Electrical equipment used in the following spaces must be drip-proof:

(1) A machinery space.

(2) A space normally exposed to splashing, water wash-down, or other wet conditions within a galley, a laundry, or a public washroom or toilet room that has a bath or shower.

(3) Every other space with similar wet conditions.

(b) Electrical equipment exposed to the weather must be watertight.

(c) Electrical equipment exposed to corrosive environments must be of suitable construction and must be resistant to corrosion.

§ 129.220 Basic safety.

(a) Electrical equipment and installations must be suitable for the roll, pitch, and vibration of the vessel under way.

(b) All equipment, including switches, fuses, and lampholders, must be suitable for the voltage and current used.

(c) Receptacle outlets of the type providing a grounded pole or a specific direct-current polarity must be of a configuration that does not permit improper connection.

(d) Electrical equipment and circuits must be clearly marked and identified.

(e) Any cabinet, panel, box, or other enclosure containing more than one source of power must be fitted with a sign warning persons of this condition and identifying the circuits to be disconnected.

Subpart C—Power Sources and Distribution Systems

§ 129.310 Power sources.

(a)(1) Each vessel that relies on electricity to power the following loads must be arranged so that the loads can be energized from at least two sources of electricity:

(i) Any system identified as a vital system in § 128.130(a) of this subchapter.

(ii) Interior lights.

(iii) Communication systems.

(iv) Navigational equipment and lights.

(v) Fire-protection equipment.

(2) A vessel with batteries of enough capacity for 3 hours of continuous operation to supply the loads specified in paragraph (a)(1) of this section, and with a generator or alternator driven by a propulsion engine, complies with paragraph (a)(1) of this section.

(b) Where a generator driven by a propulsion engine is used as a source of electrical power, no speed change, throttle movement, or change in direction of the propeller shaft of the vessel may interrupt power to any of the loads specified in paragraph (a)(1) of this section.

§ 129.315 Power sources for OSVs of 100 or more gross tons.

(a) The requirements of this section apply instead of those in subpart 111.10 of this chapter.

(b) If a generator provides electrical power for any system identified as a vital system by § 128.130(a) of this subchapter, at least two power-generating sets must be provided. At least one set must be independent of the main propulsion plant. A generator not independent of the main propulsion plant must comply with § 111.10–4(d) of this chapter. With any one generating set stopped, the remaining set or sets must provide the power necessary for the loads required by this section.

§ 129.320 Generators and motors.

(a) Each generator and motor, except a submersible-pump motor, must be—

(1) In an accessible space, adequately ventilated and as dry as practicable; and

(2) Mounted above the bilges to avoid damage by splash and to avoid contact with low-lying vapors.

(b) Each generator and motor must be designed for an ambient temperature of 50 °C (122 °F), except that—

(1) If the ambient temperature, in the space where a generator or motor is, does not exceed 40 °C (104 °F) under normal operating conditions, the generator or motor may be designed for an ambient temperature of 40 °C (104 °F); and

(2) A generator or motor designed for an ambient temperature of 40 °C (104 °F) may be used in a location where the ambient temperature is 50 °C (122 °F), if the generator or motor is derated to 80 percent of the full-load rating and if the rating or setting of the overcurrent devices of the generator or motor is reduced accordingly.

(c) For each generator rated at 50 volts or more, a voltmeter and an ammeter used for measuring voltage and current while the generator is in operation must be provided. For each alternating-current generator, a means for measuring frequency must also be provided. To ensure satisfactory operation of each generator, additional control equipment and measuring instruments, if needed, must also be provided.

(d) Each generator must have a nameplate attached to it indicating—

(1) Name of manufacturer, type of generator, and designation of frame;

(2) Output in kilowatts, or horsepower rating;

(3) Kind of rating (continuous, overload, or other);

(4) Amperes at rated load, voltage, and frequency;

(5) Number of phases, if applicable;

(6) Type of windings, if DC;

(7) When intended for connection in a normally grounded configuration, the grounding polarity; and

(8) For a generator derated to comply with paragraph (b)(2) of this section, the derated capacity.

(e) Each motor must have attached to it a nameplate containing the information required by Article 430 of NFPA 70.

§ 129.323 Multiple generators.

If an OSV uses two or more generators to supply electricity for the ship's service loads, to comply with § 129.310(a) of this subpart, the following requirements must be met:

(a) Each generator must have an independent prime mover.

(b) The circuit breaker of a generator to be operated in parallel with another generator must comply with §§ 111.12–11(f), 111.30–19(a), and 111.30–25(d) of this chapter.

(c) The circuit breaker of a generator not to be operated in parallel with another generator must be interlocked to prevent that generator from being connected to the switchboard simultaneously with another.

§ 129.326 Dual-voltage generators.

If a dual-voltage generator is installed on an OSV—

(a) The neutral of the dual-voltage system must be solidly grounded at the switchboard's neutral bus and be accessible for checking the insulation resistance of the generator; and

(b) Ground detection must be provided that—

(1) For an alternating-current system, complies with § 111.05–27 of this chapter; and

(2) For a direct-current system, complies with § 111.05–29 of this chapter.

§ 129.330 Distribution panels and switchboards.

(a) Each distribution panel or switchboard must be in a location as dry as practicable, accessible, adequately ventilated, and protected from falling debris and dripping or splashing water.

(b) Each distribution panel or switchboard must be totally enclosed and of the dead-front type.

(c) Each switchboard must have nonconductive handrails.

(d) Each switchboard or main distribution panel must be fitted with a dripshield, unless the switchboard or distribution panel is of a type mounted deck-to-overhead and is not subject to falling objects or liquids from above.

(e) Each distribution panel and switchboard accessible from the rear must be constructed to prevent a person's accidental contact with energized parts.

(f) Working space must be provided around each main distribution panel and switchboard of at least 610 millimeters (24 inches) in front of the switchboard and, of at least 460 millimeters (18 inches) from the nearest bulkhead, stiffener, or frame behind the switchboard. Rear access is prohibited when the working space behind the switchboard is less than 460 millimeters (18 inches).

(g) Nonconductive mats or grating must be provided on the deck in front of each switchboard and, if the switchboard is accessible from the rear, on the deck behind the switchboard.

(h) Each uninsulated current-carrying part must be mounted on noncombustible, nonabsorbent, high-dielectric insulating material.

(i) Equipment mounted on a hinged door of an enclosure must be constructed or shielded so that no person will come into accidental contact with energized parts of the door-mounted equipment when the door is open and the circuit energized.

(j) Bus capacity of switchboards and main distribution panels must be sized in accordance with § 111.30–19(a) of this chapter. Panelboards must have current rating of not less than the feeder-circuit capacity.

§ 129.340 Cable and wiring.

(a) If individual wires, rather than cables, are used in systems operating at a potential of greater than 50 volts, the wire and associated conduit must be run in a protected enclosure. The protected enclosure must have drain holes to prevent the buildup of condensation.

(b) Each cable and wire must—

(1) Have stranded copper conductors with sufficient current-carrying capacity for the circuit in which it is used;

(2) Be installed so as to avoid or reduce interference with radio reception and compass indication;

(3) Be protected from the weather;

(4) Be supported so as to avoid chafing or other damage;

(5) Be installed without sharp bends;

(6) Be protected by metal coverings or other suitable means, if in areas subject to mechanical abuse;

(7) Be suitable for low temperature and high humidity, if installed in refrigerated compartments;

(8) Be located outside a tank, unless it supplies power to equipment in the tank; and

(9) Have sheathing or wire insulation compatible with the fluid in a tank, when installed to comply with paragraph (b)(8) of this section.

(c) Cable and wire in power and lighting circuits must be #14 AWG or larger. Cable and wire in control and indicator circuits must be #22 AWG or larger, or be ribbon cable or similar, smaller, conductor-size cable recommended by the equipment manufacturer for use in circuits for low-power instrumentation, monitoring, or control.

(d) Cable and wire for power and lighting circuits must—

(1) Comply with Section 310–13 of the NEC (NFPA 70), except that no asbestos-insulated cable or dry-location cable may be used;

(2) Be listed by Underwriters Laboratories, Inc. as UL Boat or UL Marine Shipboard cable; or

(3) Comply with § 111.60–1 of this chapter for cable, and § 111.60–11 of this chapter for wire.

(e) Cable and wire serving vital systems listed in § 128.130(a) of this subchapter or serving emergency loads must be routed as far as practicable from areas at high risk for fire, such as galleys, laundries, and machinery spaces.

(f) Cable or wire serving duplicated equipment must be separated so that a casualty that affects one cable does not affect the other.

(g) Each connection to a conductor or a terminal part of a conductor must be made within an enclosure and—

(1) Have a pressure-type connector on each conductor;

(2) Have a solder lug on each conductor;

(3) Have a splice made with a pressure-type connector to a flexible lead or conductor; or

(4) Be splice-soldered, brazed, or welded to a flexible lead or conductor.

(h) A connector or lug of the set-screw type must not be used with a stranded conductor smaller than No. 14 AWG, unless there is a nonrotating follower that travels with the set screw and makes pressure contact with the conductor.

(i) Each pressure-type wire connector and lug must comply with UL 486A. No wire nuts may be used.

(j) Each terminal block must have terminal screws 6–32 or larger.

(k) Each wire connector used in conjunction with screw-type terminal blocks must be of the captive type such as the ring or the flanged-spade type.

(l) No cable may be spliced in—

(1) A hazardous location; or

(2) Another location, except—

(i) A cable installed in a subassembly may be spliced to a cable installed in another subassembly;

(ii) For a vessel receiving alterations, a cable may be spliced to extend a circuit;

(iii) A cable of large diameter or exceptional length may be spliced to facilitate its installation.

(iv) A cable may be spliced to replace a damaged section of itself if, before replacement of the damaged section, the insulation resistance of the remainder of the cable is measured, and the condition of the insulation is unimpaired.

(m) All material in a cable splice must be chemically compatible with other material in the splice and with the materials in the cable.

(n) Ampacities for conductors must comply with Section 310–15 of the NEC (NFPA 70), or with IEEE Standard 45, as appropriate.

(o) Each conductor must be sized so that the voltage drop at the load terminals does not exceed 10 percent.

(p) Each metallic covering of armored cable must—

(1) Be electrically continuous; and

(2) Be grounded at each end of the run to the—

(i) Hull (on a metallic vessel); or

(ii) Common ground plate (on a nonmetallic vessel); and

(3) Have final sub-circuits grounded at the supply end only.

(q) Each portable or temporary electric cord or cable must be constructed and

used in compliance with the requirements of § 111.60–13 of this chapter for flexible electric cord or cable.

§ 129.350 Batteries—general.

(a) Wherever a battery is charged, there must be natural or induced ventilation to dissipate the gases generated.

(b) Each battery must be located as high above the bilge as practicable within the space the battery is located in and be secured to protect against shifting due to roll, pitch, and heave motions or vibration of the vessel, and free from exposure to splash or spray of water.

(c) Each battery must be accessible for maintenance and removal.

(d) Each connection to a battery terminal must be made with a permanent connector, rather than with spring clips or other temporary clamps.

(e) Each battery must be mounted in a tray lined with, or constructed of, lead or other material resistant to damage by the electrolyte.

(f) Each battery charger must have an ammeter connected in the charging circuit.

(g) Unless the battery is adjacent to its distribution panel or switchboard that distributes power to the lighting, motor, and appliance circuits, the battery leads must have fuses in series with and as close as practicable to the battery.

(h) Each battery used for starting an engine must be located as close as possible to the engine or engines served.

§ 129.353 Battery categories.

This section applies to batteries installed to meet the requirements of § 129.310(a) for secondary sources of power to vital loads.

(a) *Large.* A large battery-installation is one connected to a battery charger having an output of more than 2 kW, computed from the highest possible charging current and rated voltage of the battery installed.

(b) *Small.* A small battery-installation is one connected to a battery charger having an output of 2 kW or less, computed from the highest possible charging current and rated voltage of the battery installed.

§ 129.356 Battery installations.

(a) *Large.* Each large battery-installation must be located in a locker, room, or enclosed box dedicated solely to the storage of batteries. Ventilation must be provided in accordance with § 111.15–10 of this chapter. Electrical equipment located within the battery enclosure must be approved by an independent laboratory for hazardous locations of Class I, Division 1, Group B, and must meet subpart 111.105 of this chapter.

(b) *Small.* Each small battery-installation must be located in a well-ventilated space and protected from falling objects. No small battery-installation may be in a closet, storeroom, or similar space.

§ 129.360 Semiconductor-rectifier systems.

(a) Each semiconductor-rectifier system must have an adequate heat-removal system to prevent overheating.

(b) If a semiconductor-rectifier system is used in a propulsion system or in another vital system, it must—

(1) Have a current-limiting circuit;

(2) Have external overcurrent protection; and

(3) Comply with Sections 4/5.84.2 and 4/5.84.4 of the ''Rules for Building and Classing Steel Vessels'' of the American Bureau of Shipping.

§ 129.370 Equipment grounding.

(a) On a metallic vessel each metallic enclosure and frame of electrical equipment must be permanently grounded to the hull. On a nonmetallic vessel each enclosure and frame of electrical equipment must be bonded to each other and to a common ground by a conductor not normally carrying current.

(b) Each metallic case of instruments must be grounded. So must each secondary winding of instrument transformers.

(c) Each equipment grounding conductor must be sized to comply with section 250–95 of NEC (NFPA 70).

(d) Each nonmetallic mast and topmast must have a lightning-ground conductor.

§ 129.375 System grounding.

(a) If a grounded distribution system is provided, there must be only one connection to ground, regardless of the number of power sources. This connection must be at the main switchboard.

(b) On each metallic vessel, a grounded distribution system must be grounded to the hull. On each nonmetallic vessel, the neutral of a grounded system must be connected to a common ground plate, except that no aluminum grounding conductors may be used.

(c) On each nonmetallic vessel with a grounded distribution system, the common ground plate must have—

(1) Only one connection to the main switchboard; and

(2) The connection to itself readily accessible for checking.

(d) On each nonmetallic vessel with a ground plate provided for radio equipment, the plate must be connected to the common ground plate.

(e) Each insulated grounding-conductor of a cable must be identified by one of the following means:

(1) Wrapping of the cable with green braid or green insulation.

(2) Stripping of the insulation from the entire exposed length of the grounding-conductor.

(3) Marking of the exposed insulation of the grounding-conductor with green tape or green adhesive labels.

(f) No vessel's hull may carry current as a conductor except for—

(1) An impressed-current cathodic-protection system; or

(2) A battery system to start an engine.

(g) No cable armor may be used to ground electrical equipment or systems.

(h) Each receptacle outlet and attachment plug, for a portable lamp, tool, or similar apparatus operating at 100 or more volts, must have a grounding-pole and a grounding-conductor in the portable cord.

§ 129.380 Overcurrent protection.

(a) Overcurrent protection must be provided for each ungrounded conductor, to open the electric circuit if the current reaches a value that causes an excessive or dangerous temperature in the conductor or its insulation.

(b) Each conductor of a control, interlock, or indicator circuit, such as a conductor for an instrument, pilot light, ground-detector light, or potential transformer, must be protected by an overcurrent device.

(c) Each generator must be protected by an overcurrent device set at a value not exceeding 115 percent of the generator's full-load rating.

(d) Circuits of control systems for steering gear must be protected against short circuit.

(e) Each feeder circuit for steering gear must be protected by a circuit breaker that complies with §§ 58.25–55(a) and (b) of this chapter.

(f) Each branch circuit for lighting must be protected against overcurrent by either fuses or circuit breakers. Neither the fuses nor the circuit breakers may be rated at more than 30 amperes.

(g) Each conductor must be protected in accordance with its current-carrying capacity. If the allowable current-carrying capacity does not correspond to a standard size of device, the next larger overcurrent device may be used, provided it is less than 150 percent of the conductor's current-carrying capacity.

(h) An overcurrent device must be installed to protect each motor

conductor and control apparatus against overcurrent due to short circuit or ground fault. Each overcurrent device must be capable of carrying the starting current of the motor.

(i) An emergency switch must be provided in each normally ungrounded main supply conductor from a battery. The switch must be accessible from the battery and located as close as practicable to it.

(j) No grounded conductor of a circuit may be disconnected by a switch or circuit breaker unless the ungrounded conductors are all simultaneously disconnected.

(k) A means of disconnect must be provided on the supply side of and adjacent to each fuse, to de-energize the fuse for inspection and maintenance.

(l) A way for locking the means of disconnect open must be provided unless the means of disconnect for a fused circuit is within sight of the equipment that the circuit supplies.

(m) Each fuse must be of the cartridge type and be listed by Underwriters Laboratories (UL) or another independent laboratory recognized by the Commandant.

(n) Each circuit breaker must meet UL 489 and be of the manually-reset type designed for—

(1) Inverse delay;

(2) Instantaneous short-circuit protection; and

(3) Switching duty if the breaker is used as a switch.

(o) Each circuit breaker must indicate whether it is open or closed.

§ 129.390 Shore power.

Each vessel that has an electrical system operating at more than 50 volts and has provisions for receiving shore power must meet the requirements of this section:

(a) A shore-power-connection box or receptacle must be permanently installed at a convenient location.

(b) A cable connecting the shore-power-connection box or receptacle to the switchboard or main distribution panel must be permanently installed.

(c) A circuit breaker must be provided at the switchboard or main distribution panel for the shore-power connection.

(d) The circuit breaker, required by paragraph (c) of this section, must be interlocked with the feeder circuit breakers for the vessel's power sources to preclude the vessel's power sources and shore power from energizing the vessel's switchboard simultaneously, except in cases where system devices permit safe momentary paralleling of OSV power with shore power.

§ 129.395 Radio installations.

A separate circuit, with overcurrent protection at the switchboard, must be provided for at least one radio installation. Additional radios, if installed, may be powered from a local lighting power source, such as the pilothouse lighting panel, provided each radio power source has a separate overcurrent protection device.

Subpart D—Lighting Systems

§ 129.410 Lighting fixtures.

(a) Each globe, lens, or diffuser of a lighting fixture must have a high-strength guard or be made of high-strength material, except in accommodations, the pilothouse, the galley, or similar locations where the fixture is not subject to damage.

(b) No lighting fixture may be used as a connection box for a circuit other than the branch circuit supplying the fixture.

(c) Each lighting fixture must be installed as follows:

(1) Each lighting fixture and lampholder must be fixed. No fixture may be supported by the screw shell of a lampholder.

(2) Each pendant-type lighting fixture must be suspended by and supplied through a threaded rigid-conduit stem.

(3) Each tablelamp, desklamp, floorlamp, or similar equipment must be so secured in place that it cannot be displaced by the roll, pitch, or heave or by the vibration of the vessel.

(d) Each lighting fixture in an electrical system operating at more than 50 volts must comply with UL 595, ''Marine Type Electric Lighting Fixtures.'' A lighting fixture in an accommodation space, radio room, galley, or similar interior space may comply with UL 57, ''Electric Lighting Fixtures,'' UL 1570, ''Fluorescent Lighting Fixtures,'' UL 1571, ''Incandescent Lighting Fixtures,'' UL 1572, ''High Intensity Discharge Lighting Fixtures,'' UL 1573, ''Stage and Studio Lighting Units,'' or UL 1574, ''Track Lighting Systems,'' as long as the general marine requirements of UL 595 are satisfied.

§ 129.420 Branch circuits for lighting on OSVs of 100 or more gross tons.

On each vessel of 100 or more gross tons, each branch circuit for lighting must comply with § 111.75–5 of this chapter, except that—

(a) Appliance loads, electric-heater loads, and isolated small-motor loads may be connected to a lighting-distribution panelboard; and

(b) Branch circuits, other than for lighting, connected to the lighting-distribution panelboard permitted by paragraph (a) of this section may have fuses or circuit breakers rated at more than 30 amperes.

§ 129.430 Navigational lighting.

(a) Each vessel of less than 100 gross tons and less than 19.8 meters (65 feet) in length must have navigational lighting in compliance with the applicable navigation rules.

(b) Each vessel of 100 or more gross tons, or 19.8 meters (65 feet) or more in length, must have navigational lighting in compliance with the applicable navigation rules and with § 111.75–17(d) of this chapter.

§ 129.440 Emergency lighting.

(a) A vessel of less than 100 gross tons must have adequate emergency lighting fitted along the line of escape to the main deck from accommodations and working (machinery) spaces below the main deck.

(b) The emergency lighting required by paragraph (a) of this section must automatically actuate upon failure of the main lighting. Unless a vessel is equipped with a single source of power for emergency lighting, it must have individual battery-powered lighting that is—

(1) Automatically actuated upon loss of normal power;

(2) Not readily portable;

(3) Connected to an automatic battery-charger; and

(4) Of enough capacity for 6 hours of continuous operation.

§ 129.450 Portable lighting.

Each vessel must be equipped with at least two operable, portable, battery-powered lights. One of these lights must be located in the pilothouse, another at the access to the engine room.

Subpart E—Miscellaneous Electrical Systems

§ 129.510 Lifeboat winches.

Each lifeboat winch operated by electric power must comply with subparts 111.95 and be approved under approval series in subparts 160.015 or 160.115 of this chapter.

§ 129.520 Hazardous areas.

(a) No OSV that carries flammable or combustible liquid with a flashpoint of below 140 °F (60 °C), or carries hazardous cargoes on deck or in integral tanks, or is involved in servicing wells, may have electrical equipment installed in pump rooms, in hose-storage spaces, or within 3 meters (10 feet) of a source of vapor on a weather deck unless the equipment is explosion-proof or intrinsically safe under § 111.105–9 or 111.105–11 of this chapter.

(b) No electrical equipment may be installed in any locker used to store paint, oil, turpentine, or other flammable liquid unless the equipment is explosion-proof or intrinsically safe under § 111.105–9 or § 111.105–11 of this chapter.

(c) Equipment that is explosion-proof and intrinsically safe must comply with subpart 111.105 of this chapter.

§ 129.530 General alarm.

Each vessel must be fitted with a general alarm that complies with subpart 113.25 of this chapter.

§ 129.540 Remote stopping-systems on OSVs of 100 or more gross tons.

(a) Except as provided by paragraph (b) of this section, each vessel must be fitted with remote stopping-systems that comply with subpart 111.103 of this chapter.

(b) The following remote stopping-systems may substitute for remote stopping-systems that must comply with subpart 111.103 of this chapter:

(1) For each propulsion unit, in the pilothouse.

(2) For each discharge pump for bilge slop or dirty oil, at the deck discharge.

(3) For each powered ventilation system, outside the space ventilated.

(4) For each fuel-oil pump, outside the space containing the pump.

(5) For each cargo-transfer pump for combustible and flammable liquid, at each transfer-control station.

(c) Remote stopping-systems required by this section may be combined.

§ 129.550 Power for cooking and heating.

(a) Equipment for cooking and heating must be suitable for marine use. Equipment designed and installed to comply with ABYC Standards A–3 and A–7 or Chapter 6 of NFPA 302 meets this requirement.

(b) The use of gasoline for cooking, heating, or lighting is prohibited.

(c) The use of liquefied petroleum gas for cooking, heating, or other purposes must comply with subpart 58.16 of this chapter.

(d) Each electric space-heater must be provided with a thermal cut-out to prevent overheating.

(e) Each element of an electric space-heater must be enclosed, and the case or jacket of the element made of a corrosion-resistant material.

(f) Each electrical connection for a cooking appliance must be drip-proof.

§ 129.560 Engine-order telegraphs.

No OSV need carry an engine-order telegraph, provided the vessel meets the requirements of § 113.35–3(d) of this chapter.

PART 130—VESSEL CONTROL, AND MISCELLANEOUS EQUIPMENT AND SYSTEMS

Subpart A—Vessel Control

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Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart A—Vessel Control

§ 130.110 Internal communications on OSVs of less than 100 gross tons.

Each vessel of less than 100 gross tons equipped with an independent auxiliary means of steering, as required by § 130.130(b) of this subpart, must have a fixed means of communication between the pilothouse and the place where the auxiliary means of steering is controlled.

§ 130.120 Propulsion control.

(a) Each vessel must have—

(1) A propulsion-control system operable from the pilothouse; and

(2) A means at each propulsion engine of readily disabling the propulsion-control system to permit local operation.

(b) Each propulsion-control system operable from the pilothouse must enable—

(1) Control of the speed of each propulsion engine;

(2) Control of the direction of propeller-shaft rotation;

(3) Control of propeller pitch, if a controllable-pitch propeller is fitted; and

(4) Shutdown of each propulsion engine.

(c) The propulsion-control system operable from the pilothouse may constitute the remote stopping-system required by § 129.540 of this subchapter.

(d) Each propulsion-control system, including one operable from the pilothouse, must be designed so that no one complete or partial failure of an easily replaceable component of the system allows the propulsion engine to overspeed or the pitch of the propeller to increase.

§ 130.130 Steering on OSVs of less than 100 gross tons.

(a) Each OSV of less than 100 gross tons must have a steering system that complies with—

(1) Section 130.140 of this subpart; or

(2) This section.

(b) Except as provided by paragraph (i) of this section, each vessel must have a main and an independent auxiliary means of steering.

(c) The main means of steering (main steering gear) must be—

(1) Of adequate strength for, and capable of, steering the OSV at each service speed;

(2) Designed to operate at maximum astern speed without being damaged; and

(3) Capable of moving the rudder from 35 degrees on one side to 30 degrees on the other side in no more than 28 seconds with the vessel moving ahead at maximum service speed.

(d) Control of the main steering gear must be available from the pilothouse, including control of any necessary ancillary device (motor, pump, valve, or the like). If a power-driven main steering gear is used, a pilot light must be installed in the pilothouse to indicate operation of the power units.

(e) The auxiliary means of steering (auxiliary steering gear) must be—

(1) Of adequate strength for steering the OSV at navigable speed;

(2) Capable of steering the vessel at navigable speed; and

(3) Controlled from a place that—

(i) Can communicate with the pilothouse; or

(ii) Enables the master to safely maneuver the vessel.

(f) The steering gear must be designed so that transfer from the main steering gear or its control to the auxiliary steering gear or its control can be achieved rapidly. Any tools or equipment necessary for transfer must be readily available. Instructions for transfer must be posted.

(g) Each vessel must have instantaneous protection against short circuit for electrical-power circuits and control circuits, the protection sized and located to comply with §§ 58.25–55 (d) and (e) of this chapter.

(h) A rudder-angle indicator independent of the control of the main steering gear must be installed at the steering-control station in the pilothouse.

(i) No auxiliary steering gear need be installed if—

(1) The main steering gear, including power systems, is installed in duplicate; or

(2) Multiple-screw propulsion—with independent control of propulsion from the pilothouse for each screw and with a means to restrain and center the rudder—is installed, and if that control is capable of steering the OSV.

(j) Each vessel with duplicate (parallel but cross-connected) power systems for the main steering gear by way of compliance with paragraph (i)(1) of this section may use one of the systems for other purposes if—

(1) Control of the subordinate parallel system is located at the steering-control station in the pilothouse;

(2) Full power is available to the main steering gear when the subordinate parallel system is not in operation;

(3) The subordinate parallel system can be isolated from the means of steering, and instructions on procedures for isolating it are posted; and

(4) The subordinate parallel system is materially equivalent to the steering system.

§ 130.140 Steering on OSVs of 100 or more gross tons.

(a) Each OSV of 100 or more gross tons must have a means of steering that meets the—

(1) Applicable requirements of subchapters F and J of this chapter; or

(2) Requirements for a hydraulic-helm steering-system in paragraph (b) of this section.

(b) Each hydraulic-helm steering-system must have the following:

(1) A main steering gear of adequate strength for, and capable of, steering the vessel at every service speed without being damaged at maximum astern speed.

(2) A hydraulic system with a maximum allowable working pressure of not more than 12,411 kPa (1,800 psi), dedicated to steering.

(3) Piping materials that comply with subchapter F of this chapter, and piping thickness of at least schedule 80.

(4) Each fore-and-aft run of piping located as far inboard as practicable.

(5) Rudder stops.

(6) Either—

(i) Two steering pumps in accordance with § 130.130(c)(3) of this part; or

(ii) A single hydraulic sump of the ''cascading overflow'' type with a centerline bulkhead open only at the top, if each half has enough capacity to operate the system.

(7) Control of the main steering gear from the pilothouse, including—

(i) Control from the helm;

(ii) Control of any necessary ancillary device (motor, pump, valve, or the like); and

(iii) Adequate visibility when going astern.

(8) Multiple-screw propulsion with independent control of propulsion from the pilothouse, complying with § 130.120 of this part and being capable of steering the vessel.

(9) Dual hydraulic cylinders arranged so that either cylinder can be readily isolated, permitting the other cylinder to remain in service and move each rudder.

(10) The steering alarms and indicators required by § 58.25–25 of this chapter, located in the pilothouse.

(11) Instantaneous protection against short circuit for electrical power, and control circuits sized and located as required by §§ 58.25–55 (d) and (e) of this chapter.

(12) A rudder-angle indicator, at the steering-control station in the pilothouse, that is independent of the control of the main steering gear.

(13) Means to locally start and stop the steering pumps.

(14) Means to isolate any auxiliary means of steering so as not to impair the reliability and availability of the control required by paragraph (b)(7) of this section.

(15) Manual capability to center and steady the rudder if the vessel loses normal steering power.

(c) For compliance with paragraph (b) of this section, a common piping system for pumps, helm, and cylinders is acceptable.

Subpart B—Miscellaneous Equipment and Systems

§ 130.210 Radiotelegraph and radiotelephone.

Each vessel must comply with 47 CFR part 80 as applicable.

§ 130.220 Design of equipment for cooking and heating.

(a) Doors on each cooking appliance must be provided with heavy-duty hinges and locking-devices to prevent accidental opening in heavy weather.

(b) Each cooking appliance must be installed so as to prevent its movement in heavy weather.

(c) Each grill or similar cooking appliance must have means to collect grease or fat and to prevent its spillage onto wiring or the deck.

(d) On each cooking appliance, grab rails must be installed when determined by the cognizant OCMI to be necessary for safety.

(e) On each cooking appliance, sea rails, with suitable barriers to prevent accidental movement of cooking pots, must be installed.

(f) Each heater must be constructed and installed so as to prevent the hanging from it of items such as towels and clothing.

§ 130.230 Protection from refrigerants.

(a) For each refrigeration system that exceeds 0.6 cubic meters (20 cubic feet) of storage capacity if using ammonia or other hazardous gas, or exceeds 28.3 cubic meters (1,000 cubic feet) of storage capacity if using a fluorocarbon, as a refrigerant, there must be available one pressure-demand, open-circuit, self-contained breathing apparatus, approved by the National Institute for Occupational Safety and Health (NIOSH) and having at a minimum a 30-minute air supply, and a full facepiece.

(b) Each self-contained breathing apparatus must be stowed convenient to, but outside, the space containing the refrigeration equipment.

(c) A complete recharge in the form of a spare charge must be carried for each self-contained breathing apparatus. The spare charge must be stowed with the equipment it is to reactivate.

(d) The self-contained breathing apparatus in a fireman's outfit, if fitted, complies with this section.

§ 130.240 Anchors and chains for OSVs of 100 or more gross tons.

(a) Each OSV of 100 or more gross tons must be fitted with anchors and chains meeting the applicable standards set by the ABS for classed vessels, including equipment, except as permitted by paragraphs (b) and (c) of this section.

(b) As well as the standards incorporated by paragraph (a) of this section, each vessel of under 61 meters (200 feet) in length and with an equipment number from the ABS of less than 150 may be equipped with either—

(1) One anchor of the tabular weight and one-half the tabulated length of anchor chain listed in the applicable standard; or

(2) Two anchors of one-half the tabular weight with the total length of anchor chain listed in the applicable standard, if both anchors are ready for use at any time and if the windlass is capable of heaving in either anchor.

(c) Standards of classification societies other than the ABS may be used, upon approval of the Commandant.

§ 130.250 Mooring and towing equipment for OSVs of less than 100 gross tons.

Each OSV of less than 100 gross tons must be fitted with mooring and towing equipment meeting the applicable requirements for small passenger vessels in § 184.300 of this chapter.

Subpart C—Navigational Equipment

§ 130.310 Radar.

Each vessel of 100 or more gross tons must be fitted with a general marine radar in the pilothouse.

§ 130.320 Electronic position-fixing device.

Each vessel must be equipped with an electronic position-fixing device satisfactory for the area in which the vessel operates.

§ 130.330 Charts and nautical publications.

(a) Except as provided by paragraph (b) or (c) of this section, as appropriate for the intended voyage, each vessel must carry adequate and up-to-date—

(1) Charts of large enough scale to make safe navigation possible;

(2) U.S. Coast Pilot or similar publication;

(3) Coast Guard Light List;

(4) Tide Tables published by the National Ocean Service;

(5) Local Notice or Notices to Mariners; and

(6) Current Tables published by the National Ocean Service, or a river-current publication issued by the U.S. Army Corps of Engineers or by a river authority, or both.

(b) Any vessel may carry, instead of the complete publications listed in paragraph (a) of this section, extracts from them for areas it will transit.

(c) When operating in foreign waters, a vessel may carry an appropriate foreign equivalent of any item required by paragraph (a) of this section.

§ 130.340 Compass.

Each vessel must be fitted with a compass suitable for the intended service of the vessel. Except aboard a vessel limited to daytime operation, the compass must be illuminated.

Subpart D—Automation of Unattended Machinery Spaces

§ 130.400 Applicability.

This subpart applies to each vessel of 100 or more gross tons where automated systems either replace specific personnel in the control and observation of the propulsion system and machinery spaces or reduce the level of crew associated with the vessel's engine department.

§ 130.410 General.

(a) Arrangements must be such that under any operating condition, including maneuvering, the safety of the vessel is equivalent to that of the same vessel with the machinery spaces fully tended and under direct manual supervision.

(b) Acceptance by the Coast Guard of automated systems to replace specific crew members or to reduce overall requirements for crew members depends upon the—

(1) Capabilities of the automated system;

(2) Combination of crew members, equipment, and systems necessary to ensure the safety of the vessel, personnel, and environment in each operating condition, including maneuvering; and

(3) Ability of the crew members to perform each operational evolution, including to cope with emergencies such as fire and failure of control or monitoring systems.

§ 130.420 Controls.

Each piece of machinery under automatic control must have an alternative manual means of control.

§ 130.430 Pilothouse control.

Each OSV must have, at the pilothouse, controls to start a fire pump, charge the fire main, and monitor the pressure in the fire main.

§ 130.440 Communications system.

(a) Each OSV must have a communications system to immediately summon a crew member to the machinery space wherever one of the alarms required by § 130.460 of this subpart is activated.

(b) The communications system must be either—

(1) An alarm that—

(i) Is dedicated for this purpose;

(ii) Sounds in the crew accommodations and the normally manned spaces; and

(iii) Is operable from the pilothouse; or

(2) A telephone operated from the pilothouse that reaches the master's stateroom, engineer's stateroom, engine room, and crew accommodations that either—

(i) Is a sound-powered telephone; or

(ii) Gets its power from the emergency switchboard or from an independent battery continuously charged by its own charger.

§ 130.450 Machinery alarms.

(a) Each alarm required by § 130.460 of this subpart must be of the self-monitoring type that will both show visibly and sound audibly upon an opening or break in the sensing circuit.

(b) The visible alarm must show until it is manually acknowledged and the condition is corrected.

(c) The audible alarm must sound until it is manually silenced.

(d) No silenced alarm may prevent any other audible alarm from sounding.

(e) Each OSV must be provided with means for testing each visible and audible alarm.

(f) Each OSV must provide battery power for the alarm required by § 130.460(a)(8) of this subpart.

§ 130.460 Placement of machinery alarms.

(a) Visible and audible alarms must be installed at the pilothouse to indicate the following:

(1) Loss of power for propulsion control.

(2) Loss of power to the steering motor or for control of the main steering gear.

(3) Engine-room fire.

(4) High bilge-level.

(5) Low lube-oil pressure for each main propulsion engine and each prime mover of a generator.

(6) For each main propulsion engine and each prime mover of a generator—

(i) High lube-oil temperature; and

(ii) High jacket-water temperature.

(7) For each reduction gear and each turbocharger with a pressurized oil system—

(i) Low lube-oil pressure; and

(ii) High lube-oil temperature.

(8) Loss of normal power for the alarms listed in paragraphs (a)(1) through (a)(7) of this section.

(b) Sensors for the high-bilge-level alarm required by paragraph (a)(4) of this section must be installed in—

(1) Each space below the deepest load waterline that contains pumps, motors, or electrical equipment; and

(2) The compartment that contains the rudder post.

(c) Centralized displays must be installed in the machinery spaces to allow rapid evaluation of each problem detected by the alarms required by paragraph (a) of this section. Equipment-mounted gauges or meters are acceptable for this purpose, if they are grouped at a central site.

§ 130.470 Fire alarms.

(a) Each fire detector and control unit must be of a type specifically approved by the Commandant (G–MSE).

(b) No fire-alarm circuit for the engine room may contain a fire detector for any other space.

(c) The number and placement of fire detectors must be approved by the cognizant OCMI.

§ 130.480 Test procedure and operations manual.

(a) A procedure for tests to be conducted on automated equipment by the operator and the Coast Guard must be submitted to comply with § 127.110 of this subchapter.

(b) The procedure for tests must—

(1) Be in a sequential-checkoff format;

(2) Include the required alarms, controls, and communications; and

(3) Set forth details of the tests.

(c) Details of the tests must specify status of equipment, functions necessary to complete the tests, and expected results.

(d) No tests may simulate conditions by misadjustments, artificial signals, or improper wiring.

(e) A detailed operations manual that describes the operation and indicates the location of each system installed to comply with this part must be submitted to comply with § 127.110 of this subchapter.

PART 131—OPERATIONS

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Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 10104; E.O. 12234, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46.

Subpart A—Notice of Casualty and Records of Voyage

§ 131.110 Notice and records.

Each vessel must meet the requirements of part 4 of this chapter for reporting marine casualties and retaining voyage records.

Subpart B—Markings on Vessels

§ 131.210 Hulls.

The hull of each vessel must be marked as required by parts 67 and 69 of this chapter.

§ 131.220 Drafts.

(a) Each vessel must have the drafts of the vessel plainly and legibly marked upon the stem and upon the sternpost or rudderpost, or at any place at the stern of the vessel that may be necessary for easy observance. The bottom of each mark must indicate the draft.

(b) Each draft must be taken from the bottom of the keel to the surface of the water at the location of the marks.

(c) When, because of raked stem or cutaway skeg, the keel does not extend forward or aft to the draft markings, the datum line from which the draft is taken must be the line of the bottom of the keel projected forward or aft, as the case may be, to where the line meets that of the draft markings projected downward.

(d) When a skeg or other appendage extends below the line of the keel, the draft at the end of the vessel adjacent to that appendage must be measured to a line tangent to the lowest part of the appendage and parallel to the line of the bottom of the keel.

(e) Drafts must be separated so that the projections of the marks onto a vertical plane are of uniform height, equal to the vertical spacing between consecutive marks.

(f) Marks must be painted in a color contrasting with that of the hull.

(g) Where marks are obscured because of operational constraints or by protrusions, the vessel must be fitted with a reliable draft-indicating system from which the drafts at bow and stern can be determined.

§ 131.230 Loadlines and decklines.

Each vessel assigned a loadline must have loadline markings and deck-line markings permanently scribed or embossed as required by subchapter E of this chapter.

Subpart C—Preparations for Emergencies

§ 131.310 List of crew members and offshore workers.

(a) The master of each vessel shall keep a correct list containing the name of each person that embarks upon and disembarks from the vessel.

(b) The list required by paragraph (a) of this section must be prepared before the vessel's departure on a voyage, and deposited ashore—

(1) At the facility from which the crew members and offshore workers embarked;

(2) In a well-marked place at the vessel's normal berth; or

(3) With a representative of the owner or managing operator of the vessel.

§ 131.320 Safety orientation for offshore workers.

(a) Before a vessel gets under way on a voyage, the master shall ensure that suitable public announcements are made informing each offshore worker of—

(1) In general terms, emergency and evacuation procedures;

(2) Locations of emergency exits and of embarkation areas for survival craft;

(3) Locations of stowage of lifejackets and immersion suits;

(4) With demonstration, proper method or methods of donning and adjusting lifejackets and immersion suits of the type or types carried on the vessel;

(5) Locations of the instruction placards for lifejackets and other lifesaving devices;

(6) Explanation that each offshore worker shall don an immersion suit and a lifejacket when the master determines that hazardous conditions do or might exist but that offshore workers may don lifejackets whenever they feel it necessary;

(7) Which hazardous conditions might require the donning of lifejackets and immersion suits;

(8) Types and locations of any other lifesaving device carried on the vessel;

(9) Locations and contents of the ''Emergency Instructions'' required by § 131.330;

(10) Survival craft to which assigned;

(11) Any hazardous materials on the vessel; and

(12) Any conditions or circumstances that constitute a risk to safety.

(b) The master of each vessel shall ensure that each offshore worker boarding the vessel on a voyage after the initial public announcement has been made, as required by paragraph (a) of this section, also hears the information in paragraph (a) of this section.

§ 131.330 Emergency instructions.

(a) Except as otherwise provided by this section, the master of each vessel shall prepare and post durable emergency-instruction placards in conspicuous locations accessible to the crew members and offshore workers.

(b) The instruction placards must contain the recommended ''Emergency Instructions'' listed in § 131.340 that, in the judgment of the cognizant OCMI, apply. The placards must be further designed to address the equipment, arrangement, and operation peculiar to each vessel.

§ 131.340 Recommended placard for emergency instructions.

The following are the recommended format and content of the placard for emergency instructions:

EMERGENCY INSTRUCTIONS

(a) *Rough weather at sea, crossing of hazardous bars, or flooding.*

(1) Close each watertight and weathertight door, hatch, and air-port to prevent taking water aboard or further flooding in the vessel.

(2) Keep bilges dry to prevent loss of stability from water in bilges. Use power-driven bilge pump, hand pump, and buckets to dewater.

(3) Align fire pumps to serve as bilge pumps if possible.

(4) Check, for leakage, each intake and discharge line that penetrates the hull.

(5) Offshore workers remain seated and evenly distributed.

(6) Offshore workers don immersion suits (if required aboard) or lifejackets if the going becomes very rough, if the vessel is about to cross a hazardous bar, if flooding begins, or when ordered to by the master.

(7) Never abandon the vessel unless actually forced to, or ordered to by the master.

(8) Prepare survival craft—life floats, (inflatable) rafts, (inflatable) buoyant apparatus, and boats—for launching.

(b) *''Man overboard''.*

(1) Throw a ring buoy into the water as close to the person overboard as possible.

(2) Post a lookout to keep the person overboard in sight.

(3) Launch the rescue boat and maneuver it to pick up the person overboard, or maneuver the vessel to pick up the person.

(4) Have a crew member put on an immersion suit or lifejacket, have a safety line made fast to the crew member, and have the crew member stand by to jump into the water to assist the person overboard if necessary.

(5) If the person overboard is not immediately located—

(i) Notify other vessels in the vicinity, and the Coast Guard; and

(ii) Continue searching until released by the Coast Guard.

(c) *Fire.*

(1) Cut off air to the fire: close hatches, ports, doors, manual ventilators, and the like and shut off the ventilation system.

(2) De-energize electrical systems supplying the affected compartment.

(3) Immediately use a portable fire extinguisher aimed at the base of the flames. Never use water on electrical fires.

(4) If the fire is in machinery spaces, shut off the fuel supply and ventilation system and activate any fixed extinguishing-system.

(5) Maneuver the vessel to minimize the effect of wind on the fire.

(6) If unable to control the fire, notify other vessels in the vicinity, and the Coast Guard.

(7) Move offshore workers away from fire; have them don lifejackets and, if necessary, prepare to abandon the vessel.

§ 131.350 Station bill.

(a) The master of each vessel shall post a station bill if the vessel's Certificate of Inspection requires more than four crew members, including the master.

(b) The station bill must be posted in the pilothouse and in conspicuous places in crew members' and offshore workers' accommodations.

(c) The station bill must set forth the special duties and duty stations of each crew member for various emergencies. The duties must, as far as possible, be comparable to and compatible with the regular work of the member. The duties must include at least the following and should comprise any other duties necessary for the proper handling of a particular emergency:

(1) The closing of hatches, air-ports, watertight doors, vents, and scuppers, and of intake valves and discharge lines that penetrate the hull; the stopping of fans and ventilating systems; and the operating of safety equipment.

(2) The preparing and launching of survival craft and rescue boats.

(3) The extinguishing of fire.

(4) The mustering of offshore workers, which includes—

(i) Assembling them and seeing that they are properly dressed and have donned their immersion suits and lifejackets; and

(ii) Directing them to their appointed stations.

§ 131.360 Responsibilities of licensed or certificated individuals.

Nothing in the emergency instructions or in any station bill required by this subpart exempts any licensed or certificated individual from the exercise of good judgment in an emergency.

Subpart D—Sufficiency and Supervision of Crew of Survival Craft

§ 131.410 Certificate of proficiency.

A merchant mariner's document with an endorsement of lifeboatman or another inclusive rating under part 12 of this title is evidence of training in survival craft and serves as a certificate of proficiency. For this subpart, a ''certificated'' person is a person holding a merchant mariner's document with such an endorsement.

§ 131.420 Manning and supervision.

(a) There must be enough trained persons aboard each survival craft to muster and assist untrained persons.

(b) Except as permitted by paragraph (c)(2) of this section, there must be enough deck officers, able seamen, or other certificated persons aboard each survival craft to manage the launching and handling of the survival craft.

(c) One person must be placed in charge of each survival craft to be used.

(1) Except as permitted by paragraph (c)(2) of this section, the person in command must be a deck officer, able seaman, or other certificated person.

(2) Considering the nature of the voyage, the number of persons permitted aboard, and the characteristics of the vessel, including gross tonnage, the cognizant OCMI may permit persons practiced in the handling of liferafts to be placed in charge of liferafts instead of persons required under paragraph (c)(1) of this section.

(3) A deck officer, able seaman, or other certificated person shall serve as second-in-command for each lifeboat either—

(i) Carried on a vessel in ocean service; or

(ii) Permitted to carry more than 40 persons.

(d) The person in charge and the second-in-command of each survival craft shall have a list of crew members and offshore workers assigned to the craft and shall see that the crew members are acquainted with their duties.

(e) Each motorized survival craft must have assigned a person capable of operating the engine and carrying out minor adjustments.

(f) The master shall ensure that the persons required under paragraphs (a), (b), and (c) of this section are equitably distributed among the vessel's survival crafts.

Subpart E—Tests, Drills, and Inspections

§ 131.505 Steering gear, whistle, and means of communication.

(a) On each vessel expected to be away from shore for more than 48 hours, the master shall examine and test the steering gear, the whistle, and the means of communication between the pilothouse and the engine room 12 or fewer hours before departure. On every other vessel, the master shall do the same at least once a week.

(b) The date of each test and examination and the condition of the equipment must be noted in the vessel's logbook.

§ 131.510 Draft and loadline markings.

(a) The master of each vessel on an ocean or coastwise voyage shall enter in the vessel's logbook the drafts of the vessel, forward and aft, when leaving port.

(b) The master of each vessel subject to the requirements of subchapter E of this chapter shall, upon departure from port on an ocean or coastwise voyage, enter in the vessel's logbook a statement of the position of the loadline markings, port and starboard, relative to the surface of the water in which the vessel is then floating.

(c) If the master, when recording drafts, compensates for the density of the water in which the vessel is floating, he or she shall note this density in the vessel's logbook.

§ 131.513 Verification of compliance with applicable stability requirements.

(a) After loading but before departure, and at other times necessary to assure the safety of the vessel, the master shall verify that the vessel complies with requirements in its trim-and-stability book, stability letter, Certificate of Inspection, and Loadline Certificate, whichever apply, and then enter a statement of the verification in the log book. The vessel may not leave port until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements, the master shall ascertain the vessel's draft, trim, and stability as necessary; and any stability calculations made in support of the determination must remain aboard the vessel for the duration of the voyage.

§ 131.515 Periodic sanitary inspections.

(a) The master shall make periodic inspections of the quarters, toilet and washing spaces, serving pantries, galleys, and the like, to ensure that those spaces are maintained in a sanitary condition.

(b) The master shall enter in the vessel's logbook the results of these inspections.

§ 131.520 Hatches and other openings.

Before any vessel leaves protected waters, the master shall ensure that the vessel's exposed cargo hatches and other openings in the hull are closed; made properly watertight by the use of tarpaulins, gaskets, or similar devices; and properly secured for sea.

§ 131.525 Emergency lighting and power.

(a) The master of each vessel shall ensure that the emergency lighting and power systems are tested at least once each week that the vessel is operated, to verify that they work.

(b) The master shall ensure that emergency generators driven by internal-combustion engines run under load for at least 2 hours at least once each month that the vessel is operated.

(c) The master shall ensure that storage batteries driving fitted systems for emergency lighting and power are tested at least once each 6 months that the vessel is operated, to demonstrate the ability of the batteries to supply the emergency loads for the period specified by Table 112.05–5(a) of this chapter for cargo vessels.

(d) The date of each test and the condition and performance of the apparatus must be noted in the vessel's logbook.

§ 131.530 Abandon-ship training and drills.

(a) Material for abandon-ship training must be aboard each vessel. The material must consist of a manual of one or more volumes, or audiovisual training aids, or both.

(1) The material must contain instructions and information about the lifesaving appliances aboard the vessel and about the best methods of survival. Any manual must be written in easily understood terms, illustrated wherever possible.

(2) If a manual is used, there must be a copy in each messroom and recreation room for crew members or in each stateroom for them. If audiovisual aids are used, they must be incorporated in the training sessions aboard under paragraph (d) of this section.

(3) The material must explain the—

(i) Method of donning immersion suits and lifejackets carried aboard;

(ii) Mustering at assigned stations;

(iii) Proper boarding, launching, and clearing of survival craft and rescue boats;

(iv) Method of launching survival craft by people within them;

(v) Method of releasing survival craft from launching-appliances;

(vi) Use of devices for protecting survival craft in launching-areas, where appropriate;

(vii) Illumination of launching-areas;

(viii) Use of each item of survival equipment;

(ix) Instructions for emergency repair of lifesaving appliances;

(x) Use of radio lifesaving-appliances, with illustrations;

(xi) Use of sea anchors;

(xii) Use of engine and accessories, where appropriate;

(xiii) Recovery of survival craft and rescue boats, including stowage and securing;

(xiv) Hazards of exposure and need for warm clothing;

(xv) Best use of survival craft for survival; and

(xvi) Methods of retrieving personnel, including use of helicopter-mounted rescue gear (slings, baskets, stretchers) and vessel's line-throwing apparatus.

(b) An abandon-ship drill must be held on each vessel in alternate weeks. If none can be held during the appointed week, because of bad weather or other unavoidable constraint, one must be held at the first opportunity afterward. If the crew changes more than once in any 2 weeks, one must be held as soon after the arrival of each crew as practicable.

(1) Any crew member excused from an abandon-ship drill must participate in the next one, so that each member participates in at least one each month. Unless more than 25 percent of the members have participated in one on that particular vessel in the previous month, one must be held before the vessel leaves port if reasonable and practicable; but, unless the Commandant (G–MOC) accepts alternative arrangements as at least equivalent, one must be held not later than 24 hours after the vessel leaves port in any event.

(2)(i) On a voyage likely to take more than 24 hours to complete, a muster of offshore workers must be held on departure. The master shall ensure that each worker is assigned to a survival craft and is directed to its location. Each person in charge of such a craft shall maintain a list of workers assigned to the craft.

(ii) On a voyage likely to take 24 hours or less to complete, the master shall call the attention of each offshore worker to the emergency instructions required by § 131.330.

(3) Each abandon-ship drill must include—

(i) Summoning of crew members and offshore workers to survival craft with the general alarm;

(ii) Simulation of an abandon-ship emergency that varies from drill to drill;

(iii) Reporting of crew members and offshore workers to survival craft, and preparing for, and demonstrating the duties assigned under the procedure described in the station bill for, the particular abandon-ship emergency being simulated;

(iv) Checking to see that crew members and offshore workers are suitably dressed;

(v) Checking to see that immersion suits and lifejackets are correctly donned;

(vi) Lowering of at least one lifeboat (far enough that the davit head has completed its travel and the fall wire of the lifeboat has begun to pay out) or, if no lifeboats are required, lowering of one rescue boat, after any necessary preparation for launching;

(vii) Starting and operating of the engine of the lifeboat or rescue boat; and

(viii) Operation of davits used for launching liferafts.

(4) As far as practicable, at successive drills different lifeboats must be lowered to meet the requirements of paragraph (b)(3)(vi) of this section.

(5) As far as practicable, each abandon-ship drill must be conducted as if there were an actual emergency.

(6) Each lifeboat must be launched with its assigned crew aboard during an abandon-ship drill, and be maneuvered in the water, at least once each 3 months that the vessel is operated.

(7) Each rescue boat must be launched with its assigned crew aboard and be maneuvered in the water—

(i) Once each month that the vessel is operated, if reasonable and practicable; but,

(ii) In any event, at least once each 3 months that the vessel is operated.

(8) If drills for launching lifeboats and rescue boats are carried out with the vessel making headway, the drills must, because of the danger involved, be practiced only in waters where the drills are safe, under the supervision of an officer experienced in such drills.

(9) At least one abandon-ship drill each 3 months must be held at night, unless the master determines it unsafe.

(10) Emergency lighting for mustering and abandonment must be tested at each abandon-ship drill.

(c) The master of each vessel carrying immersion suits shall ensure that—

(1) Each crew member either—

(i) Wears an immersion suit in at least one abandon-ship drill a month unless it is impracticable because of warm weather; or

(ii) Participates in at least one immersion-suit drill a month that includes donning an immersion suit and being instructed in its use;

(2) In each abandon-ship drill, each offshore worker aboard is instructed in the use of immersion suits; and

(3) Each offshore worker is told at the beginning of the voyage where immersion suits are stowed aboard and is encouraged to read the instructions for donning and using the suits.

(d) Each crew member aboard the vessel must be given training in the use of lifesaving appliances and in the duties assigned by the station bill.

(1) Except as provided by paragraph (d)(2) of this section, training aboard in the use of the vessel's lifesaving appliances, including equipment on survival craft, must be given to each crew member as soon as possible but not later than 2 weeks after the member joins the vessel.

(2) If a crew member is on a regularly scheduled rotating assignment to a vessel, training aboard in the use of the vessel's lifesaving appliances, including equipment on survival craft, must be given to the member not later than 2 weeks after the member first joins the vessel.

(3) Each crew member must be instructed in the use of the vessel's lifesaving equipment and appliances and in survival at sea during alternate weeks, normally in the weeks when abandon-ship drills are not held. If individual instructional sessions cover different parts of the vessel's lifesaving system, they must cover each part of the vessel's lifesaving equipment and appliances each 2 months. Each member must be instructed in at least—

(i) Operation and use of the vessel's inflatable liferafts;

(ii) Problems of hypothermia, first aid for hypothermia, and other appropriate procedures; and

(iii) Special procedures necessary for use of the vessel's lifesaving equipment and appliances in heavy weather.

(4) Training in the use of davit-launched inflatable liferafts must take place at intervals of not more than 4 months on each vessel with such liferafts. Whenever practicable this must include the inflation and lowering of a liferaft. If this liferaft is a special one intended for training only, and is not part of the vessel's lifesaving system, it must be conspicuously so marked.

(e) Dates when musters are held, details of abandon-ship drills, drills on other lifesaving equipment and appliances, and training aboard must be entered in the vessel's official logbook. Each logbook entry must include the following, as applicable:

(1) Time and date.

(2) Length of drill or training session.

(3) Identification of survival craft used in drills.

(4) Subject of training session.

(5) Statement on the condition of the equipment used.

(6) Unless a full muster, drill, or training session is held at the appointed time, the circumstances and the extent of the muster, drill, or training session held.

§ 131.535 Firefighting training and drills.

(a) A fire drill must be held on each vessel, normally on alternate weeks. It must not be held as part of the abandon-ship drill, nor immediately before or after the abandon-ship drill. If none can be held on schedule, because of bad weather or other unavoidable constraint, one must be held at the next opportunity.

(b) Any crew member excused from a fire drill must participate in the next one, so that each member participates in at least one each month. Unless more than 25 percent of the members have participated in one on that particular vessel in the previous month, one must be held before the vessel leaves port if reasonable and practicable; but, unless the Commandant (G–MOC) accepts alternative arrangements as at least equivalent, one must be held not later than 24 hours after the vessel leaves port in any event.

(c) Each fire drill must include—

(1) Summoning of crew members and offshore workers to their stations with the general alarm;

(2) Simulation of a fire emergency that varies from drill to drill;

(3) Reporting of crew members and offshore workers to stations, and preparing for, and demonstrating of the duties assigned under the procedure described in the station bill for, the particular fire emergency being simulated;

(4) Starting of fire pumps and use of a sufficient number of outlets to determine that the system is working properly;

(5) Bringing out each breathing apparatus and other item of rescue and safety equipment from the emergency-equipment lockers, and demonstrating of the use of each item by the person or persons that will make use of it;

(6) Operation of each watertight door;

(7) Operation of each self-closing fire door;

(8) Closing of each fire door and each door within the fire boundary; and

(9) Closing of each ventilation closure of each space protected by a fixed fire-extinguishing system.

(d) Each fire drill must, as far as practicable, be conducted as if there were an actual emergency.

(e) The dates when fire drills are held, and details of training in fire fighting and of fire drills, must be entered in the vessel's official logbook. Each logbook entry must include the following, as applicable:

(1) Time and date.

(2) Length of drill or training session.

(3) Number and lengths of hose used.

(4) Subject of training session.

(5) Statement on the condition of the equipment used.

(6) Unless a full drill or training session is held at the appointed time, the circumstances and the extent of the drill or training session held.

§ 131.540 Operational readiness.

(a) Except as provided by § 131.545(e) of this subpart, ach lifesaving appliance and each item of equipment for a lifeboat, liferaft, survival craft, rescue boat, life float, or buoyant apparatus must be in good working order and ready for immediate use before the vessel leaves port and at any time when the vessel is away from port.

(b) Each deck where a lifeboat, liferaft, survival craft, rescue boat, life float, or buoyant apparatus is stowed, launched, or boarded must be kept clear of obstructions that would interfere with the breaking out, launching, or boarding of the lifesaving appliance.

§ 131.545 Maintenance in general.

(a) For each lifesaving appliance, the manufacturer's instructions for maintenance of the appliances aboard must be aboard and must include the following:

(1) Checklists for use in the inspections required by § 131.565(a) of this subpart.

(2) Instructions for maintenance and repair.

(3) A schedule of periodic maintenance.

(4) A diagram of lubrication points with the recommended lubricants.

(5) A list of replaceable parts.

(6) A list of sources of spare parts.

(7) A log for records of inspections, maintenance, and repair.

(b) The master shall ensure that maintenance is carried out to comply with the instructions required by paragraph (a) of this section.

(c) For lifesaving appliances constructed on or before July 1, 1986, paragraph (a) of this section need be complied with only to the extent that appliances' manufacturers' instructions are available.

(d) The cognizant OCMI may accept, instead of the instructions required by paragraph (a) of this section, a program for planned shipboard maintenance that includes the items listed in that paragraph.

(e) If lifeboats and rigid liferafts are maintained and repaired on the vessel while the vessel is under way, there must be enough lifeboats and liferafts available for use on the vessel to accommodate each person aboard the vessel.

(f) Except in an emergency, no extensive repairs or alterations may be made to any lifesaving appliance without advance notice to the cognizant OCMI. As far as possible, each repair or alteration must be made to comply with the requirements for the appliance in subchapter Q of this chapter. This OCMI may require each appliance that has been extensively repaired or in any way altered to undergo each pertinent test in subchapter Q of this chapter.

(g) The master shall report each emergency repair or alteration to a lifesaving appliance, as soon as practicable, either to the OCMI in the next port in the United States where the vessel calls or, if the vessel does not regularly call at ports in the United States, to the OCMI responsible for the next foreign port where the vessel calls.

(h) No lifeboat or rigid liferaft may be repaired or reconditioned for use on a vessel other than the one it was originally built for, unless specifically permitted by the cognizant OCMI. The lifeboat or rigid liferaft must be so repaired or reconditioned under the supervision of this OCMI, unless he or she specifically allows otherwise.

§ 131.550 Maintenance of falls.

(a) Each fall used with a launching appliance must be turned end for end at intervals of not more than 30 months.

(b) Each fall used with a launching appliance must be renewed either when necessary because of deterioration or after the passage of not more than 5 years, whichever occurs earlier.

(c) Each fall used with a launching appliance must have a corrosion-resistant tag permanently marked with—

(1) The date the new fall was installed; and

(2) The last date, if any, the fall was turned end for end.

§ 131.555 Spare parts and repair equipment.

Spare parts and repair equipment must be provided for each lifesaving appliance and component that either is subject to excessive wear or consumption or needs to be replaced regularly. These parts and equipment must be kept aboard the OSV, except

that, if the vessel operates daily out of the same shore base, they may be kept at that base.

§ 131.560 Weekly tests and inspections.

The following tests and inspections must be carried out weekly:

(a) Each lifesaving appliance and launching appliance must be visually inspected to ensure that it is ready for use.

(b) Each engine of a lifeboat or a rescue boat must be run ahead and astern for not less than 3 minutes, unless the ambient temperature is below the minimal temperature required for starting the engine.

(c) The general alarm system must be activated.

(d) Each battery for starting the engine of a lifeboat or a rescue boat, or for energizing a searchlight, a fixed installation of a radio in a lifeboat, or a portable radio, must be brought up to full charge at least once a week if the battery is—

(1) Of a type that requires recharging; and

(2) Not connected to a device that keeps it continuously charged.

(e) The transmitter of each fixed installation of a radio in a lifeboat and that of each portable radio must be tried out at least once a week with a dummy antenna load.

§ 131.565 Monthly tests and inspections.

(a) Each lifesaving appliance, including lifeboat equipment, must be inspected monthly against the checklist required by § 131.545(a)(1) of this subpart to ensure that it is aboard and in good order. A report of the inspection, including a statement on the condition of the appliance, must be entered in the vessel's logbook.

(b) Each Emergency Position Indicating Radio Beacon (EPIRB) and each Search and Rescue Transponder (SART), other than an EPIRB or SART in an inflatable liferaft, must be tested monthly. The EPIRB must be tested using the integrated test circuit and the output indicator (test button) to determine that it works.

§ 131.570 Quarterly inspections.

(a) Each apparatus that controls a lifeboat winch, including motor controllers, emergency switches, master switches, and limit switches, must be inspected once each 3 months.

(b) The inspection must involve the removal of drain plugs and the opening of drain valves to ensure that enclosures are free of water.

(c) The date of the inspection required by this section and the condition of the equipment must be entered in the vessel's logbook.

§ 131.575 Yearly inspections and repair.

(a) Each lifeboat, rescue boat, rigid liferaft, buoyant apparatus, and life float must be stripped, cleaned, and thoroughly inspected and repaired as needed at least once a year. This procedure includes emptying and cleaning each fuel tank and refilling it with fresh fuel.

(b) Each davit, winch, fall, and other launching-appliance must be thoroughly inspected at least once a year, and repaired as needed.

(c) Each item of survival equipment with an expiration date must be replaced during the annual inspection and repair if this date has passed.

(d) Each battery used in an item of survival equipment and clearly marked with an expiration date must be replaced during the annual inspection and repair if this date has passed.

(e) Except a storage battery used in a lifeboat or in a rescue boat, each battery used in an item of survival equipment and not clearly marked with an expiration date must be replaced during the annual inspection and repair.

(f) Compliance with the requirements of this section does not relieve the master or person in charge of the duty of compliance with requirements in § 131.540(a) of this subpart to keep the equipment ready for immediate use when the vessel is under way.

§ 131.580 Servicing of inflatable liferafts, inflatable lifejackets, inflatable buoyant apparatus, and inflated rescue boats.

(a) Except for an inflatable liferaft or an inflatable buoyant apparatus less than two years of age, each inflatable liferaft, inflatable lifejacket, inflatable buoyant apparatus, and hybrid inflatable lifejacket or work vest must be serviced within 12 months of—

(1) Its initial packing; and

(2) Each subsequent servicing, except when a servicing due after 12 months is delayed not more than 5 months until the next scheduled inspection of the OSV.

(b) Each inflatable liferaft and inflatable buoyant apparatus must be serviced—

(1) Whenever the container of the raft is damaged, or the straps or seal broken; and

(2) In compliance with subpart 160.151 of this chapter.

(c) Each inflatable lifejacket must be serviced in compliance with subpart 160.176 of this chapter.

(d) Each hybrid inflatable lifejacket or work vest must be serviced in accordance with the manual provided under § 160.077–29 of this chapter.

(e) Repair and maintenance of inflatable rescue boats must follow the manufacturers' instructions. Each repair, except an emergency repair made aboard the vessel, must be made at a servicing facility approved by the Commandant (G–MSE).

§ 131.585 Periodic servicing of hydrostatic-release units.

(a) Except a disposable hydrostatic-release unit with an expiration date, each hydrostatic-release unit must be serviced—

(1) Within 12 months of its manufacture and within 12 months of each subsequent servicing, except when a servicing due after 12 months is delayed not more than 5 months until the next scheduled inspection of the vessel; and

(2) In compliance with subpart 160.062 of this chapter.

(b) The springs of each spring-tensioned gripe used with a hydrostatic-release unit must be renewed when the unit is serviced and tested.

§ 131.590 Firefighting equipment.

(a) The master shall ensure that the vessel's required firefighting equipment is on board in the prescribed location and always ready for use, other than when the equipment is being serviced.

(b) The master shall, at least once each 12 months, nsure the performance of the tests and inspections of each portable fire extinguisher, semiportable fire extinguisher, and fixed fire-extinguishing system aboard described by Table 132.350 of this subchapter.

(c) The master shall keep records of these tests and inspections, showing the dates of their performance, the number or other identification of each unit undergoing them, and the name of the person or company conducting them. The records must be made available to the marine inspector upon request and must be kept for the period of validity of the vessel's current Certificate of Inspection.

(d) The conducting of tests and inspections required by this section does not relieve the master of his or her responsibility to maintain the prescribed firefighting equipment in working order for use at any time when the vessel is under way.

Subpart F—Logs

§ 131.610 Logbooks and records.

(a) Each OSV must by statute, or by regulations in this subchapter, have certain logbooks or records. The master shall make all entries required by statute, or by regulations in this subchapter.

(b) 46 U.S.C. 11301 states that a vessel of the United States, except one on a voyage from a port in the United States

to a port in Canada, shall have an official logbook if the vessel is—

(1) On a voyage from a port in the United States to a foreign port; or

(2) Of at least 100 gross tons and on a voyage between a port in the United States on the Atlantic Ocean and one on the Pacific Ocean.

(c) The Coast Guard gratuitously furnishes to masters of vessels of the United States the official logbook as Form CG–706B or CG–706C, depending upon the number of persons employed as crew. The first several pages of this logbook list various acts of Congress governing logbooks and the entries required in them.

(d) When a voyage is completed, or after a specified time has elapsed, the master shall file the official logbook containing required entries with the OCMI at or nearest the port where the vessel may be.

(e) Unless an official logbook is required, the owner, operator, or master shall supply an alternative log or record for making entries required by law, including regulations in this subchapter. This log or record need not be filed with this OCMI, but must be kept available for review by a marine inspector for a year after the date that the latest entry concerns.

§ 131.620 Matters that must be logged.

The following matters must be entered in each vessel's logbook:

(a) Safety Orientation for Offshore Workers. As held. See § 131.320.

(b) Tests and inspection of Steering Gear, Whistle, and Means of Communication. Before departure. See § 131.505.

(c) Draft and Loadline Markings. Before leaving port. Ocean and coastwise voyages only. See § 131.510.

(d) Verification of Compliance with Applicable Stability Requirements. See § 131.513.

(e) Periodic Sanitary Inspections. After periodic sanitary inspections made by the master. See § 131.515.

(f) Hatches and Other Openings. Each opening and closing, or departure from port without closing (except by vessels on protected waters). See § 131.520.

(g) Tests of Emergency Lighting and Power. Weekly, monthly, and twice-yearly. See § 131.525.

(h) Abandon-Ship Training and Drills, and Firefighting Training and Drills. As held. See §§ 131.530 and 131.535.

(i) Inspection of Lifeboat Winches. Once each 3 months. See § 131.570.

§ 131.630 Entries in official logbooks.

On each vessel required to have an Official Logbook, the items required by 46 U.S.C. 11301, as well as the items required by § 131.620, must be entered in the logbook.

Subpart G—Work Vests

§ 131.710 Approved work vests.

Each buoyant work vest carried aboard must be approved under subpart 160.053 of this chapter or, as a commercial hybrid personal flotation device, under subpart 160.077 of this chapter.

§ 131.720 Use.

(a) An approved buoyant work vest is an item of safety apparel and may be carried aboard for wear by a crew member when working near or over the water.

(b) The vest may not count towards the vessel's complement of lifejackets.

(c) The vest may not be worn instead of a lifejacket during a drill.

§ 131.730 Shipboard stowage.

The master shall ensure that no work vest is stowed where any lifejacket is stowed.

§ 131.740 Shipboard inspections.

Each buoyant work vest must be subject to examination by a marine inspector, to determine its serviceability. If found serviceable, it may continue in service; but no buoyant work vest is stamped as inspected. If not found serviceable, and if determined irreparable by the inspector, a buoyant work vest must be destroyed in the presence of the inspector.

Subpart H—Markings for Fire Equipment and Emergency Equipment

§ 131.800 General.

(a) This section prescribes markings necessary for the guidance of persons aboard in case of an emergency. The markings may be modified or omitted if they are unnecessary, because either the vessel is small or particular circumstances warrant, and if the cognizant OCMI approves.

(b) Each stateroom notice, directional sign, and the like must be printed in English and in other languages appropriate to the service of the vessel.

(c) Where this subpart specifies red letters, letters of a contrasting color on a red background are acceptable.

§ 131.805 General alarm bell, switch.

The switch in the pilothouse that activates the general alarm bell must be clearly and permanently identified either by letters on a metal plate or with a sign in red letters on a suitable background that state the following: ''GENERAL ALARM.''

§ 131.810 General alarm bell.

Each general alarm bell must be identified by red letters at least 13 millimeters (½-inch) high that state the following: ''GENERAL ALARM—WHEN BELL RINGS GO TO YOUR STATION.''

§ 131.815 Alarm for fixed gaseous fire-extinguishing system.

Each alarm for a fixed gaseous fire-extinguishing system must be conspicuously identified, using the following statement: ''WHEN ALARM SOUNDS, LEAVE AT ONCE: [CARBON DIOXIDE] [HALON] BEING RELEASED.''

§ 131.820 Branch lines of fire-extinguishing system.

The valves of each branch line in the fire extinguishing system must be plainly and permanently marked, indicating the spaces served.

§ 131.825 Controls of fire-extinguishing system.

Each control cabinet or space containing a valve or manifold for a fire extinguishing system must be distinctly marked in conspicuous red letters at least 50 millimeters (2 inches) high that state the following: ''FIRE APPARATUS FOR [CARBON DIOXIDE] [HALON]''.

§ 131.830 Fire hose stations.

Each fire station must be identified in red letters and figures at least 50 millimeters (2 inches) high that state the following: ''FIRE STATION #1,'' ''* * * 2,'' ''* * * 3,'' and so on. Where the hose is not so stowed in the open or behind glass as to be readily seen, this identification must be so placed as to be readily seen from a distance.

§ 131.835 Portable fire extinguishers.

(a) Except as provided by paragraph (b) of this section, ach portable fire extinguisher must be marked with a number, and the site of its stowage must be marked with a corresponding number at least 13 millimeters (½-inch) high.

(b) If only one type and size of portable fire extinguisher is carried, the number may be omitted.

§ 131.840 Emergency lighting.

Emergency lighting must be marked with a letter ''E'' at least 13 millimeters (½-inch) high.

§ 131.845 Instructions for shift of steering gear.

(a) Instructions, including diagrams, for a shift of steering gear and for a shift to the alternative steering stations must be on water-resistant material and posted at each steering station and in the steering-engine room, relating, in order, the different steps to take in either shift.

(b) The instructions must indicate each clutch or pin to be ''in'' or ''out'' and each valve or switch to be ''open'' or ''closed'' in a shift to any means of steering for which the vessel is equipped.

(c) The instructions must specify that each steering wheel or lever, and each rudder, must be amidships before any shift of steering gear or steering stations.

(d) Each clutch, gear, wheel, lever, valve, or switch used during any shift of steering gear or steering stations must be numbered or lettered on a metal plate or painted so that the numbers or letters are recognizable at a reasonable distance.

§ 131.850 Rudder orders.

At each steering station there must be installed a suitable notice on the wheel or lever, or in some other place directly in the helmsman's line of sight, to indicate the direction in which to turn the wheel or lever for ''right rudder'' and for ''left rudder.''

§ 131.855 Lifeboats and rescue boats.

(a) The following must be plainly marked or painted on each side of the bow of each lifeboat and rescue boat in block capital letters and numbers:

(1) The name of the vessel.

(2) The number of the boat. (The boats on each side of the vessel must be numbered from forward to aft. If there are boats on both sides of the vessel, the odd numbers must be on the starboard side.)

(3) For each vessel in ocean service, the name of the port whose marking on the stern is required by § 67.123 of this chapter.

(b) The following must be plainly marked or painted on each side of the bow of each lifeboat and rescue boat in block capital letters and numbers:

(1) The length and beam of the boat.

(2) The number of persons the boat will hold. This number must—

(i) Be the number of persons the boat is equipped for; and

(ii) Not be greater than the number of persons the boat is approved for, as shown on its nameplate.

(c) The following must be plainly marked or painted on each lifeboat and rescue boat, visible from above the boat:

(1) The number of the boat.

(2) The name of the vessel.

(d) Each lifeboat and rescue boat must be marked with Type II retro-reflective material approved under subpart 164.018 of this chapter. The arrangement of the retro-reflective material must comply with IMO Resolution A.658(16).

§ 131.860 Rigid liferafts.

(a) The following must be plainly marked or painted, near one entrance of each rigid liferaft:

(1) The name of the vessel.

(2) For each vessel in ocean service, the name of the port whose marking on the stern is required by § 67.123 of this chapter.

(b) The length of the painter must be plainly marked or painted, near one entrance of each rigid liferaft.

(c) The number of persons the rigid liferaft is approved for must be plainly marked or painted, over each entrance to each raft, in letters and numbers at least 102 millimeters (4 inches) high and in a color contrasting to that of the raft. This number must—

(1) Be the number of persons the rigid liferaft is equipped for; and

(2) Not be greater than the number of persons the rigid liferaft is approved for, as shown on its nameplate.

(d) The rigid liferaft must be marked with the words ''SOLAS A pack'' or ''SOLAS B pack'', to reflect the pack inside.

§ 131.865 Inflatable liferafts and inflatable buoyant apparatus.

The number of the inflatable liferaft or inflatable buoyant apparatus and the number of persons it is approved for must be marked or painted, in a conspicuous place in the immediate vicinity of each raft and each apparatus, in letters and numbers at least 38 millimeters (1–½ inches) high and in a color contrasting to that of the raft or apparatus. Each raft or apparatus stowed on the side of a vessel must be numbered like a liferaft in compliance with § 199.178 (c) and (d) of this chapter. No letters or numbers may go on the liferaft or on the container of the apparatus.

§ 131.870 Life floats and buoyant apparatus.

(a) The name of the vessel must be plainly marked or painted on each life float or buoyant apparatus, and on each oar and paddle.

(b) The number of persons each life float or buoyant apparatus is approved for must be plainly marked or painted on each float or apparatus in letters and numbers at least 38 millimeters (1–½ inches) high and in a color contrasting to that of the float or apparatus. This number must—

(1) Be the number of persons the float or apparatus is equipped for; and

(2) Not be greater than the number of persons the float or apparatus is approved for, as shown on its nameplate.

§ 131.875 Lifejackets, immersion suits, and ring buoys.

(a) Each lifejacket, immersion suit, and ring life buoy must be marked in block capital letters with the vessel's name.

(b) Each container for lifejackets and immersion suits must be marked in letters and numbers at least 50 millimeters (2 inches) high with the number, identity, or IMO symbol specified by IMO Resolution A.760(18), and size of the items stowed inside.

(c) Each ring buoy on a vessel in ocean service must be marked in block capital letters with the name of the port whose marking on the stern of the vessel is required by § 67.123 of this chapter.

(d) Each stowage site for a ring buoy must be marked ''LIFE BUOY'' or marked with the IMO symbol.

(e) Each lifejacket must be marked with Type I retro-reflective material approved under subpart 164.018 of this chapter. The arrangement of the retro-reflective material must comply with IMO Resolution A.658(16).

(f) Each ring life buoy must be marked with Type I or II retro-reflective material approved under subpart 164.018 of this chapter. The arrangement of the retro-reflective material must comply with IMO Resolution A.658(16).

§ 131.880 Fire hoses and axes.

Each fire hose and axe must be marked with the vessel's name.

§ 131.890 EPIRBs and SARTs.

The name of the vessel must be plainly marked or painted on each Emergency Position Indicating Radio Beacon (EPIRB) and on each Search and Rescue Transponder (SART), except on an EPIRB or SART—

(a) In an inflatable liferaft; or

(b) Permanently installed in a survival craft.

§ 131.893 Watertight doors and watertight hatches.

Each watertight door in a bulkhead that must be watertight in compliance with the requirements in part 174 of this chapter, and each watertight hatch, must be marked on both sides in letters at least 50 millimeters (2 inches) high that state the following: ''WATERTIGHT DOOR—KEEP CLOSED EXCEPT FOR PASSAGE'' or ''WATERTIGHT HATCH—KEEP CLOSED WHEN NOT IN USE''.

§ 131.896 Remote stopping-systems.

The remote stopping-systems required by § 129.540 of this subchapter must be clearly marked to show what system each controls.

§ 131.899 Fire dampers.

Each fire damper installed within the boundary of a space protected by a fixed fire extinguishing system must be fitted with an indicator showing whether the damper is open or closed and must be marked with red letters at least 13 millimeters (½-inch) high stating ''FIRE DAMPER'' and, as otherwise appropriate, identifying the space served by the fire damper.

Subpart I—Miscellaneous

§ 131.905 Statutory penalties.

(a) The marine-safety statutes and other statutes impose criminal and civil penalties for violating the applicable provisions of this subchapter. Possible sanctions include:

(1) Assessment and collection of civil monetary penalty.

(2) Criminal prosecution, where no loss of life results.

(3) Criminal prosecution for manslaughter, where loss of life results from violating marine-safety statutes or regulations or from misconduct, negligence, or inattention to duty.

(4) Libel against vessel.

(b) 46 U.S.C. Chapter 77 allows, in addition to the foregoing, the suspension or revocation of licenses, certificates, or documents issued by the Coast Guard, for incompetence, misconduct, or negligence or for violating marine-safety statutes or regulations.

§ 131.910 Notices to mariners and aids to navigation.

Each master and mate shall acquaint himself or herself with the latest information published by the Coast Guard and the U.S. Navy regarding aids to navigation in the area in which the vessel operates.

§ 131.915 Persons allowed in pilothouse and on navigational bridge.

No person may be in the pilothouse while the vessel is under way, unless connected with the navigation of the vessel or authorized for good cause by the master or mate on watch.

§ 131.920 Level of manning.

Each vessel must carry the personnel required by the Certificate of Inspection, as determined by the cognizant OCMI, based on an evaluation under part 15 of this chapter.

§ 131.925 Compliance with provisions of Certificate of Inspection.

The master of the vessel shall ensure compliance with each provision of the Certificate of Inspection. Nothing in this subchapter prevents the master's diverting the vessel from the route prescribed in the Certificate, or taking other steps necessary and prudent to assist vessels in distress or to handle similar emergencies.

§ 131.930 Display of stability letter.

If the Coast Guard issues a stability letter under § 170.120 of this chapter, the letter must be readily available to the person on watch in the pilothouse of the vessel.

§ 131.935 Prevention of oil pollution.

Each vessel must be operated in compliance with—

(a) Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321); and

(b) 33 CFR parts 151, 155, and 156.

§ 131.940 Marine sanitation device.

Each vessel with installed toilet facilities must have a marine sanitation device in compliance with 33 CFR part 159.

§ 131.945 Display of plans.

Each vessel must have a permanently exhibited, for the guidance of the master and crew members, general arrangement plans showing, for each deck, the various fire-retardant bulkheads together with particulars of the—

(a) Fire-detection systems;

(b) Manual-alarm systems;

(c) Fire-extinguishing systems;

(d) Fire doors;

(e) Means of ingress to the different compartments; and

(f) Ventilating-systems, including the—

(1) Positions of the dampers;

(2) Site of the remote means of stopping the fans; and

(3) Identification of the fans serving each section.

§ 131.950 Placard on lifesaving signals and helicopter recovery.

(a) Each vessel must have readily available to the person on watch in the pilothouse a placard (Form CG–811) containing instructions—

(1) For the use of lifesaving signals set forth in Regulation 16, Chapter V, of SOLAS 74/83; and

(2) In helicopter recovery.

(b) The signals must be employed by vessels or persons in

distress when communicating with lifesaving stations and maritime rescue units.

§ 131.955 Display of license.

Each master and licensed officer on an vessel shall conspicuously display his or her license in compliance with 46 U.S.C. 7110.

§ 131.960 Use of auto-pilot.

When the automatic pilot is used in areas of high traffic density, conditions of restricted visibility, or any other hazardous navigational situations, the master shall ensure that—

(a) It is possible to immediately establish manual control of the vessel's steering;

(b) A competent person is ready at all times to take over steering control; and

(c) The changeover from automatic to manual control of the vessel's steering and the reverse is made by, or under the supervision of, the master or officer of the watch.

§ 131.965 Sounding of whistle.

No vessel may sound its whistle within any harbor limits of the United States unless it needs to.

§ 131.970 Unauthorized lighting.

No master of a vessel may authorize or permit the vessel's carrying of any lighting not required by law that will interfere in any way with any other vessel's ability to distinguish the vessel's navigation lighting.

§ 131.975 Searchlights.

No person may flash, or cause to be flashed, the rays of a searchlight or other blinding light onto the bridge or into the pilothouse of any vessel, OSV or other, under way.

§ 131.980 Lookouts and watches.

Nothing in this part exonerates any master or officer of the watch from the consequences of any neglect to keep a proper lookout or to maintain a proper fire watch, or of any neglect of any precaution that may be required by the ordinary practice of seamen, by general prudence, or by the special circumstances of the case. Each master shall set added watches when necessary to guard against fire or other danger and to give an alarm in case of accident or disaster.

PART 132—FIRE-PROTECTION EQUIPMENT

Subpart A—Fire Main

Sec.
132.100 General.
132.110 Piping.
132.120 Fire pumps.
132.130 Fire stations.

Subpart B—Portable and Semiportable Fire Extinguishers

132.210 Classification.
132.220 Installation.
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132.360 Fire axes.
132.370 Added requirements for fixed independent and portable tanks.

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart A—Fire Main

§ 132.100 General.

(a) Except as provided by paragraphs (b) and (c) of this section, each vessel must be equipped with a fire main that complies with this subpart.

(b) Each vessel of less than 100 gross tons and not more than 19.8 meters (65 feet) in length may have, instead of a fire main that complies with this subpart, a hand-operated pump and a hose capable of providing an effective stream of water to each part of the vessel.

(c) A garden hose of nominal inside diameter of at least 16 millimeters (5/8-inch) complies with paragraph (b) of this section if the hose is—

(1) Of good commercial grade and is constructed of an inner rubber tube, plies of braided-fabric reinforcement, and an outer cover made of rubber or equivalent fire-resistant material; and

(2) Fitted with a commercial garden-hose nozzle of high-grade bronze or equivalent metal capable of providing a solid stream and a spray pattern.

§ 132.110 Piping.

(a) Except as provided for liftboats by § 134.180 of this subchapter, each fitting, flange, valve, and run of piping must meet the applicable requirements of part 128 of this subchapter. Piping must be—

(1) Hot-dip galvanized;

(2) At least extra-heavy schedule; or

(3) Of a suitable corrosion-resistant material.

(b) Each distribution cut-off valve must be marked in compliance with § 131.820 of this subchapter.

§ 132.120 Fire pumps.

(a) Except as provided by § 132.100(b) of this subpart, each vessel must be equipped with one self-priming power-driven fire pump capable of delivering a single stream of water from the highest hydrant, through the hose and nozzle at a Pitot-tube pressure of at least 345 kPa (50 psi [pounds per square inch]).

(b) Each fire pump must be fitted on the discharge side with a pressure gauge.

(c) Each fire pump must be fitted on the discharge side with a relief valve set to relieve at either 172 kPa (25 psi) in excess of the pressure necessary to maintain the requirements of paragraph (a) of this section or 862 kPa (125 psi), whichever is greater. The relief valve is optional if the pump is not capable of developing pressure exceeding the greater amount.

(d) If two propulsion engines are installed, the pump required by paragraph (a) of this section may be driven by one of the engines. If only one propulsion engine is installed, the pump must be driven by a source of power independent of the engine.

(e) If two fire pumps are installed, and if one pump remains available for service on the fire main at any time, the other pump may be used for other purposes.

(f) Each fire pump must be capable of providing the quantity of water required to comply with paragraph (a) of this section while meeting any other demands placed on it, as by a branch line connected to the fire main for washing the anchor or the deck.

(g) No branch line may be directly connected to the fire main except for fighting fires or for washing the anchor or the deck. Each discharge line for any other purpose must be clearly marked and must lead from a discharge manifold near the fire pump.

(h) When a fire monitor is connected to the fire main system, it must lead from a discharge manifold near the fire pump.

(i) The total cross-sectional area of piping leading from a fire pump may not be less than that of the pump-discharge outlet.

(j) In no case may a pump connected to a line for flammable or combustible liquid be used as a fire pump.

(k) A fire pump must be capable of both manual operation at the pump and, if a remote operating station is fitted, operation at that station.

§ 132.130 Fire stations.

(a) Except as provided by paragraph (b) of this section, ire stations must be so numerous and so placed that each part of the vessel accessible to persons aboard while the vessel is being operated, and each cargo hold, are reachable by at least two effective spray patterns of water. At least two such patterns must come from separate hydrants. At least one must come from a single length of hose.

(b) Each part of the main machinery space, including the shaft alley if it contains space assigned for the stowage of combustibles, must be reachable by at least two streams of water. Each stream must come from a single length of hose, from a separate fire station.

(c) Each fire station must be numbered in compliance with § 131.830 of this subchapter.

(d) Each part of the fire main on a weather deck must be either protected against freezing or fitted with cut-out valves and drain valves so that exposed parts of the piping may be shut off and drained in freezing weather. Except when closed against freezing, the cut-out valves must be sealed open.

(e) Each outlet at a fire hydrant must be at least 38 millimeters (1½ inch) in diameter and, to minimize the possibility of kinking, must be fitted so that no hose leads upward from it.

(f) Each fire station must be equipped with a spanner suitable for use on the hose there.

(g) Each fire station must have at least one length of fire hose. Each hose on the station must have a fire nozzle approved under subpart 162.027 of this chapter that can discharge both solid stream and water spray.

(h) Each pipe and fire hydrant must be placed so that the fire hose may be easily coupled to them. Each station must be readily accessible. No deck cargo may interfere with access to the stations; each pipe must run as far away from this cargo as practicable, to avoid risk of damage by the cargo.

(i) Each fire hydrant or ''Y'' branch must be equipped with a valve such that the fire hose may be removed while there is pressure on the fire main.

(j) Each fire hydrant connection must be of brass, bronze, or equivalent metal. The threads of fire hose couplings must be of brass or other suitable corrosion-resistant material and comply with NFPA 1963.

(k) Each fire hydrant must have a fire hose 15.2 meters (50 feet) in length, with a minimum diameter of 38 millimeters (1½ inches), connected to an outlet, for use at any time.

(l) No fire hose, when part of the fire equipment, may be used for any purpose except fire-fighting, fire drills, and testing.

(m) A suitable hose rack or other device must be provided for each fire hose. Each rack on a weather deck must be placed so as to protect its hose from heavy weather.

(n) Each section of fire hose must be lined commercial fire hose, or lined fire hose that meets Standard 19 of Underwriters Laboratories, Inc. (UL). Hose that bears the UL label as lined fire hose complies with this section.

Subpart B—Portable and Semiportable Fire Extinguishers

§ 132.210 Classification.

(a) Each portable fire extinguisher and semiportable fire extinguisher is classified by a symbol combining letter and number. The letter indicates the type of fire that the unit should extinguish; the number indicates the relative size of the unit.

(b) The types of fire are the following:

(1) ''A''—fires in ordinary combustible materials, where the quenching and cooling effect of quantities of either water or solutions containing large percentages of water is essential.

(2) ''B''—fires in flammable liquids, greases, and the like, where the blanketing effect of a smothering-agent is essential.

(3) ''C''—fires in electrical equipment, where the use of nonconducting extinguishing-agent is essential.

(c) The sizes of units run from ''I'' for the smallest to ''V'' for the largest. Sizes I and II are portable fire extinguishers; sizes III, IV, and V, which exceed 25 kilograms (55 pounds) in gross weight, are semiportable fire extinguishers and must be fitted with suitable hose and nozzle or other practicable means to cover any part of the space involved. Typical portable and semiportable fire extinguishers are set forth by Table 132.210 of this section.

TABLE 132.210

Classification		Halon 1211, 1301, and 1211–1301 mixtures kgs. (lbs.)	Foam, liters (gallons)	Carbon dioxide, kgs. (lbs.)	Dry chemicals, kgs. (lbs.)
Type	Size				
A	II		9.46 (2½)		
B	I	1.13 (2½)		1.8 (4)	0.91 (2)
B	II	4.5 (10)	9.46 (2½)	6.8 (15)	4.5 (10)
B	III		45.4 (12)	15.9 (35)	9 (20)
B	IV		75.7 (20)	22.6 (50)	13.6 (30)
B	V		151.4 (40)	453 (100)	22.6 (50)
C	I	1.13 (2½)		1.8 (4)	.91 (2)
C	II	4.5 (10)		6.8 (15)	4.5 (10)

(d) Each portable fire extinguisher and semiportable fire extinguisher must have permanently attached an identification plate that gives the name of the extinguishing-agent, the capacity of the agent in liters (gallons) or kilograms (pounds), the classification of the extinguisher expressed by letter or letters indicating the type or types of fire for which it is intended, and the identifying mark of the manufacturer.

§ 132.220 Installation.

(a) Each portable fire extinguisher approved under subpart 162.028 of this chapter and each semiportable fire extinguisher approved under subpart 162.039 of this chapter must be installed in compliance with Table 132.220 of this section. The placement of each extinguisher must satisfy the cognizant OCMI, who may also deem added extinguishers necessary for the proper protection of the vessel.

TABLE 132.220.—CARRIAGE OF PORTABLE AND SEMIPORTABLE FIRE EXTINGUISHERS

Space	Classification (see § 132.210)	Number and placement
.		
Safety areas: Communicating passageways	A–II	1. In each main passageway, not more than 45.7 meters (150 feet) apart (permissible in stairways).
Pilothouse	C–I	2. In vicinity of exit.
Service spaces: Galleys	B–II or C–11	1. For each 230 square meters (2,500 feet^2) or fraction thereof, suitable for hazards involved.
Paint lockers	B–II	1. Outside space, in vicinity of exit.
Accessible baggage and storerooms	A–II	1. For each 230 square meters (2,500 feet^2) or fraction thereof, located in vicinity of exits, either inside or outside spaces.
Work shops and similar spaces	A–II	1. Outside space in vicinity of exit.
Machinery spaces: Internal-combustion propulsion-machinery.	B–II	1. For each 1,000 brake horsepower, but not fewer than 2 nor more than 6.
	B–III	1. Required. (1), (2)
Electric propulsion motors or generators of open type.	C–II	1. For each propulsion motor or generator unit.
Auxiliary spaces: Internal combustion	B–II	1. Outside space in vicinity of exit. (2)
Electric motors and emergency generators	C–II	1. Outside space in vicinity of exit. (2)

(1) Not required where a fixed gaseous fire-extinguishing system is installed.
(2) Not required on vessels of less than 300 gross tons.

(b) Each semiportable fire extinguisher must be mounted or otherwise placed in the open so as to be readily visible.

(c) Except as provided by paragraph (d) of this section, each portable fire extinguisher must be mounted or otherwise placed in the open or behind glass so as to be readily visible.

(d) A portable fire extinguisher may be mounted or otherwise placed in an enclosure together with the fire hose, if the enclosure is marked in compliance with § 131.830 of this subchapter.

(e) Each portable fire extinguisher and its station must be numbered to comply with § 131.835 of this subchapter.

(f) No portable or semiportable fire extinguisher with a nameplate indicating that it needs protection from freezing may be mounted or otherwise

placed where freezing temperatures are foreseeable.

§ 132.230 Spare charges.

(a) Except as provided by paragraph (b) or (c) of this section, each vessel must carry spare charges for 50 percent of the portable fire extinguishers required by § 132.220 of this subpart.

(b) Rather than comply with paragraph (a) of this section, a vessel may carry one extra portable extinguisher of the same classification.

(c) If extinguishers of a particular classification cannot be readily recharged by crew members, a vessel must— rather than comply with paragraph (a) of this section—carry one more extinguisher of that classification.

(d) Each spare charge must be packaged so as to minimize the hazards to personnel recharging the extinguishers.

§ 132.240 Stowage of semiportable fire extinguishers.

The frame or support of each semiportable fire extinguisher of size III, IV, or V must be secured to prevent the extinguisher from shifting in heavy weather.

Subpart C—Miscellaneous

§ 132.310 Fixed fire-extinguishing systems for paint lockers.

(a) Except as provided by paragraph (b) of this section, a fixed gaseous fire-extinguishing system or another approved fixed fire-extinguishing system must be installed in each paint locker.

(b) No fixed fire-extinguishing system need be installed in a paint locker that is—

(1) Less than 1.7 cubic meters (60 cubic feet) in volume;

(2) Accessible only from the weather deck; and

(3) Not adjacent to a tank for flammable or combustible liquid.

(c) Each fixed fire-extinguishing system installed must comply with part 95 of this chapter or be approved by the Commanding Officer, Marine Safety Center.

§ 132.320 Helicopter-landing decks.

Each vessel with a helicopter-landing deck must meet the fire fighting requirements of part 108 of this chapter.

§ 132.330 Fire monitors.

(a) Each fire monitor of the fire main system must be fitted with a shut-off valve at the monitor and at the connection to the fire main discharge manifold required by § 132.120(h) of this part.

(b) Fire monitor piping must comply with § 132.110 of this part.

(c) Each fire monitor must be protected against over-pressure.

§ 132.340 Equipment installed although not required.

A vessel may install equipment for detection of and protection against fires beyond that required by this subchapter, unless the excess equipment in any way endangers the vessel or the persons aboard. This equipment must be listed and labeled by a nationally recognized testing laboratory.

§ 132.350 Tests and inspections of fire-extinguishing equipment.

(a) Each master of a vessel shall ensure that the tests and inspections, of fire-extinguishing equipment, described by paragraph (b) of this section are performed—

(1) Every 12 months; or

(2) Not later than the next inspection for certification, unless the total time from the date of the last tests and inspections exceeds 15 months.

(b) The master shall provide satisfactory evidence of the servicing of fire-extinguishing equipment, required by paragraph (c) of this section, to the marine inspector. If any of the equipment or records have not been properly maintained, a qualified servicing facility may be required to perform the required inspections, maintenance, and hydrostatic tests.

(c) The following tests and inspections of fire-extinguishing equipment must be performed by the owner, operator, or master, or by a qualified servicing facility, to verify compliance with paragraph (a) of this section:

(1) Each portable fire extinguisher must be inspected, maintained, and hydrostatically tested as required by Chapter 4 of NFPA 10 with the frequency specified by NFPA 10. Carbon-dioxide and halon portable fire extinguishers must be refilled when the weight loss of net content exceeds that specified for fixed systems by Table 132.350. Further, each must be examined for excessive corrosion and for general condition. A tag issued by a qualified servicing facility, and attached to each extinguisher, will be acceptable evidence that the necessary maintenance has been conducted.

(2) Each semiportable fire extinguisher and each fixed fire-extinguishing system must be—

(i) Inspected and tested as required by Table 132.350 of this subpart;

(ii) Inspected, tested, and marked as required by §§ 147.60 and 147.65 of this chapter;

(iii) Inspected to ensure that piping, controls, and valves are in good general condition with no excessive corrosion; and

(iv) Inspected and tested to determine that alarms and ventilation shutdowns for each fire-extinguishing system operate properly.

TABLE 132.350.—TESTS OF SEMIPORTABLE AND FIXED FIRE-EXTINGUISHING SYSTEMS

Type of system	Test
Carbon dioxide	Weigh cylinders. Recharge if weight loss exceeds 10% of weight of charge. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the manufacturer's instruction manual. Inspect hoses and nozzles to be sure they are clean.
Halon	Weigh cylinders. Recharge if weight loss exceeds 5% of weight of charge. If the system has a pressure gauge, also recharge if pressure loss (adjusted for temperature) exceeds 10%. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the manufacturer's instruction manual. Inspect hoses and nozzles to be sure they are clean.
Dry chemical (cartridge-operated)	Examine pressure cartridge and replace if end is punctured or if cartridge has leaked or is in unsuitable condition. Inspect hose and nozzle to see that they are clear. Insert charged cartridge. Ensure that dry chemical is free-flowing (not caked) and that extinguisher contains full charge.
Dry chemical (stored pressure)	See that pressure gauge is in opera ting range. If not, or if seal is broken, weigh or otherwise determine that extinguisher is fully charged with dry chemical. Recharge if pressure is low or if dry chemical is needed.
Foam (stored pressure)	See that pressure gauge, if there is one, is in operating range. If it is not, or if seal is broken, weigh or otherwise determine that extinguisher is fully charged with foam. Recharge if pressure is low or if foam is needed. Replace premixed agent every 3 years.

(3) The fire-main system must be operated, and the pressure checked at the remotest and highest outlets. Each fire hose must be subjected to a test pressure, equivalent either to the maximal pressure to which it may be subjected in service or to 690 kPa (100 psi), whichever is greater.

(4) All systems for detecting smoke and fire, including sensors and alarms, must be inspected and tested.

§ 132.360 Fire axes.

(a) Each vessel of less than 100 gross tons must carry one fire axe.

(b) Each vessel of 100 or more gross tons must carry two fire axes.

(c) Each fire axe must be so placed as to be readily available in an emergency.

(d) Each fire axe must be so placed in the open or behind glass that it is readily visible, except that, if the enclosure is marked in compliance with § 131.830 of this subchapter, the axe may be placed in an enclosure together with the fire hose.

§ 132.370 Added requirements for fixed independent and portable tanks.

(a) When carrying fixed independent tanks on deck or portable tanks in compliance with § 125.110 of this subchapter, each vessel must also comply with §§ 98.30–37 and 98.30–39 of this chapter.

(b) When carrying portable tanks in compliance with § 125.120 of this subchapter, each vessel must also comply with 49 CFR 176.315.

PART 134—ADDED PROVISIONS FOR LIFTBOATS

Sec.
134.100 Applicability.
134.110 Initial inspection.
134.120 Inspection for certification.
134.130 New construction.
134.140 Structural standards.
134.150 Liftboat-jacking systems.
134.160 Freeboard markings.
134.170 Operating manual.
134.180 Piping for fire-main suction.

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

§ 134.100 Applicability.

This part, as well as parts 125 through 133 of this subchapter, applies to each liftboat of United States flag to which this subchapter applies.

§ 134.110 Initial inspection.

Liftboat jacking systems, liftboat legs, liftboat leg pads, and arrangements for supply of water to fire mains, as well as the items listed by § 126.340 of this subchapter, will normally be inspected during the initial inspection to determine whether the liftboat was built in compliance with developed plans and meets applicable regulations.

§ 134.120 Inspection for certification.

Liftboat jacking systems, liftboat legs, liftboat leg pads, and arrangements for supply of water to fire mains, as well as the items listed by § 126.430 of this subchapter, will normally be inspected during an inspection for certification to determine whether the liftboat is in satisfactory condition and fit for the service intended.

§ 134.130 New construction.

Each applicant for an original Certificate of Inspection and for approval of plans must submit, as well as three copies of those required by § 127.110 of this subchapter, three copies of the following plans:

(a) Operating Manual for Liftboats.

(b) Legs, details of supporting structure, and structural calculations.

§ 134.140 Structural standards.

(a) Except as provided by paragraph (b) of this section, each liftboat must comply with the ABS's ''Rules for Building and Classing Mobile Offshore Drilling Units'', assuming a steady wind speed of 100 knots for liftboats in unrestricted service, and 70 knots for liftboats in restricted service under normal operating conditions and 100 knots under severe storm conditions, as follows:

(1) The main hull structure, legs, and supporting structure must comply with Section 3/4.3 of the Rules.

(2) The calculations required by Section 3/4.3 of the Rules must assume the vessel to be in the most adverse loading conditions described by Sections 3/2.1 and 3/4.1 of the Rules.

(3) Unless otherwise agreed upon by the Commandant (G–MSE), the calculations on column-buckling required by Section 3/4.3 of the Rules, must employ an effective-length factor, ''K'', of not less than 2.0.

(4) The calculations on single-rack jacking systems required by Sections 3/2.1 and 3/4.1 of the Rules must include an extra bending moment caused by the most adverse eccentric loading of the legs.

(b) Standards of classification societies other than the ABS, and other established standards acceptable to the Commandant (G–MSE), may be used.

(c) Upon submittal of the plans required by §§ 127.110 and 133.130 of this subchapter, the standard used in the design must be specified.

(d) If no established standard is used in the design, etailed design calculations must be submitted with the plans required by §§ 127.110 and 133.130 of this subchapter.

§ 134.150 Liftboat-jacking systems.

(a) For this subchapter, liftboat jacking systems are vital systems and must comply with Sections 4/1.13.1 through 4/1.13.3 of the ABS's ''Rules for Building and Classing Mobile Offshore Drilling Units'' as well as meet the applicable requirements of part 128 of this subchapter.

(b) Each control system for a liftboat jacking system must be designed so that loss of power, loss of pressure in the hydraulic system, or low hydraulic-fluid level will activate a visible and audible alarm at the operating station and will not result in the liftboat's uncontrolled descent.

§ 134.160 Freeboard markings.

Freeboard markings required by § 174.260 of this subchapter must be both permanently scribed or embossed and painted white or yellow on a dark background.

§ 134.170 Operating manual.

(a) Each liftboat must have aboard an operating manual approved by the Coast Guard as complying with this section.

(b) The operating manual must be available to, and written so as to be easily understood by, the crew members of the liftboat and must include the following:

(1) A table of contents and general index.

(2) A general description of the vessel, including—

(i) Major dimensions;

(ii) Tonnages; and

(iii) Load capacities for—

(A) Various cargoes;

(B) Crane hook; and

(C) Helicopter-landing deck.

(3) Designed limits for each mode of operation, including—

(i) Draft;

(ii) Air gap;

(iii) Wave height;

(iv) Wave period;

(v) Wind;

(vi) Current;

(vii) Temperatures; and

(viii) Other environmental factors.

(4) The heaviest loads allowable on deck.

(5) Information on the use of any special cross-flooding fittings and on the location of valves that may require closure to prevent progressive flooding.

(6) Guidance on preparing the vessel for heavy weather and on what to do when heavy weather is forecast, including when critical decisions or acts—such as leaving the area and heading for a harbor of safe refuge, or evacuating the vessel—should be accomplished.

(7) Guidance on operating the vessel while changing mode and while

preparing the vessel to make a move, and information on how to avoid structural damage from shifting loads during heavy weather.

(8) Information on inherent operational limitations for each mode and on changing modes, including preloading instructions.

(9) Guidance on the proper procedures for discovering the flooding of a normally buoyant leg or leg pad, precautionary information concerning the effects on stability of flooded legs, and what to do upon discovering the flooding of a normally buoyant leg or leg pad.

(10) A description, a diagram, operating guidance for the bilge system, and an alternative method of dewatering.

(11) A general arrangement diagram showing the locations of—

(i) Watertight and weathertight compartments;

(ii) Openings in the hull and structure;

(iii) Vents and closures;

(iv) Shutdowns for mechanical and electrical emergencies, and for emergencies affecting ventilation;

(v) Alarms for flooding and for too-high and too-low levels;

(vi) Fire and gas detectors; and

(vii) Access to different compartments and decks.

(12) A list of shutdown locations for emergencies and guidance on restarting mechanical and electrical equipment and equipment for ventilation after shutdowns.

(13) A diagram of the hazardous locations (if applicable).

(14) A diagram of the emergency-power system.

(15) Stability information setting forth the maximum allowable height of the center of gravity in relation to draft data, displacement, and other applicable parameters unique to the design of the unit to determine compliance with the intact and damage stability criteria, under §§ 174.250 and 174.255 of this chapter.

(16) Curves of form as required under § 170.075(a)(3) of this chapter.

§ 134.180 Piping for fire-main suction.

(a) Except as provided by paragraph (b) of this section, suction lines must comply with § 132.110 of this subchapter.

(b) Suction lines that extend below the main deck outside the hull plating and that supply the fire pump with the liftboat in the elevated mode must be metallic, unless they comply with § 56.60–25(c) of this chapter for vital fresh-water and salt-water service, except that they may be of unlimited length.

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

8. The authority citation for part 170 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

9. In § 170.055, revise paragraph (g) to read as follows:

§ 170.055 Definitions concerning a vessel.

* * * * *

(g) *Downflooding angle* means, except as specified by §§ 171.055(f), 172.090(d), 173.095(e), 174.015(b), and 174.035(b)(2) of this chapter, the static angle from the intersection of the vessel's centerline and waterline in calm water to the first opening that cannot be closed watertight and through which downflooding can occur.

* * * * *

PART 174—SPECIAL RULES PERTAINING TO VESSELS OF SPECIFIC TYPES

10. The authority citation for part 174 continues to read as follows:

Authority: 42 U.S.C. 9118, 9119, 9153; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

11. In § 174.005, redesignate paragraphs (g) and (h) as paragraphs (f) and (g), respectively, to read as follows:

§ 174.005 Applicability.

* * * * *

(f) Offshore supply vessel inspected under subchapter L of this chapter.

(g) Liftboat inspected under subchapter L of this chapter.

12. Revise subpart G of part 174 to read as follows:

Subpart G—Special Rules Pertaining to Offshore Supply Vessels

Sec.

174.180 Applicability.
174.185 Intact stability.
174.190 Collision bulkheads.
174.195 Bulkheads in machinery spaces.
174.200 Damaged stability in machinery spaces for all OSVs.
174.205 Additional damaged stability for OSVs carrying more than 16 offshore workers.
174.207 Damaged stability criteria.
174.210 Watertight doors in watertight bulkheads.
174.215 Drainage of weather deck.
174.220 Hatches and coamings.
174.225 Hull penetrations and shell connections.

§ 174.180 Applicability.

Each offshore supply vessel (OSV), except a liftboat inspected under subchapter L of this chapter, must comply with this subpart.

§ 174.185 Intact stability.

(a) Each OSV must be shown by design calculations to meet, under each condition of loading and operation, the minimal requirements for metacentric height (GM) in § 170.170 of this chapter, and in either § 170.173 of this chapter or paragraphs (b) through (e) of this section.

(b) The area under each righting arm curve must be at least 0.08 meter-radians (15 foot-degrees) up to the smallest of the following angles:

(1) The angle of maximum righting arm;

(2) The downflooding angle; or

(3) 40 degrees.

(c) The downflooding angle must not be less than 20 degrees.

(d) The righting arm curve must be positive to at least 40 degrees.

(e) The freeboard at the stern must be equal to the freeboard calculated to comply with subchapter E of this chapter or to the value taken from Table 174.185, whichever is less.

(f) For paragraphs (b) and (d) of this section, at each angle of heel an OSV's righting arm may be calculated considering either—

(1) The vessel is permitted to trim free until the trimming moment is zero; or

(2) The vessel does not trim as it heels.

(g) For the purpose of paragraphs (b) and (d) of this section, the method of calculating righting arms chosen must be the same for all calculations.

TABLE 174.185.—MINIMAL FREEBOARD AT THE STERN

LBP in meters (feet)	Freeboard at stern in millimeters (inches)
Less than 20 (65)	300 (12)
20 (65) but less than 30 (100)	380 (15)
30 (100) but less than 40 (130)	400 (18)
40 (130) but less than 50 (155)	500 (20)
50 (155) but less than 60 (190)	560 (22)
60 (190) but less than 70 (230)	610 (24)
70 (230) and greater	660 (26)

§ 174.190 Collision bulkhead.

(a) Each OSV must have a collision bulkhead in compliance with §§ 171.085(c)(1), (d), (e)(2), and (f) of this chapter.

(b) Penetration of the collision bulkhead by piping must be minimal, and, where fitted, piping must meet the requirements of §§ 56.50–1(b)(1) and (c) and 128.230 of this chapter.

§ 174.195 Bulkheads in machinery spaces.

(a) The bulkhead in each machinery space of each OSV must be watertight to the bulkhead deck.

(b) Each penetration of, and each opening in, a bulkhead in a machinery space must—

(1) Be kept as high and as far inboard as practicable; and

(2) Except as provided by § 174.210 of this subpart and by paragraph (c) of this section, have means to make it watertight.

(c) No penetration of a bulkhead in a machinery space by a ventilation duct need have means to make the bulkhead watertight if—

(1) Every part of the duct is at least 760 millimeter (30 inches) from the side of the OSV; and

(2) The duct is continuously watertight from the penetration to the main deck.

(d) Each penetration of a bulkhead in a machinery space by piping must meet the design requirements for material and pressure in subchapter F of this chapter.

§ 174.200 Damaged stability in machinery spaces for all OSVs.

Each OSV must be shown by design calculations to comply, under each afloat condition of loading and operation, with § 174.207 of this subpart in case of damage between any two watertight bulkheads in each machinery space.

§ 174.205 Additional damaged stability for OSVs carrying more than 16 offshore workers.

(a) *Calculations.* Each OSV carrying more than 16 offshore workers must be shown by design calculations to comply, under each afloat condition of loading and operation, with § 174.207 of this subpart in case of the damage specified by paragraph (b) of this section.

(b) *Character of damage.* For paragraph (a) of this section, design calculations must show that the OSV can survive damage at any place other than either the collision bulkhead or a transverse watertight bulkhead unless—

(1) The transverse watertight bulkhead is closer than the longitudinal extent of damage, specified by Table 174.207(a), to the adjacent transverse watertight bulkhead; or

(2) The transverse watertight bulkhead has a step or a recess, which must be assumed damaged, if it is both more than 3 meters (10 feet) in length and located within the transverse extent of damage specified by Table 174.207(a) of this section.

§ 174.207 Damaged stability criteria.

(a) *Extent of damage.* Damage must consist of penetrations having the dimensions specified by table 174.207(a) of this section, except that, if the most disabling penetrations are smaller than the penetrations specified by the table, damage must consist of the smaller penetrations.

(b) *Permeability of spaces.* The permeability of a floodable space must be as specified by Table 174.207(b) of this section.

(c) *Survival conditions.* An OSV is presumed to survive assumed damage if it meets the following conditions in the final stage of flooding:

(1) *Final waterline.* The final waterline, in the final stage of sinkage, heel, and trim, must be below the lower edge of an opening through which progressive flooding may take place, such as an air pipe, a tonnage opening, an opening closed by a weathertight door or hatch-cover, or a tank vent fitted with a ball check-valve. This opening does not include an opening closed by a—

(i) Watertight manhole-cover;

(ii) Flush scuttle;

(iii) Small hatch-cover for a watertight cargo-tank that maintains the high integrity of the deck;

(iv) Watertight door in compliance with § 174.210 of this subpart; or

(v) Side scuttle of the non-opening type.

(2) *Angle of heel.* The angle of heel must not exceed 15 degrees.

(3) *Range of stability.* Through an angle of 20 degrees beyond its position of equilibrium after flooding, an OSV must meet the following conditions:

(i) The righting arm curve must be positive.

(ii) The righting arm must be at least 100 millimeters (4 inches).

(iii) Each submerged opening must be weathertight. (A tank vent fitted with a ball check-valve is weathertight.)

(4) *Progressive flooding.* Piping, ducts, or tunnels within the assumed extent of damage must be either—

(i) Equipped with arrangements, such as stop check-valves, to prevent progressive flooding of the spaces with which they connect; or

(ii) Assumed in the calculations required by paragraph (a) of this section to permit progressive flooding of the spaces with which they connect.

(d) *Buoyancy of superstructure.* For paragraph (a) of this section, the buoyancy of any superstructure directly above the side damage must be considered in the most unfavorable condition.

TABLE 174.207(A).—Extent of Damage

Collision Penetration	
Longitudinal extent (vessels with LBP not greater than 45 meters [143 feet]).	.1L or 1.8 meters (6 feet):, whichever is greater in length.
Longitudinal extent (vessels with LBP greater than 45 meters [143 feet]).	3 meters (10 feet) + .03L.
Transverse extent*	760 millimeters (30 inches).
Vertical extent.	From baseline upward without limit.

*The transverse penetration applies inboard from the side of the vessel, at right angles to the centerline, at the level of the deepest load waterline.

TABLE 174.207(b).—PERMEABILITY OF SPACES

Spaces and tanks	Permeability
Storerooms	60 percent.
Accommodations	95 percent.
Machinery	85 percent.
Voids and passageways.	95 percent.
Dry-bulk tanks	0 (*) or 95 percent.
Consumable-liquid tanks.	0 (*) or 95 percent.
Other liquid tanks	0 (*) 0 (**) or 95 percent.

*Whichever results in the more disabling condition.

**If tanks are partly filled, the permeability must be determined from the actual density and amount of liquid carried.

§ 174.210 Watertight doors in watertight bulkheads.

(a) This section applies to each vessel with watertight doors in bulkheads made watertight in compliance with this chapter.

(b) Except as provided by paragraph (c) of this section, each watertight door must comply with subpart H of part 170 of this chapter.

(c) A Class-1 door may be installed at any place if—

(1) The door has a quick-acting closing-device operative from both sides of the door;

(2) The door is designed to withstand a head of water equivalent to the depth from the sill of the door to the bulkhead deck or 3 meters (10 feet), whichever is greater; and

(3) The vessel's pilothouse contains a visual indicator showing whether the door is open or closed.

(d) Each watertight door must be marked in compliance with § 131.893 of this chapter.

(e) If a Class-1 door is installed, the vessel's stability letter will require the master to ensure that the door is always closed except when being used for access.

§ 174.215 Drainage of weather deck.

The weather deck must have open rails to allow rapid clearing of water, or must have freeing ports in compliance with § 42.15–70 of this chapter.

§ 174.220 Hatches and coamings.

(a) Each hatch exposed to the weather must be watertight, except that the following hatches may be only weathertight:

(1) Each hatch on a watertight trunk that extends at least 430 millimeters (17 inches) above the weather deck.

(2) Each hatch in a cabin top.

(b) Each hatch cover must—

(1) Have securing-devices; and

(2) Be attached to the hatch frame or coaming by hinges, captive chains, or other devices to prevent its loss.

(c) Each hatch that provides access to quarters or to accommodation spaces for crew members or offshore workers must be capable of being opened and closed from either side.

(d) Except as provided by paragraph (e) of this section, a weathertight door with a permanent watertight coaming at least 380 millimeters (15 inches) high must be installed for each opening in a deckhouse or companionway that—

(1) Gives access into the hull; and

(2) Is in an exposed place.

(e) If an opening in a deckhouse or companionway has a Class-1 watertight door installed, the height of the watertight coaming need only accommodate the door.

§ 174.225 Hull penetrations and shell connections.

Each overboard discharge and shell connection except an engine exhaust must comply with §§ 56.50–95 and 128.230 of this chapter.

13.Revise subpart H of part 174 to read as follows:

Subpart H—Special Rules Pertaining to Liftboats

Sec.
174.240 Applicability.
174.245 General.
174.250 Unrestricted service.
174.255 Restricted service.
174.260 Freeboard.

§ 174.240 Applicability.

Each liftboat inspected under subchapter L of this chapter must comply with this subpart.

§ 174.245 General.

Each liftboat must comply with §§ 174.210 through 174.225.

§ 174.250 Unrestricted service.

Each liftboat not limited to restricted service must comply with subpart C of this part in each condition of loading and operation.

§ 174.255 Restricted service.

This section applies to each liftboat unable to comply with § 174.250 and limited to restricted service as defined by § 125.160 of this chapter.

(a) *Intact stability.*

(1) Each liftboat must be shown by design calculations to meet, under each condition of loading and operation afloat, the following requirements:

(i) Those imposed by § 174.045, given a ''K'' value of at least 1.4.

(ii) A range of positive stability of at least 10 degrees extending from the angle of the first intercept of the curves of righting moment and wind heeling moment, either to the angle of the second intercept of those curves or to the angle of heel at which downflooding would occur, whichever angle is less.

(iii) A residual righting energy of at least 0.003 meter radians (5 foot-degrees) between the angle of the first intercept of the curves of righting moment and wind heeling moment, either to the angle of the second intercept of those curves or to the angle of heel at which downflooding would occur, whichever angle is less.

(2) For this section, each wind heeling moment must be calculated as prescribed by § 174.055 of this part using winds of 60 knots for normal conditions of operation afloat and of 70 knots for severe-storm conditions of operation afloat.

(3) For paragraph (a)(1) of this section, the initial metacentric height must be at least 300 millimeters (1 foot) for each leg position encountered while afloat including the full range of leg positions encountered while jacking.

(b) *Damaged stability.*

(1) Each liftboat must be designed so that, while it is in each of its normal operating conditions, its final equilibrium waterline will remain below the lowest edge of any opening through which additional flooding can occur if the liftboat is subjected simultaneously to—

(i) Damage causing flooding described by paragraph (b)(4) of this section; and

(ii) A wind heeling moment calculated in compliance with § 174.055(b) using a wind speed of 50 knots.

(2) Each liftboat must have a means of closing off each pipe, ventilation system, and trunk in each compartment described by paragraph (b)(4) of this section if any part of the pipe, ventilation system, or trunk is within 760 millimeters (30 inches) of the hull.

(3) For compliance with paragraph (b)(1) of this section, no compartment on the liftboat may be ballasted or pumped out to compensate for the flooding described by paragraph (b)(4) of this section.

(4) For compliance with paragraph (b)(1) of this section, each compartment within 760 millimeters (30 inches) of the hull, excluding the bottom of the liftboat, between two adjacent main watertight bulkheads and the uppermost continuous deck or first superstructure deck where superstructures are fitted must be assumed subject to simultaneous flooding.

(5) In the calculations required by paragraph (b)(1) of this section, the permeability of a floodable space must be as listed by Table 174.205(d).

(c) *On-bottom stability.* Each liftboat must be shown by design calculations to exert a continuous downward force on each footing when the vessel is supported on the bottom with footings and is subjected to the forces of waves, currents, and winds of 70 knots under normal conditions of operation, and winds of 100 knots under severe-storm conditions of operation when elevated in a safe place, if this place is other than a harbor of safe refuge. The waves and currents must be appropriate for the winds and place.

§ 174.260 Freeboard.

(a) Each liftboat not required to obtain and maintain a loadline in compliance with subchapter E of this chapter must place markings on each side of the vessel amidships. These markings must each consist of a horizontal line 460 millimeters (18 inches) in length and 25 millimeters (1 inch) in height. The upper edges of the markings must be at a distance equal to the authorized freeboard measured vertically below the intersection of the continuation outwards of the upper surface of the weather deck and the outer surface of the shell. This distance must be at least 610 millimeters (24 inches).

(b) The markings required by paragraph (a) of this section may not be submerged in any condition of loading or operation.

PART 175—GENERAL PROVISIONS

14. The authority citation for part 175 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; Section 175.01–3 also issued under the authority of 44 U.S.C. 3507.

15. Add § 175.115 to read as follows:

§ 175.115 Applicability to offshore supply vessels.

(a) Existing OSVs of more than 15 but less than 100 gross tons are subject to inspection under this subchapter. New OSVs of more than 15 but less than 100

gross tons are subject to inspection under subchapter L of this chapter.

(b) Each existing OSV permitted grandfathering under paragraph (a) of this section must complete construction and have a Certificate of Inspection by March 16, 1998.

16. In § 175.400, add definitions of ''Offshore supply vessel (OSV),'' ''Existing OSV,'' and ''New OSV'' to read as follows:

§ 175.400 Definitions of terms used in this subchapter.

* * * * *

Offshore supply vessel (OSV) means a vessel that—

(1) Is propelled by machinery other than steam;

(2) Is of above 15 gross tons and of less than 500 gross tons (as measured under the Standard, Dual, or Simplified Measurement System under part 69, subpart C, D, or E, of this chapter), or is less than 6,000 gross tons (as measured under the Convention Measurement System under part 69, subpart B, of this chapter); and

(3) Regularly carries goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

* * * * *

Existing OSV means an OSV that was contracted for, or the keel of which was laid, before March 15, 1996.

* * * * *

New OSV means an OSV—

(1) That was contracted for, or the keel of which was laid, on or after March 15, 1996; or

(2) That underwent a major conversion initiated on or after March 15, 1996.

* * * * *

Dated: August 28, 1997.

R.D. Herr,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

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Friday
September 19, 1997

Part III

Department of Agriculture

Natural Resources Conservation Service

7 CFR Part 636

Wildlife Habitat Incentives Program; Final Rule

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 636

RIN 0578–AA21

Wildlife Habitat Incentives Program

AGENCY: Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Final rule.

SUMMARY: The Natural Resources Conservation Service is issuing a final rule for the Wildlife Habitat Incentives Program (WHIP). A proposed rule for WHIP was published in the **Federal Register** on December 13, 1996 (61 FR 65485) and comments were solicited from the public. This final rule establishes the process by which NRCS will administer WHIP, responds to comments received from the public during the 45-day comment period, and incorporates clarifications to improve implementation of the program.

EFFECTIVE DATE: September 19, 1997.

ADDRESSES: This final rule may be accessed via Internet. Users can access the Natural Resources Conservation Service (NRCS) homepage at http://www.ftw.nrcs.usda.gov; select 1996 Farm Bill Conservation Programs from the menu.

FOR FURTHER INFORMATION CONTACT: Warren M. Lee, Director, Watersheds and Wetlands Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890. 202–720–3534. Fax: 202–720–2143.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) determined that this final rule is significant and was reviewed by OMB under Executive Order 12866. Pursuant to section 6(a)(3) of Executive Order 12866, NRCS conducted a benefit-cost assessment of the potential impacts associated with this proposed rule and concluded from the benefit-cost assessment that the overall impacts of WHIP will be beneficial. NRCS determined that the development of partnerships to provide expert technical assistance will ensure customers are afforded the best opportunity for success. In this manner, NRCS believes that WHIP will provide for wildlife habitat, help improve the quality of life for participants, and have a neutral to positive impact on local economies. Copies of the benefit-cost assessment are available upon request from Jeanne Christie, Program Manager, Watersheds and Wetlands Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

It has determined through an amendment to the ''Environmental Assessment for the Wildlife Habitat Incentives Program, August 22, 1996'' that the issuance of this final rule will not have a significant effect on the human environment. Copies of the Environmental Assessment, the amendment, and the finding of no significant impact may be obtained from Jeanne Christie, Watersheds and Wetlands Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890.

Paperwork Reduction Act

No substantive changes have been made in this final rule which affect the recordkeeping requirements and estimated burdens previously reviewed and approved under OMB control number 0560–0174. The recordkeeping requirements and estimated burdens for WHIP were transferred to OMB control number 0578–0013.

Executive Order 12988

This final has been reviewed in accordance with Executive Order 12988. The provisions of this final rule are not retroactive. Furthermore, the provisions of this final rule preempt State and local laws to the extent such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614 and 11 must be exhausted.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, NRCS assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Discussion of Program

The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) (Pub. L. 104–127, April 4, 1996) provides authority for several conservation programs. Section 387 of the 1996 Act authorizes the Wildlife Habitat Incentives Program (WHIP) under the supervision of the NRCS. The primary purpose of WHIP is to help landowners ''develop upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife habitat.''

Section 387 of the 1996 Act provides that up to $50 million is available to implement WHIP. These funds were formerly available to implement the Conservation Reserve Program, 16 U.S.C. 3831–3836. WHIP will be under the general supervision and direction of the Chief of NRCS.

Through WHIP, NRCS will utilize CCC funds to provide cost-share assistance to those landowners who wish to integrate wildlife considerations into the overall management of their operations, or who simply desire to do more for wildlife. NRCS will implement WHIP in harmony with other programs to achieve more comprehensive advancement of wildlife objectives.

WHIP offers an opportunity to encourage development of improved wildlife habitat on eligible lands. As participants make decisions about the wildlife habitat development plan for their land, they will gain a greater awareness about their farming and ranching activities. NRCS believes that the efforts made by participants in this program will serve as a catalyst for improving wildlife conditions throughout the Nation.

On December 13, 1996, a proposed rule was published with request for comments. The proposed rule described the program requirements, administrative processes, and eligibility criteria that NRCS would use to implement WHIP. Nearly 53 individual responses containing about 377 specific comments were received during the 45-day comment period: 5 from agricultural organizations; 19 from environmental organizations; 18 from State and local agencies; and, 11 from individuals and other organizations.

Additional responses were received from Federal agencies and employees, but are not included in the following analysis of public comments. These responses are being treated as inter-and intra-agency comments and are being considered along with the public comments where appropriate.

All comments received are available for review at United States Department

of Agriculture, Room 6029–S, South Building, 14th and Independence Ave., SW., Washington, DC., during regular business hours (8 a.m. to 5 p.m.) Monday through Friday.

Analysis of Public Comment

Overall, almost all respondents expressed appreciation with the proposed rule and the various means by which the public could comment. Many offered valuable suggestions for improving or clarifying specific sections of the proposed rule. Some of these suggestions were group efforts, whereas individual responses used similar or identical language to identify and describe their interests, concerns, and recommended modifications to the proposed rule.

The majority of comments centered on six major issues: the ranking of projects; practices that required recurring implementation; cost-share provisions; length of the contract; plan development; and, land eligibility. Several comments either commended or criticized specific statutory requirements. These comments were considered as part of the rulemaking record to the extent that they were relevant to the provisions of the rulemaking. Numerous minor editorial and other changes in the text were suggested; these comments are not included in the following analysis but all were considered, and many of the minor changes were included in the final rule.

General Comments on 7 CFR Part 1470

Under the proposed rule, NRCS proposed to set out WHIP regulations in CFR title 7, part 1470. However, NRCS later determined that it is more appropriate to include the final rule in part 636. Therefore, NRCS organized the comments according to the section number as found in the proposed rule but in its responses provided the new section number as found in the final rule where appropriate. The following summarizes comments received on the proposed rule and NRCS' response to them.

1. Preamble Language in the Proposed Rule

Comment. Thirty-six comments expressed support for the WHIP program as proposed. Of these, 10 comments indicated that there were existing wildlife problems which WHIP could address. These wildlife problems varied across the country. Four comments expressed concern that the preamble did not give sufficient emphasis to the decline of wildlife species in the southeast, while three other comments indicated that wildlife has already benefited from existing USDA programs.

Response. In the preamble to the proposed rule, NRCS did not intend to provide an exhaustive description of the various wildlife declines that each region has experienced or how programs of the Department have helped to stem these declines. The NRCS recognizes that there exist special wildlife concerns all across the country and hopes that programs such as WHIP will help reverse these troubling trends.

Comment. Eight comments supported using partnerships to implement WHIP. Four comments recommended that procedures should be kept simple and that USDA should try to maximize landowner participation.

Response. The NRCS appreciates these comments and will adopt the recommendations when possible. In developing the program, the NRCS determined that a simple and flexible approach could best meet the varied wildlife concerns that exist across the country. The final rule provides the necessary flexibility to accommodate input from the landowner and to obtain assistance from other entities with wildlife expertise, and to address specific wildlife concerns.

Privacy

Comment. Nine comments focused on concern over privacy issues. Four comments stated that pre-cost-share agreement information should be confidential—specifically, if the cost-share agreement is not later awarded. Two suggested that participants should be able to terminate the cost-share agreement if the NRCS violated confidentiality with no obligation to return dollars already expended. Two comments supported full disclosure of all partners who would be involved in the cost-share agreement prior to obtaining final signatures. Three comments requested that the participant receive notification regarding any site visits by any partners and access to any information gathered during the site visit. One comment stated that the WHIP plan and cost-share agreement should not be subject to FOIA or used in an environmental audit as part of discovery.

Response. The public's concern with the confidentiality of information made available to NRCS in connection with WHIP is understandable. There is significant apprehension that compliance with applicable Federal Statutes may hinder some uses of private lands. NRCS' policy is to not release information obtained from WHIP applicants or participants to other members of the public or other Federal agencies unless required to do so by law. In practice, this means that NRCS will not contact other Federal agencies offering information it obtains from WHIP participants or regarding the participant's land.

NRCS may be required to release information about threatened and endangered or listed species or critical habitat pursuant to a request made under the Freedom of Information Act or as part of NRCS' Endangered Species Act (ESA) compliance requirements. In deciding whether to participate in WHIP, prospective applicants will need to consider whether the benefits of participating in the program outweigh the concern that the potential release of information to the public about listed species or habitat may lead to a legally mandated restriction of any degree on the participant's land. NRCS will disclose to WHIP applicants all public and private entities that may be involved in a partnership in administering WHIP in a particular area.

Notification to prospective participants concerning the involvement of partnership organizations will generally occur as part of the application and planning process before NRCS enters into a cost-share agreement with the applicant. After the cost-share agreement is signed, NRCS will attempt to contact the participant before follow-up site visits occur.

ESA and related Federal Law

Comment. Fifteen comments addressed the relationship of WHIP to other Federal laws and regulations, 13 of these comments were directed to concerns over compliance with the ESA. Two other comments raised concerns that ESA compliance requirements could be triggered by the identification of endangered species on an applicant's land, while two different comments recommended that lands under contract with WHIP should not be subject to ESA. Two comments stated that at the conclusion of the contract participants should be allowed to return to pre-contract conditions without regard to provisions of the ESA, section 404 of the Clean Water Act (CWA) or any related laws, rules, or regulations. Five comments suggested that WHIP should not be implemented in critical habitats for threatened and endangered species absent safe harbor agreement with the Fish and Wildlife Service, while one comment suggested that such a safe harbor agreement should be included as a component of the WHIP cost-share agreement. Even so, one comment raised the concern that the rule failed to address incidental take permits and

related ESA matters. The remaining three comments discussed the relationship to section 404 of the CWA and the ineligibility provisions for USDA programs under the Food Security Act of 1985, as amended.

Response. The public's interest in the relationship between WHIP and other environmental statutes, particularly the Endangered Species Act (ESA), is understandable in light of the public's general interest in and concern about endangered species and WHIP's goal of developing wildlife habitat. The United States Fish and Wildlife Service (FWS) is responsible for administering the ESA and the Army Corps of Engineers and Environmental Protection Agency is responsible for administering section 404 of the CWA. Questions regarding the applicability of these statutes to a WHIP participant's land, including questions about the application of the statutes after a WHIP cost-share agreement expires, should be addressed to the agency responsible for the statute. However, NRCS intends to provide assistance to persons interested in WHIP and therefore, offers to facilitate discussion with the applicable agency when asked.

NRCS has no authority to issue safe harbor agreements for an individual's land or issue incidental take permits ('incidental take permits' allow for the incidental take of species or habitat incidental to a Habitat Conservation Plan and section 10 of ESA). Therefore, NRCS will refer applicants to the FWS on these important issues. NRCS will satisfy its consultation responsibilities as required by ESA.

The WHIP will reflect a concern for threatened and endangered species by providing for the termination of any WHIP cost-share agreement if the participant unlawfully adversely modifies critical habitat or otherwise harms a threatened or endangered species. The adverse action may involve an area on the participant's farm that is outside the site of habitat development specified in the cost-share agreement. Section 636.11 of the final rule provides for cost-share agreement termination if the State Conservationist determines that the termination is in the public interest. NRCS believes it is in the public's interest to terminate a WHIP cost-share agreement when the program participant unlawfully harms a threatened or endangered species.

NRCS will also support threatened or endangered species through WHIP by not approving a cost-share agreement for a practice that may help one threatened or endangered species but harm another.

Funding

Comment. The NRCS received thirteen comments on the subject of WHIP program funding. These comments did not focus on any particular aspect of funding but included such varied topics as the availability of technical assistance moneys to NRCS and non-USDA entities, the policy option to obligate the majority of WHIP program funds over the next two years, and the suggested ability of NRCS to set a $5000 cap per year per contract. One comment recommended that habitat conservation plans receive priority for threatened and endangered species funding. One comment suggested that conservation partners should donate technical assistance. Another comment advised that NRCS should spend WHIP funds on implementation of cost-share practice and not on technical assistance.

Response. The NRCS did not address funding matters in the rule. However, as a policy matter the NRCS recognizes the importance of using WHIP funds to implement wildlife habitat practices that yield real benefits for wildlife. NRCS will also work with other public and private wildlife interests to provide assistance for the program from other resources. This may include both technical assistance and funding where there are voluntary and mutual interests between program applicants, partners, and the NRCS. In addition, the 1996 Act provided that $50,000,000 shall be made available to carry out WHIP. The NRCS intends to distribute these funds to priority projects that maximize environmental returns and participation in the program. Therefore, the NRCS does not anticipate a need to set a $5000 per year limitation, especially given the projected high demand for program funding. However, NRCS does anticipate that most cost-share agreements will cost less than $10,000 and will only enter in a cost-share agreement in excess of that amount if superior wildlife habitat benefit warrants greater Federal investment.

Paperwork Reduction Act

Comment. The Department received three comments on the Paperwork Reduction Act during the public comment period for the proposed rule. These comments expressed concern regarding: the level of bureaucracy involved with the local work groups; the need to simplify the paperwork; and that a greater amount of technical assistance will be needed to implement the program.

Response. The NRCS has striven to simplify the process for the participant by only requiring the minimum of paperwork, assuming most of the administrative burden, and providing flexibility to incorporate the Wildlife Habitat Development Plan (WHDP) into other conservation plans that the participant may have. Based on the information currently available, NRCS believes that its recordkeeping and reporting burden estimates are valid, but will re-evaluate their accuracy after the program is fully implemented.

2. Section-by-Section Comments on 7 CFR Part 1470

Several modifications to improve the clarity of the rule have resulted in some of the section numbers being redesignated in the final rule. The following discussion of the public comments relates to the section numbers as indicated in the proposed rule.

Section 1470.1 Applicability

Comment. One comment supported the purpose of WHIP to ''help participants develop habitat for upland wildlife, wetland wildlife, threatened and endangered species, fish and other types of wildlife.''

Response. The purpose stated in the rule mirrors the statutory purposes. The NRCS welcomes the opportunity to work with landowners to improve wildlife habitats throughout the nation.

Section 1470.2 Administration

Comment. Under the proposed rule, section 1470.2 addressed the general framework for WHIP implementation. The NRCS received 28 comments on this section. Ten of these comments expressed support for the utilization of cooperative agreements with other entities with interests in wildlife habitat while one comment disapproved of the use of such arrangements. Three comments suggested the NRCS clarify whether non-profit organizations or other entities could enter into agreements under WHIP. One comment wanted the NRCS to delegate implementation authority for the program to a State agency.

Response. The NRCS believes that the opportunity to work with other Federal agencies, local and State partners, and the private sector, will improve delivery of the program. The language in the proposed rule encompassed many types of organizations who have wildlife concerns, including non-profit organizations, land trusts, and hunting clubs. The final rule language has been simplified regarding these agreements.

Comment. The NRCS received two other comments related to cooperative agreements: one comment

recommended that the rule expressly provide for agreements which reimburse partners for salaries and expenses; and the other comment recommended that a one-to five year time frame for agreements be included in the rule.

Response. Any agreement the NRCS enters into must be in accordance with the appropriate authorities.

Comment. Six comments supported a strong role for the State Technical Committees, while two other comments supported review of State Technical Committee membership by the NRCS National Office, and two other comments recommended particular agencies for membership on the State Technical Committee.

Response. Section 3861 of Title 16 of the United States Code authorizes the establishment of State Technical Committees, describes their advisory role, and describes the entities eligible to participate on such a committee. NRCS intends to publish a rule on the structure and purpose of the State Technical Committees in a separate rulemaking, and shall consider these recommendations regarding committee representation as it develops that rule.

Comment. One comment expressed concern that Habitat Conservation Plans were not explicitly mentioned in this section.

Response. The term ''habitat conservation plan'' is a term of art recognized under the ESA. As described above, the NRCS does not have enforcement authority under the ESA and does not want to create any confusion between such plans and the plans developed under WHIP. The WHIP participant may use one plan or another method to satisfy this requirement under both statutes.

Section 1470.3 Definitions

There were seven comments received on this section.

Authorized CCC Representative

Comment. One comment recommended adding a definition for this term in the rule.

Response. The CCC is a government-owned and operated corporation, chartered in the 1930s to help stabilize and support farm prices and income, and to maintain balanced supplies and orderly distribution of agricultural commodities. The 1996 Act expanded the mission of the CCC to include the power to carry out conservation or environmental programs authorized by law.

Although CCC will provide most of the funds to implement the program, the NRCS has the administrative responsibility to manage the program. The term ''authorized CCC representative'' has been removed from the final rule.

Conservation Plan

Comment. One comment wanted this term defined within the rule and clarification of its role in WHIP relative to other NRCS programs.

Response. The NRCS added a definition for ''conservation plan'' in the final rule. However, the term ''Wildlife Habitat Development Plan (WHDP)'', as found in this rule, can constitute an entire conservation plan if the participant does not intend to implement any non-WHIP practices, or the WHDP can constitute a component of a conservation plan for a larger management unit or a broader set of conservation activities under other programs.

Habitat Development

Comment. One comment wanted to narrow this definition based on the assumption that a broader definition makes targeting more difficult.

Response. The NRCS believes that a broad definition is necessary to encompass the range of possible program opportunities that merit funding. Therefore, no change has been made to this definition.

Wildlife

Comment. Four comments were received indicating that this definition should be changed. One of these comments suggested adding amphibians and three of these comments recommended a less inclusive definition while adding a definition for ''wildlife habitat''.

Response. The NRCS agrees with these recommendations and has modified the definition for ''wildlife'' in the final rule to mean ''birds, fishes, reptiles, amphibians, invertebrates, and mammals, along with all other animals' and has added a new definition for ''wildlife habitat'' to mean ''the aquatic and terrestrial environments required for wildlife to complete their life cycles, including air, food, cover, water, and spatial requirements.''

Cost-Share Agreement

To better reflect the nature of the relationship between NRCS and a participant, the term ''contract'' has been changed to ''cost-share agreement.''

Section 1470.4 Program requirements.

Section 1470.4 (a):

Comment. There were 19 comments regarding the length of contracts. Ten comments supported the terminology within the proposed for a 10-year minimum. One of these comments supported allowing cost-share agreements to extend up to 15 years, similar to an existing state wildlife program, and another of these comments supported perpetual cost-share agreements. Nine comments supported shorter time-spans. Of these, seven supported annual cost-share agreements and one comment recommended tying the life of the practice to the length of the cost-share agreements, as appropriate, ranging from three to five to ten years.

Response. The NRCS decided to provide greater flexibility in the length of the cost-share agreement. Therefore, the rule has been revised to provide for cost-share agreement lengths of five to ten years and in special emergency circumstance to provide the flexibility to enter into one-year cost-share agreements. From a wildlife standpoint, the longer wildlife habitat is retained on the landscape, the greater the wildlife benefits. While certain wildlife species such as birds, can find alternative nesting sites, many wildlife species are much less mobile and will not be able to relocate. Even many bird species display a strong preference for returning to the same site year after year. Therefore, NRCS will continue to place priority on working with applicants who express an interest in long-term cost-share agreements. However, the cost-share agreement period applies to the time that it takes to install a practice or practices and verify that they have been successfully installed. For certain wildlife practice or combinations of wildlife practices it may not require 10 years to achieve desired benefits. In all cases, after completion of the cost-share agreement period, program participants will still be required to be in compliance with an associated operations and maintenance agreement to maintain the WHIP practice or practices for the life of each practice. Practice life varies, and may or may not extend beyond the actual cost-share agreement period, but for some practices such as impoundment structures, practice lifespans can range up to 20 or 30 years. This operations and maintenance agreement is consistent with the way other Departmental programs, such as the Agriculture Conservation Program, Great Plains Conservation Program, and Colorado River Basin Salinity Control Programs operated in the past. All of these programs had wildlife components. The NRCS believes the five to ten year cost-share agreement period is appropriate because it allows NRCS to monitor the wildlife practices on an annual basis for

the first several years after the practice is installed and thus evaluate whether they are providing the benefits anticipated. Wildlife management is complex; wildlife science is changing as our understanding of wildlife and its interactions increase. Successful implementation of wildlife habitat practices requires ongoing monitoring and the ability to respond by modifying the agreement where appropriate and acceptable to the parties involved.

In addition, an emergency event may necessitate NRCS's quick intervention to minimize or remove a threat to critical wildlife habitat. For example, wildlife populations threatened with overcrowding and disease because of a severe drought might require the implementation of habitat practices which ameliorate the drought's immediate and deleterious impacts. An emergency practice, such as the pumping of water, may need to be in place for only one year to realize its wildlife habitat goals, and therefore a five to ten-year cost-share agreement requirement would eliminate such a critical opportunity from funding.

NRCS believes it would prove more cost-effective to undertake short-term practices which prevent the loss of wildlife habitat and wildlife populations, than to undertake the expense of subsequent efforts which would attempt to re-establish wildlife populations. This concern applies particularly to wildlife species already in decline and under consideration for nomination as a candidate, threatened or endangered species listing under the Endangered Species Act.

NRCS anticipates the application of this provision will only occur on a very limited basis. The State Conservationist, in consultation with the State Technical Committee, must identify the existence of a wildlife emergency and request authority from the Chief, or designee, to enter into agreements for periods shorter than 5 years. If approved, the State Conservationist may enter into emergency agreements during a six-month time period. If there is a continuing need to enter into agreements after the six-months has elapsed, then the State Conservationist may request a six-month extension.

NRCS incorporated the ability to respond to emergencies into this final rule. To improve the organization and clarity of the final rule, the WHDP and cost-share agreements were reorganized into separate sections.

Section 1470.4 (c):

Comment. There were 15 responses to land eligibility requirements. Eleven comments supported limiting eligible lands primarily or exclusively to private lands. One comment supported making State lands ineligible along with Federal lands, while allowing local, tribal, and private lands to remain eligible.

Response. The NRCS will focus the majority of WHIP funds towards private lands. However, the NRCS State Conservationist, in consultation with the State Technical Committee, can allow exceptions where significant wildlife habitat gains can only be achieved by installing practices on non-Federal public land. For example, practices for aquatic habitat restoration may require such an exception because the State owns the stream or lake bottom. In another case, it may be cost effective to include State or local lands adjoining or interspersed with a number of private lands enrolled in WHIP, particularly where State agencies are providing significant in-kind or monetary resources to the success of the overall project. In addition, Tribal lands, regardless of their status in terms of Federal trust lands, continue to be eligible and Federal lands are eligible in those very limited circumstances where the benefit is primarily on the private lands, but must include some Federal land to meet the WHIP objective. Therefore, this section has been revised to clarify which lands are eligible.

Comment. One comment wanted the NRCS to obtain the State Fish and Game agency's concurrence on all eligible land determinations. One respondent requested clarification of whether Federal land is confined to lands held in title by the U.S. or includes lands held by other entities but originally purchased with Federal funds. One comment requested clarification of the term ''other lands'' in § 1470.4(c)(3).

Response. The final rule provides the flexibility to work with partners including State Fish and Game agencies in the implementation of WHIP. Land eligibility determinations are derived from identifying who holds title to the land. To specifically require concurrence on eligible land determinations would add unnecessary administrative complexity to the program without providing a specific benefit. The term ''other lands'' in § 636.4(c)(3) of the final rule refers to the other lands offered for enrollment in WHIP at the time the application is considered or in the future.

Section 1470.5 Application Procedures

Comment. The NRCS received three comments about application procedures. One comment wanted partners to accept applications for WHIP, one comment requested that only qualified biological professionals should make wildlife habitat assessments, and one comment recommended the release of existing information in a State's Natural Heritage database to NRCS.

Response. Partners can provide copies of applications to interested individuals, but should inform such prospective applicants of the need to contact NRCS to complete and submit final applications. Acceptance of applications will need a determination of land eligibility that will generally require a visit to the NRCS field office before the application can be processed. Persons trained in the appropriate assessment procedures will conduct all the biological assessments, but such professionals may not hold a degree in biology. Partners with biological expertise can provide assessment assistance or information to NRCS, including non-privileged information such partner may have regarding the range or habitat requirements of a particular species. No change was made in the rule in response to these recommendations. However, § 1470.5 in the proposed rule has been revised and divided into two sections in the final rule: ''§ 636.7, The Wildlife Habitat Development Plan'' and ''§ 636.8, Cost-share Agreements'' to improve clarity.

Section 1470.6 Establishing Priority for Enrollment in WHIP

Sections 1470.6 (a) and (b):

Comment. The NRCS received 53 comments directed to establishment of priorities for enrollment in WHIP. Forty-two of these comments concerned the establishment of State and national priorities while 11 concerned establishment of criteria for evaluating individual applications. Thirteen comments supported geographic targeting at either the state or national level as proposed in the rule, while eight comments opposed geographic targeting but supported instead targeting by specific wildlife habitats, wildlife species, or wildlife practices.

Three comments supported placing national priorities in the final rule, while one comment requested clarification about how national priorities should be developed. Sixteen comments recommended particular species or habitats for priority treatment: five comments recommended fish as an equal priority to terrestrial species; seven comments recommended grassland wildlife habitat in various parts of the country; three recommend habitats for neotropicals; and one comment recommend utilizing wellhead protection areas. Three comments stated that State Fish and Game agencies should establish priorities.

Response. Although the Chief has been given the ability to target or limit

the scope of WHIP, the rule states that this is in response to national and regional needs. These national and regional needs are identified in part by the NCRS State office in consultation with the State Technical Committee. Each NRCS State office has the ability to prioritize the allocation made to its administrative area and has been given the option of targeting by geographic areas, wildlife habitat types, or specific wildlife practices.

NRCS intends to allow targeting based upon local priorities through a locally-led process or by the State Technical Committee, and therefore, has not included specific national priorities in the final rule. In the locally-led process, local groups and individuals are given the ability to identify any wildlife issue of concern, terrestrial or aquatic. NRCS has explicitly included fish in its definition of wildlife and believes that fish shall receive priority treatment in many areas of the country.

WHIP provides an opportunity to prevent declines in wildlife populations and to achieve stable and diverse wildlife habitats. The NRCS believes the locally-led process will increase the likelihood of the program meeting these Federal goals. Throughout the process, NRCS will gain local knowledge, experience, and expertise from the participating groups and individuals, and will benefit from their involvement and commitment to program objectives. The proposed rule set forth the flexibility for locally-identified priorities and no changes were made in this regard in the final rule.

Section 1470.6(c):

Comment. Four comments supported the existing criteria found in section 1470.6(c) with respect to the evaluation of individual applications. Several comments recommended adding criteria to the list, including emphasis upon declining species in the context of an ecosystem approach (three comments); cost-share agreement duration (two comments); public access for hunting (one comment); threatened and endangered species habitat (one comment); and net improvement in on-site wildlife habitat (one comment). Several comments recommended either removing particular items as priority criteria or caution regarding the application of existing criteria, including removing sustainability and maintenance (one comment), cautioning that a practice that benefits one species may harm other species (one comment), and removing any priority dependent on the amount of cost-share provided by the participant (one comment). One comment suggested that the whole unit of land owned by the applicant must be included in the WHIP contract to be the eligible for cost share funds.

Response. The NRCS believes that the criteria listed in the proposed rule adequately focused WHIP funds towards the projects that will most benefit the habitat needs of wildlife. The criteria in the rule provides the NRCS with the flexibility to further refine criteria as appropriate to achieve specific wildlife habitat goals identified as important in specific areas. This flexibility will allow for the development of ranking criteria to evaluate applications and to fund those requests that will best address the specific wildlife concerns identified by NRCS in consultation with the State Technical Committee or through the locally led process. The criteria was revised to clarify that wildlife habitat need was an overriding requirement. No other additions or deletions were made to the list.

Section 1470.6(d): Comment. One comment recommended deleting this section because its provisions are already covered in 1470.4.

Response. Though this paragraph refers to eligibility, the paragraph serves as an administrative tool for eliminating projects that are technically eligible but do not meet the wildlife habitat goals of WHIP.

Comment. Another comment cautioned against placing WHIP cost-share agreements on public land unless special criteria applied such as a demonstration project.

Response. The NRCS intends to focus WHIP funds on private lands and will only enroll public lands in special situations, such as aquatic restoration, where the public land is a small component of a larger habitat restoration effort, or where there is a direct private benefit. The language was simplified to better describe the circumstances when an application could be denied.

Section 1470.7 Cost Share Payments

The NRCS received a total of 97 comments on this section of the rule.

Section 1470.7 (a): Comment. The NRCS received 13 comments on the percentage of cost-share provided under WHIP: five comments stated the cost-share percentage should not exceed 75 percent from any source; three comments stated the cost-share percentage should not exceed 75 percent from Federal sources; two comments supported the cost-share provisions in the rule; and, one comment stated that cost-share should be allowed up to 100 percent. One comment suggested that in-kind services such as time and labor could count toward the landowners 25 percent cost-share assistance and one comment recommended the participants should receive graduated payments over the life of the contract.

Response. The 1996 Act does not allow incentive payments under WHIP. In response to comments, the final rule is revised to state that WHIP shall not pay more than 75 percent of the cost for a habitat development practice. In addition, WHIP payments, in combination with other direct Federal sources, shall not exceed 75 percent of the cost for a habitat development practice. For practices that receive funds directly from other Federal sources, the WHIP cost-share payment shall be reduced proportionately, except in special cases where circumstances merit additional cost-share assistance to achieve the intended goals of the project. Generally, other direct Federal sources such as the Fish and Wildlife Service's Partners for Wildlife program can contribute part of the 75 percent maximum direct Federal cost-share assistance. The 25 percent cost-share assistance can be met from other sources such as State, private, or nonprofit sources. This assistance may include in-kind matches from the program participant, but such arrangements must be worked out in development of the agreement and must be appropriate to meeting the objectives of the project. The final rule has been modified so that a participant may receive an incentive payment for an activity from a different source. The NRCS recognizes it will not fund some activities that are necessary to the restoration of a particular habitat, and will not interfere with other organizations assisting participants in those endeavors.

Section 1470.7(b): Comment. There were many concerns raised concerning the adequacy of the standards and specifications for wildlife practices currently used by NRCS. Eleven comments recommended the State Wildlife Agencies approve wildlife standards and specifications. In addition, seven comments stated the State Technical Committees should approve all wildlife practices used in WHIP. Eighteen comments referred to the NRCS Field Office Technical Guide (FOTG), nine of which recommended updating the FOTG, one comment suggested adapting NRCS Technical Notes as eligible wildlife practices in WHIP, and the remaining eight indicated that some practices in the FOTG should not be eligible for WHIP. Several other comments identified individual practices that should be eligible for WHIP, including nesting platforms, screening diversion channels to enhance water quality, managing pesticides and nutrients, establishing

and sustaining biodiversity along field edges and rights of way, managing early successional grasslands, leaving grain standing in the field for wildlife, seasonal flooding of cropland for migratory birds, and establishing crawfish impoundments. One comment suggested developing WHIP practice guidelines for threatened or endangered species.

Response. The NRCS National office is adding technical guidance for the FOTG related to wildlife practices and management. These revisions include adding a wildlife component to many existing practices and new specifications designed to aid conservation planning. The NRCS State Conservationist, in consultation with the State Technical Committee, can develop interim standards and specifications for practices not currently in the FOTG. Practices included in WHIP cost-share agreements should focus on achieving benefits for wildlife, therefore, it is not necessary to identify practices that are ineligible for WHIP in the FOTG. NRCS Biological Technical Notes as well as existing standards and specifications developed by State Wildlife Agencies or other suitable sources may be used as the basis for developing interim wildlife practices. The flexibility already exists to address the concerns described above. Therefore, no changes were made in the final rule.

Comment. Five comments referred to the time frame for cost-share payments, two of which supported the language as proposed, two of which requested clarification whether payment will be made prior to or after the installation of a practice, and one of which suggested prior payment for limited resource farmers.

Response. As outlined in the proposed rule, cost-share payments shall be made after the installation of a practice per WHIP specifications and the submission of appropriate records and receipts. Although there is no authority in the WHIP statute to offer advance payments, WHIP payments are assignable to third parties and as such, are able to be paid directly to vendors providing services. In addition, many of the partnerships formed at the State level between NRCS and those interested in having a successful WHIP in their respective States, provide that certain financial or technical assistance or services will be provided to participants by the partners. In some cases, the partners will establish the practice at no charge to the participant. No changes were made in the final rule in response to these comments.

Comment. One comment provided that WHIP could provide significant wildlife habitat improvements if allowed on CRP lands.

Response. The 1996 Act added a wildlife emphasis to the CRP and provided substantial funds towards implementation. The NRCS does not believe the limited WHIP funds should be used to obtain wildlife benefits on acreage enrolled in a program established to achieve similar benefits.

Section 1470.7 (c): Comment. Ten comments described how many wildlife habitats require recurring practices (such as prescribed burning, discing, or mowing) to mimic the natural events that formerly maintained grassland habitats.

Response. The NRCS recognizes the special management needs of critical grassland habitats and will provide cost-share for recurring practices. Therefore, the NRCS has added a definition for ''recurring practices'' in this final rule and has changed this section to make funding of recurring practices possible.

Section 1470.7(d): Comment. The NRCS received 21 comments on this paragraph related to incentive payments, eleven of which stated incentive payments provided by partners should not be subject to the limit that specifies a participant cannot receive in excess of 100 percent cost-share assistance for a practice, nine of which recommended changing the rule to allow for incentive payments, and one comment suggesting that Wallop-Breaux funds should be eligible for matching with WHIP funds.

Response. The NRCS removed the language regarding the 100 percent limitation to clarify that its terms apply only to 75 percent of the cost-share payments received by a participant; and the remaining provisions of § 1470.7(d) were incorporated into § 636.6(a). Because the NRCS encourages cooperation between entities that share wildlife objectives, the National office recommends that the WHIP ranking system developed within a State not penalize an applicant's ability to receive cost-share assistance from other sources.

Comment. One comment recommended clarifying the meaning of the assistance versus payment so that the salaries of NRCS and other partners are not included in the cost-share the landowner is required to match.

Response. The NRCS resolves this concern with the revision described above by addressing only the 75 percent cost-share provided by NRCS or from direct Federal funds in § 636.7(a).

Section 1470.8 The Wildlife Habitat Development Plan (WHDP)

Comment. Forty comments were received on the Wildlife Habitat Development Plan (WHDP), thirteen of which expressed approval for the inclusion of partners in the planning process. Two comments wanted conservation district partners to have approval authority, one of which felt that the approval authority should be more than a ''rubber stamp''. One comment asked whether the NRCS would reimburse partners for technical assistance provided during the planning process. Two comments stated that hunting rights should not be affected by the implementation of the WHDP. Six comments related to WHDP requirements, two stated that hunting rights should remain unaffected, one stated that the plan should address State priority goals, three indicated there should not be requirements on adjacent land not subject to the cost-share agreement. One of these six comments requested the NRCS not to require a full Resource Management System. Six additional comments wanted existing management plans (e.g. SWCD conservation plans, Resource Management Systems, Stewardship Incentives Program, Forestry Incentives Program, and Habitat Conservation Plans) to be allowed as the basis for the WHDP, while one comment recommended integrating WHDP with other NRCS conservation planning efforts. Two comments supported the WHDP as described in the proposed rule.

Response. The NRCS supports using of conservation partners in all aspects of WHIP, including assessments, planning, monitoring, and evaluation activities. The NRCS also supports efficiency of efforts and will adapt, as appropriate, for use in WHIP any plans developed which provide the needed information. As stated earlier, the WHDP may be the entire conservation plan or one of several components of a conservation plan depending on the desires and priorities of the program participant. In general, it is not anticipated that the NRCS will reimburse partners for technical assistance during the planning process. However, there may be special cases where such arrangements are made. These arrangements will generally be subject to the availability of NRCS resources. No change was made in the final rule because the rule contains sufficient flexibility to address these concerns as they are raised through the locally-led process and in consultation with the State Technical Committee.

Comment. Seven comments were related to monitoring of the WHIP plan, three of which stated that monitoring and evaluation were important activities, two of which encouraged the use of partners in monitoring and measure success of the program, one of which wanted monitoring to be included in the plan, and the remaining comment wanted monitoring to be conducted only by NRCS and restricted to ensure compliance with Federal laws, rules, standards and specifications.

Response. The NRCS agrees that monitoring and evaluation are important for measuring success and identifying failures. Initially, each NRCS State office shall determine the monitoring method to use, as appropriate for the different types of wildlife habitat enrolled in the program. However, the NRCS has identified the need to develop a national standard for measuring wildlife habitat improvement in order to track wildlife habitat benefits achieved under the program. No such methodology currently exists, and it is the intent of NRCS to work with other wildlife interests to develop one. These comments are beyond the scope of this rule and are being addressed more appropriately in a broader context.

Section 1470.9 Modifications

Comment. Two comments were received concerning modifications to a WHIP plan. One comment wanted to allow changes to a plan at anytime based on unforeseen circumstances while the other comment wanted all modifications approved by the local work group in conjunction with the local conservation district.

Response. The local work group is comprised of Federal, State, County, tribal or local government representatives at the local level. The local work group serves as a recommending body only and will not have approval authority of WHIP cost-share agreements or modifications to such cost-share agreements. WHIP will accommodate, to the extent that funding allows, unforeseen technical modifications to a plan. The cost-share agreement modification provisions for WHIP are similar to those in other USDA conservation programs. The program handbook will provide procedural guidance for modifying cost-share agreements, and will have the flexibility to enable a participant to modify a cost-share agreement several years into its implementation as long as the WHDP is revised according to program requirements.

Section 1470.10 Transfer of Interest in a Contract

Comment. The NRCS received four comments on this topic. Two comments recommended funds should not be returned if a cost-share agreement is terminated. One comment recommended the return of all or a portion of the funds if a cost-share agreement is terminated through a change in ownership. One comment requesting clarification of the terms for a transfer of cost-share agreement and whether an easement was involved.

Response. NRCS does not have the authority to acquire easements from WHIP participants, and therefore there are no easements involved in a WHIP cost-share agreement. The NRCS added language to this section to include provisions when a subsequent owner is unwilling to assume responsibility under the WHIP cost-share agreement.

Section 1470.11 Termination of cost-share agreements

Comment. The NRCS received six comments on this section of the rule. Two comments requested clarification of the terms ''public interest'' and ''severe hardship''. One comment wanted the ability to end the cost-share agreement without obligation for the participant to return any funds. One comment wanted less harsh language in this section.

Response. The NRCS will utilize standard cost-share agreement procedures in the implementation of this section. The ''public interest'' and ''severe hardship'' standards have been implemented in many Departmental programs and such standards require fact-intensive determinations. A particular summary of such determinations would not prove insightful. There were no changes made to this section.

Section 1470.12 Violations and Remedies

Comment. The NRCS received one comment on this section requesting clarification of the terms ''reasonable notice'' and ''additional time as CCC may allow.''

Response. Written notice mailed to the last known address of the participant constitutes reasonable notice, but there exist other methods that also qualify. The NRCS will allow additional time beyond 30 days to correct a violation in those cases where an extension is determined reasonable, such as inclement weather, or other extenuating circumstances. In addition, language was added to clarify the difference between situations where the participant sought to come back into compliance and those where the participant elected not to do so.

Section 1470.13 Misrepresentation and Scheme or Device

Comment. The NRCS received one comment on this section raising the concern that a program participant could be penalized for unknowingly violating the terms of the cost-share agreement.

Response. Section 636.13 in the final rule focuses upon misrepresentations and knowing violations, and thus the NRCS considers a person's state of mind when applying the terms of this section. Language was added in § 636.13 clarifying the outcomes possible under this section.

Section 1470.15 Appeals

Language was added to this section identifying activities that are not subject to appeal, consistent with the Department of Agriculture Reorganization Act of 1994.

Accordingly, Title 7 of the Code of Federal Regulations, subchapter D, is amended by adding a new part 636 to read as follows:

PART 636—WILDLIFE HABITAT INCENTIVES PROGRAM

Sec.

636.1 Applicability.
636.2 Administration.
636.3 Definitions.
636.4 Program requirements.
636.5 Establishing priority for enrollment in WHIP.
636.6 Cost-share payments.
636.7 The Wildlife Habitat Development Plan (WHDP).
636.8 Cost-share agreements.
636.9 Modifications.
636.10 Transfer of interest in a cost-share agreement.
636.11 Termination of cost-share agreements.
636.12 Violations and remedies.
636.13 Misrepresentation and scheme or device.
636.14 Offsets and assignments.
636.15 Appeals.

Authority: 16 U.S.C. 3836a.

§ 636.1. Applicability.

(a) The purpose of the WHIP is to help participants develop habitat for upland wildlife, wetland wildlife, threatened and endangered species, fish, and other types of wildlife.

(b) The regulations in this part set forth the requirements for the Wildlife Habitat Incentives Program (WHIP).

(c) The Chief, NRCS may implement WHIP in any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and

the Commonwealth of the Northern Mariana Islands.

§ 636.2. Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, NRCS.

(b) The State Conservationist will consult with the State Technical Committee in the implementation of the program and in establishing program direction for the NRCS in the applicable State. The State Conservationist has the authority to accept or reject the State Technical Committee recommendation; however, the State Conservationist will give strong consideration to the State Technical Committee's recommendation.

(c) NRCS may enter into cooperative agreements with Federal agencies, State and local agencies, conservation districts, local watershed groups, and private entities to assist with program implementation, including cost-share agreement execution, assistance, planning, and monitoring responsibilities.

(d) NRCS may make payments pursuant to agreements with other Federal, State, or local agencies, conservation districts, local watershed groups, or private entities for program implementation, coordination of enrollment of cost-share agreements, or for other goals consistent with the program provided for in this part.

(e) NRCS will provide the public with reasonable notice of opportunities to apply for participation in the program.

(f) Nothing in this part shall preclude the Chief of NRCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made under this part.

§ 636.3. Definitions.

Chief means the Chief of the Natural Resources Conservation Service or the person delegated authority to act for the Chief.

Conservation district means a political subdivision of a State, Native American Tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or Tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation plan means a record of a participant's decisions, and supporting information, for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems.

Cost-share agreement means the document that specifies the obligations and the rights of any person who has been accepted for participation in the program.

Cost-share payment means the payments under this part to develop wildlife habitat.

Habitat development means the physical actions or practices undertaken to establish, improve, protect, enhance, or restore the present conditions of the land for the specific purpose of improving conditions for wildlife.

Participant means an applicant who is a party to a WHIP cost-share agreement.

Person means an individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

Practice means a specified treatment, such as a structural or land management measure, which is planned and applied according to NRCS standards and specifications.

Recurring practices means practices repeated on the same area over the life of a cost-share agreement to achieve specific habitat attributes.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State Technical Committee means a committee established by the Secretary of the United States Department of Agriculture in a State pursuant to 16 U.S.C. 3861.

Wildlife means birds, fishes, reptiles, amphibians, invertebrates, and mammals, along with all other animals.

Wildlife habitat means the aquatic and terrestrial environments required for wildlife to complete their life cycles, including air, food, cover, water, and spatial requirements.

§ 636.4. Program requirements.

(a) To participate in WHIP, a person must:

(1) Develop and agree to comply with a WHDP, as described in § 636.7;

(2) Enter into a cost-share agreement for the development of wildlife as described in § 636.8;

(3) Provide NRCS with written evidence of ownership or legal control for the life of the proposed cost-share agreement period; however, an exception may be made by the Chief:

(i) In the case of land allotted by the Bureau of Indian Affairs, tribal land, or

(ii) Other instances in which NRCS determines there is sufficient assurance of control;

(4) Agree to provide all information to NRCS as determined to be necessary to assess the merits of a proposed project and to monitor the compliance of a participant with a cost-share agreement; and (5)Agree to grant to NRCS or its representatives access to the land for purposes related to application, assessment, monitoring, enforcement, or other actions required to implement this part.

(b) *Ineligible land.* NRCS shall not provide cost-share assistance with respect to practices on land:

(1) Enrolled in a program where wildlife habitat objectives have been sufficiently achieved through other forms of assistance or without assistance, as determined by NRCS.

(2) With on-site or off-site conditions which NRCS determines would undermine the benefits of the habitat development or otherwise reduce its value;

(3) Where NRCS determines that the wildlife habitat development benefits attainable are of lessor value than would occur on other lands; or

(4) Owned by the United States, except where there is a direct Tribal, State, or private benefit; or

(5) On which habitat for threatened or endangered species would be adversely affected.

(c) All other land except as provided in paragraph (b) of this section is eligible.

§ 636.5 Establishing priority for enrollment in WHIP.

(a) In response to national and regional needs, the Chief may limit program implementation in any given year to specific geographic areas or to address specific habitat development needs of targeted species of special concern.

(b) The State Conservationist, in consultation with the State Technical Committee, may limit implementation of WHIP to address unique species, habitats, or special geographic areas of the State. Subsequent cost-share agreement offers that would complement previous cost-share agreements due to geographic proximity of the lands involved or other relationships may receive priority consideration for participation.

(c) NRCS will evaluate the applications and make enrollment decisions based on the wildlife habitat need using some or all of the following criteria:

(1) Contribution to resolving an identified habitat problem of national, regional, or state importance;

(2) Relationship to any established wildlife or conservation priority areas;

(3) Duration of benefits to be obtained from the habitat development practices;

(4) Self-sustaining nature of the habitat development practices;

(5) Availability of other partnership matching funds or reduced funding request by the person applying for participation;

(6) Estimated costs of wildlife habitat development activities; and

(7) Other factors determined appropriate by NRCS to meet the objectives of the program.

(d) Notwithstanding the criteria set forth in paragraph (c) of this section, the State Conservationist, in consultation with the State Technical Committee, may deny an application if it is not cost effective or does not sufficiently meet program requirements:

§ 636.6 Cost-share payments.

(a) NRCS may share the cost with a participant for implementing the practices as provided in the WHDP; NRCS shall offer to pay no more than 75 percent of the cost of establishing such practices. The cost-share payment to a participant shall be reduced proportionately below 75 percent to the extent that direct Federal financial assistance is provided to the participant from sources other than NRCS, except for certain cases that merit additional cost-share assistance to achieve the intended goals of the program, as determined by the State Conservationist.

(b) Cost-share payments may be made only upon a determination by the NRCS that an eligible practice or an identifiable unit of the practice has been established in compliance with appropriate standards and specifications. Identified practices may be implemented by the participant or other designee.

(c) Cost-share payments may be made for the establishment and installation of additional eligible practices, or the maintenance or replacement of an eligible practice, but only if NRCS determines the practice is needed to meet the objectives of the program, or that the failure of the original practice was due to reasons beyond the control of the participant.

§ 636.7 The Wildlife Habitat Development Plan (WHDP).

(a) The participant develops a WHDP with the assistance of NRCS or other public or private natural resource professionals, and the WHDP is approved by the participant, NRCS, and the local conservation district. A WHDP encompasses the parcel of land that has the wildlife habitat conditions that are of concern to the participant.

(b) The WHDP forms the basis for the agreement and is incorporated therein. The WHDP includes a schedule for installation of the wildlife habitat development practices, maintenance, and related requirements to maintain the habitat for the life of the cost-share agreement.

(c) The WHDP may be modified in accordance with § 636.9.

§ 636.8 Cost-share agreements.

(a) To apply for WHIP cost-share assistance, a person must submit an application for participation in the WHIP at a USDA office or to an NRCS representative.

(b) A WHIP cost-share agreement shall:

(1) Incorporate all portions of a WHDP;

(2) Be for a period of 5 to 10 years, unless provisions of paragraph (c) of this section apply;

(3) Include all provisions as required by law or statute;

(4) Specify the requirements for operation and maintenance of applied wildlife habitat development practices;

(5) Include any participant reporting and recordkeeping requirements to determine compliance with the cost-share agreement and program;

(6) Be signed by the participant. When the participant is not the owner, concurrence from the owner is required; and,

(7) Include any other provision determined necessary or appropriate by the NRCS representative.

(c) The Chief may allow a cost-share agreement period for less than five years in situations where wildlife habitat is threatened as a result of a disaster and emergency measures are necessary to address the potential for dramatic declines in one or more wildlife populations.

§ 636.9 Modifications.

(a) NRCS, with the concurrence of the conservation district, may approve modifications to a WHDP where such modifications are acceptable to the parties.

(b) NRCS may approve modifications to the cost-share agreement where such modifications are acceptable to the parties.

(c) Any modifications made under this section must meet WHIP program objectives, and must be in compliance with this part.

§ 636.10 Transfer of interest in a cost-share agreement.

(a) (1) If the ownership or operation of the land changes during the term of the cost-share agreement, NRCS shall modify the cost-share agreement to reflect the new interested persons and new divisions of payments. NRCS shall make eligible cost-share payments upon presentation of an assignment of rights or other evidence that title had passed.

(2) With respect to any and all payments owed to participants who wish to transfer ownership or control of land subject to a cost-share agreement, the division of payment shall be determined by the original party and that party's successor. In the event of a dispute or claim on the distribution of cost-share payments, NRCS may withhold payments without the accrual of interest pending a settlement or adjudication on the rights to the funds.

(b) (1) If such new owners or operators are not willing to assume the responsibilities posed in an existing WHIP cost-share agreement, NRCS shall terminate the cost-share agreement and may require that all cost-share payments may be forfeited, refunded, or both.

(2) The signatories to the cost-share agreement shall be jointly and severally responsible for refunding the cost-share payments pursuant to paragraph (b)(1) of this section.

§ 636.11 Termination of cost-share agreements.

(a) The State Conservationist may, by mutual agreement with the parties to the cost-share agreement, consent to the termination of the contract where:

(1) The parties to the cost-share agreement are unable to comply with the terms of the cost-share agreement as the result of conditions beyond their control;

(2) Compliance with the terms of the cost-share agreement would work a severe hardship on the parties to the contract; or,

(3) Termination of the cost-share agreement would, as determined by the State Conservationist, be in the public interest.

(b) If a cost-share agreement is terminated in accordance with the provisions of this section, the State Conservationist may allow the participants to retain any cost-share payments received under the cost-share agreement in a porportion appropriate to the effort the participant has made to comply with the cost-share agreement, or, in cases of hardship, where forces beyond the participant's control prevented compliance with the cost-share agreement.

§ 636.12 Violations and remedies.

(a) (1) If NRCS determines that a participant is in violation of a cost-share agreement or documents incorporated by reference into the cost-share

agreement, NRCS may give the parties to the cost-share agreement reasonable notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as NRCS may allow.

(2) If the participant fails to cure the violation of a cost-share agreement within the period provided under paragraph (a)(1) of this section, NRCS may terminate the agreement and require the participant to refund all or part of any assistance earned under that cost-share agreement, plus interest, as well as require the participant to forfeit all rights for future payment under the agreement.

(b) [Reserved].

§ 636.13 Misrepresentation and scheme or device.

(a) A person who is determined by NRCS to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to cost-share agreement payments and must refund all payments, plus interest as determined by NRCS.

(b) A person who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation; or,

(3) Misrepresented any fact affecting a program determination shall refund to NRCS all payments, plus interest as determined by NRCS, with respect to all NRCS cost-share agreements. The person's interest in all NRCS cost-share agreements may be terminated.

§ 636.14 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the land, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found in part 3 of this title shall be applicable to cost-share agreement payments.

(b) Any person entitled to any cash payment under this program, may assign the right to receive such payments in whole or in part.

§ 636.15 Appeals.

(a) Any person may obtain reconsideration and review of determinations affecting participation in this program in accordance with part 614 Part C of this title, except as provided in paragraph (b) of this section.

(b) In accordance with the provisions of the Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354 (7 U.S.C. 6901), the following decisions are not appealable:

(1) Payment rates, payment limits, and cost-share percentages;

(2) The designation of approved wildlife priority areas, habitats or practices;

(3) NRCS program funding decisions;

(4) Eligible conservation practices; and

(5) Other matters of general applicability.

(c) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section.

Signed at Washington, D.C. on September 12, 1997.

Gary A. Margheim,

Acting Chief, Natural Resources Conservation Service.

[FR Doc. 97–24768 Filed 9–18–97; 8:45 am]

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federal register

Friday
September 19, 1997

Part IV

Environmental Protection Agency

40 CFR Part 159

Reporting Requirements For Risk/Benefit Information; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 159

[OPP–60010H; FRL–5739–1

RIN 2070–AB50

Reporting Requirements For Risk/ Benefit Information

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final Rule.

SUMMARY: This final rule codifies EPA's interpretation and enforcement policy regarding section 6(a)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which requires pesticide registrants to report information concerning unreasonable adverse effects of their products to EPA. The purpose of the rule is to clarify what failures to report information, or delays in reporting, will be regarded by EPA as violations of FIFRA section 6(a)(2), actionable under FIFRA sections 12(a)(2)(B)(ii) and 12(a)(2)(N). In comparison to previous EPA policy statements, some reporting requirements are expanded, and others reflect increased flexibility or exemptions for reporting specific types of information. When effective, this rule will supersede all previous policy statements pertaining to section 6(a)(2).
EFFECTIVE DATE: This rule will become effective June 16, 1998.
FOR FURTHER INFORMATION CONTACT: By mail: James V. Roelofs, Office of Pesticide Programs (7506C), U.S. Environmental Protection Agency, 401 M St., SW.,, Washington, DC 20460. Office location, telephone number and e-mail address: Crystal Mall #2, Rm. 1113, 1921 Jefferson Davis Highway, Arlington, VA, (703) 308–2964, e-mail: roelofs.jim@epamail.epa.gov.
SUPPLEMENTARY INFORMATION:

Electronic Availability:

Internet

Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under ''Rules and Regulations'' (http://www.epa.gov/fedrgstr/).

Fax on Demand

Using a fax phone call 202–401–0527, select item 6301 for a copy of the **Federal Register** document, and select item 6051 for the Information Collect Request (ICR) form.

This **Federal Register** document discusses the background of this final rule concerning the reporting of adverse effects information by pesticide registrants. It also addresses, in general terms, the main public comments on the provisions of the proposed rule published in the **Federal Register** of September 24, 1992 (57 FR 44290). In addition, on August 12, 1996, the Agency opened a comment period to receive comments on the burdens that would be imposed by the provisions of a draft final version of the rule (61 FR 41764)(FRL–5388–1). A draft version of the rule dated June 14, 1996 was made available to the public on request at that time. The comment period was subsequently extended twice, on September 20, 1996 (61 FR 49427)(FRL–5396–1) and October 25, 1996 (61 FR 55259)(FRL–5640–7). This preamble provides EPA's final determination with respect to the provisions of the final rule, and provides information on the applicable statutory and regulatory review requirements. A more detailed section-by-section discussion of the public comments on the proposed rule, the related Information Collection Request (ICR), and the Agency's response thereto can be found in the public docket.

This document is organized into 3 units. Unit I provides background on the relevant statutory provisions and the regulatory history of adverse effects reporting. Unit II contains a discussion of the final rule and EPA's response to the major comments submitted on the proposed rule. Unit III discusses compliance with the rulemaking requirements contained in FIFRA and other statutes and executive orders, followed by the regulatory text.

I. Background

A. The Statute

Section 6(a)(2) of FIFRA requires that, ''[i]f at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, the registrant shall submit such information to the Administrator.'' Section 6(a)(2) provides an important function by assuring that a previous Agency decision to register a pesticide remains a correct one, and that a registered pesticide can in fact be used without posing unreasonable adverse effects to human health and the environment. Other provisions of FIFRA allow the Agency to require pesticide registrants to develop and submit information the Agency believes it needs in order to evaluate the risks and benefits of pesticide products. Section 6(a)(2), however, provides that registrants must also inform the Agency of certain relevant information relating to their products, even though it was not specifically requested by EPA. It recognizes that registrants may come into the possession of important information that was not anticipated by the Agency, and that without the submission of such information by registrants, EPA would remain without it. Information reportable under this provision includes not only new information derived from scientific studies, but also reports of incidents of adverse effects resulting from the use of pesticide products. Thus, section 6(a)(2) serves to provide an important ongoing check on the correctness of the original decision to register a pesticide.

As a general matter, pesticides may not be sold or distributed in the United States unless they are registered with the EPA (FIFRA section 3(a)). In order to obtain a pesticide registration, an applicant must provide EPA with data (or cite existing data) demonstrating that the proposed registration complies with the requirements for registration (FIFRA section 3(c)(1)(F)). The standard for determining whether an application should be granted is found in FIFRA section 3(c)(5), which provides that in order to grant a registration, EPA must find that a product's composition warrants the proposed claims for it; that the product's labeling and other material required to be submitted comply with FIFRA; that the product will perform its intended function without causing unreasonable adverse effects on the environment; and that, when used in accordance with widespread and commonly recognized practice, the product will not cause unreasonable adverse effects on the environment. FIFRA defines unreasonable adverse effects on the environment as ''any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.'' Thus, a critical aspect of determining whether or not a pesticide should be granted a registration is an evaluation of whether the benefits associated with the use of a pesticide exceed the risks associated with such use.

The burden of demonstrating that a product meets the standards for registration rests at all times on the registrant or applicant for registration. See, e.g., *Industrial Union Dept.* v. *American Petroleum Institute*, 448 U.S. 607, 653 n. 61 (1980); *Environmental Defense Fund* v. *EPA*, 510 F.2d 1292, 1297, 1302 (D.C. Cir. 1975). Section 6(a)(2) only imposes a reporting burden on persons who have registered

pesticides, and only requires reporting of information if that information is: (1) Additional; (2) factual; and (3) regards unreasonable adverse effects on the environment of the pesticide. These three factors were discussed extensively in the comments submitted on the proposed rule.

B. Previous Regulatory Interpretations of Section 6(a)(2)

1. *1978 interpretive statement.* On August 23, 1978, EPA published in the **Federal Register** (43 FR 37611) its interpretation of the requirements imposed by section 6(a)(2). In that interpretive statement, EPA focused on the meaning of two of the three factors pertaining to whether information is reportable: what information is ''regarding'' unreasonable adverse effects on the environment, and what information can be said to be ''factual.'' EPA went on to make clear that it believed information must be submitted under section 6(a)(2) if a registrant possesses the information, the information pertains to a pesticide for which the registrant holds a registration, and ''the information, if true, would be relevant to an Agency decision regarding the risks and benefits of the pesticide, i.e., an Agency decision regarding the registrability of the pesticide or regarding the proper terms and conditions of the registration of the pesticide.'' The statement went on to say that reportable information need only ''pertain or relate to unreasonable adverse effects on the environment; it does not have to indicate, establish, or prove the existence of such effects.'' EPA made clear in the statement that a registrant need not determine that the information would result in a change in the terms and conditions of registration in order for information to be reportable, because the ultimate determination on such registration issues rests with EPA. If the information would be relevant to the Agency's decision-making on whether a pesticide should remain registered and, if so, under what terms and conditions, the information ''regarded'' unreasonable adverse effects on the environment.

In terms of the definition of ''factual,'' the Agency explained that there was no clear demonstration of congressional intent concerning the scope of the information, and that the Agency would therefore interpret the term based upon the function of section 6(a)(2) in the context of FIFRA's regulatory scheme. Since EPA routinely relies on expert opinion in order to make regulatory decisions, and since ''Congress recognized that protection of the health of the public and the environment cannot wait until evidence of unreasonable adverse effects becomes conclusive or universally accepted,'' EPA determined that ''factual'' information should be interpreted broadly to include opinions if the opinions were not ''the unsolicited opinions of persons who are not employed or retained by the registrant to express the opinion and whose opinions would not be admissible under the Federal Rules of Evidence as 'expert' opinion'' (*Id*. at 37613).

2. *1979 policy statement.* On July 12, 1979, EPA published in the **Federal Register** (44 FR 40716) a Statement of Enforcement Policy regarding registrants' obligations under section 6(a)(2). That statement did not curb the scope of section 6(a)(2) as enunciated in the 1978 interpretive statement, but instead indicated that certain information arguably pertinent to the evaluation of the risks and benefits of a pesticide ''are not currently needed by EPA in order to properly discharge its statutory responsibilities under FIFRA and thus need not be submitted by registrants.'' The Policy statement notified registrants of the types of information for which a registrant's failure to report might precipitate enforcement action by EPA. In other words, the policy statement announced as a matter of enforcement discretion that certain types of information need not be submitted by registrants notwithstanding the fact that the information fell within the scope of section 6(a)(2). EPA indicated that it would honor the exemptions from reporting contained in the policy statement until at least 30 days after a modification or revocation of the policy statement was published in the **Federal Register**. This final rule constitutes a revocation of that policy statement; the 1979 Policy Statement will cease to be Agency policy on June 16, 1998.

3. *1985 interpretive rule.* On September 20, 1985, EPA published in the **Federal Register** (50 FR 38115) a Final Interpretive Rule and Statement of Policy concerning reporting obligations under section 6(a)(2). The rule identified those types of information covered by section 6(a)(2) for which enforcement action would be brought if material were not submitted to the Agency, and exempted the reporting of other information covered by the statutory provision. It is not clear whether the Interpretive Rule ever became effective. The **Federal Register** Notice provided that EPA would publish in the **Federal Register** a notice announcing the effective date of the rule, but no subsequent notice was ever published. In light of the issuance of this new Final Rule, the issue of whether the 1985 Rule ever became effective need not be resolved.

4. *The 1992 proposed rule.* On September 24, 1992, the Agency published in the **Federal Register** (57 FR 44290) a proposed rule relating to the submission of information pursuant to section 6(a)(2). The preamble to that rule discussed in detail the Agency's interpretation of section 6(a)(2) and the rationale for the provisions of the proposed rule. Many of those provisions have not changed significantly in this final rule. The Agency continues to endorse the substance of the preamble to the proposed rule. EPA has not always repeated in this preamble material addressed in the proposed rule; the discussion in that preamble should be consulted by anyone seeking additional background on the decisions reflected in this final rule. Throughout this preamble the term ''proposed rule'' refers to the 1992 document.

5. *The 1996 draft final rule.* On August 12, 1996 the Agency opened a comment period to allow interested parties to comment on the Information Collection Request (ICR) and the potential burden that the provisions of the Agency's draft final rule would impose on registrants. The Agency made available a draft final version of the rule which reflected changes the Agency had made from the proposed rule on the basis of comments received and its own experience with section 6(a)(2) information during the years since the proposed rule was published. The Agency received numerous written comments on the provisions of the ICR and the draft final rule, and also received oral comments from interested parties at two meetings held during the comment period. All comments received, as well as memoranda describing the meetings, and memoranda describing the Agency's response to comments are included in the public docket for this rule. The main issues which were raised and addressed by the Agency as a result of comments on the 1996 draft final rule are described in this preamble. Throughout this preamble, the term ''1996 draft'' refers to the draft version of the rule dated June 14, 1996, which was made available to the public on request through the **Federal Register** announcement of August 12, 1996.

C. Current Interpretation of Section 6(a)(2)

In assessing the proper scope of section 6(a)(2), it is necessary to focus on the potential regulatory actions that the Agency can take under FIFRA in its continuing evaluation of whether a

pesticide poses unreasonable adverse effects on the environment. The potential cancellation or suspension of a registration pursuant to section 6 is the most restrictive action EPA can take against a pesticide registration, and these were the regulatory activities most discussed by commenters on the proposed rule. While reportable information under section 6(a)(2) could conceivably result in cancellation or suspension action, this information could also be used by the Agency in other ways. The information could suggest the need for modifications to the terms and conditions of registration which could be necessitated by the balancing of the risks and benefits associated with a particular pesticide. It could also identify information gaps that could result in the request for additional information from registrants pursuant to section 3(c)(2)(B). Finally, it could identify to the Agency pesticides and issues that require closer examination by the Agency.

The Agency thus takes a very broad view of the statutory scope of section 6(a)(2). Although EPA interprets the section as requiring the submission of potentially large amounts of information, the Agency is also sensitive to the burden this could put on both registrants and Agency reviewers. Accordingly, this final rule identifies the material that the Agency considers relevant to determining whether a registered pesticide continues to meet the standards of registration and wants to be submitted under section 6(a)(2), and essentially exempts from the reporting requirements information not covered by the Rule.

This final rule establishes requirements on what information must be reported, when and how the information must be submitted to the Agency, and who has reporting obligations. The nature of the information that must be reported was the principal focus of most of the comments and takes up the bulk of the final rule. Most of this portion of the rule is considered by the Agency to be interpretive in nature and similar to the policy statements issued on section 6(a)(2) in the past. The primary sources of information covered by the rule are scientific studies, reports of incidents involving pesticides, and certain opinions, but other information could also be included if relevant to the risk/benefit balancing involved in the determination of whether a pesticide causes unreasonable adverse effects on the environment.

A number of general comments argued the need for registrants to investigate and verify the validity of information before reporting. The Agency manifestly did not design this final rule to cover only information certified to be valid. Especially in the area of incident reporting, the Agency recognizes and accepts that many reports may prove not to be valid. Registrants are not obligated to investigate, analyze, or verify incidents before reporting to the Agency, and EPA accepts that a reporting registrant may well disagree with either the significance or validity of incident reports. Registrants are free to submit information challenging the validity of section 6(a)(2) information either at the time of, or after submission of the information to the Agency. In order to comply with the final rule, however, registrants must submit the required information promptly. Failure to submit information because of the incompleteness of ongoing investigations will be considered a violation of both this final rule and of FIFRA.

Finally, EPA wants to serve notice that failure to comply with the requirements of section 6(a)(2), as reflected in this final rule, will be considered a violation of FIFRA sections 12(a)(2)(B)(ii) and 12(a)(2)(N), and could result in actions for civil and/or criminal penalties under FIFRA section 14. Failure to comply with these requirements may also constitute grounds for cancellation under FIFRA section 6 of some or all of a registrant's pesticide registrations, both because such failure means that ''material required to be submitted does not comply with the provisions of [FIFRA]'' and because the Agency may conclude that the registrant has failed to carry its burden of demonstrating that the use of its pesticides do not pose unreasonable adverse effects on the environment. EPA does not intend to pursue cancellation every time section 6(a)(2) may have been violated, but egregious or repeated violations may warrant cancellation rather than, or in addition to, monetary fines.

II. Section-By-Section Discussion

Comments were received on virtually every provision of the 1992 proposed rule, and on the 1996 draft version. As noted earlier, the Agency's detailed response to the comments are contained in documents available in the public docket for this rule. The discussion in this unit is limited to pointing out significant changes to the provisions of the 1992 proposed and 1996 draft rules, or to responding to comments that are, in the Agency's judgment, particularly important to clarify.

A. Section 159.153— Definitions

This section provides a number of definitions applicable to the final rule. Three definitions in particular were subject to a number of comments. Each is addressed in turn.

Pesticide. The definition of pesticide in the proposed rule included ''each active ingredient, inert ingredient, impurity, metabolite, or degradate contained in, or derived from, a pesticide product which is or was registered.'' The 1996 draft added the word ''contaminant'' to this definition. A number of commenters argued that this definition is excessively broad, impractical, and in violation of FIFRA (which defines the term pesticide more narrowly). The Agency has considered the comments, and determined to retain the definition of ''pesticide'' contained in the 1996 draft.

The focus of the statutory definition of ''pesticide'' is to define what products must be registered. The definition is one of intent— essentially any product must be registered if it claims to control pests. This is distinctly different from the question of what information about those products has to be submitted to EPA in order to make the risk and benefit determinations required to establish or maintain registrations. So long as the use of the pesticide results in an adverse effect, it is irrelevant for purposes of whether the information must be submitted whether the effect isactually caused by an active ingredient, an inert ingredient, or a metabolite, degradate, impurity, or contaminant. In short, neither the statutory definition of ''pesticide,'' nor the statutory definition of ''unreasonable adverse effects'' makes any reference to the constituent parts of a pesticide product. It is clearly the intent of the statute that the Agency judge whether the use of the product as a whole poses unreasonable adverse effects, regardless of what constituent part of the product may cause such effects. In practice, a number of pesticide risk assessments have been based in whole or in part on the risks posed by contaminants and impurities, such as dioxins in certain herbicides, or metabolites such as ethylene thiourea (ETU) in the EBDC fungicides. Moreover, a significant number of tolerances (maximum legal residue levels for pesticides on food or feed commodities) include metabolites as part of the tolerance expression established by regulation.

Thus, the Agency does not believe it can be seriously argued that adverse information about the inert ingredients, metabolites or contaminants in a

pesticide product is outside the statutory scope of what must be reported under section 6(a)(2), or that it is inconsistent in any way with the statutory definition of a pesticide. Moreover, this interpretation is consistent with section 10(d) of FIFRA, which clearly contemplates that the Agency may require registrants to submit, for the purpose of registering pesticide products, information on a product's ''separate ingredients, impurities, or degradation products'' as well as information on the product itself.

EPA recognizes that this definition of pesticide may pose a problem for registrants who do not know the identity of inert ingredients in their products, or for large organizations where the applicability of inert ingredients, metabolites, or degradates to particular pesticide products may not be appreciated by those individuals who obtain adverse information concerning an inert, metabolite, or degradate. In any particular enforcement action that might arise under section 6(a)(2), EPA will consider these factors, as well as the steps a registrant has taken to assure that adverse effects information on both pesticide products and particular chemicals or metabolites is referred to the appropriate personnel in the company.

Registrant. The definition of ''registrant'' in the proposed rule included any person who ''holds or ever held'' a pesticide registration. A number of commenters have challenged the authority of the Agency to apply the requirements of section 6(a)(2) to persons that held, but no longer hold, pesticide registrations. Some commenters argued that former registrants should be excused from reporting obligations after a set period of time (e.g., 3 or 5 years). Other commenters suggested that EPA extend the definition to include persons given emergency exemptions pursuant to section 18 of FIFRA.

EPA has changed the definition of ''registrant'' from both the proposed rule and the 1996 draft to clarify that the definition includes agents acting for a registrant, but does not include persons who could not reasonably be expected to receive reportable information. The Agency did not change the definition insofar as it applies to former registrants, although certain exemptions have now been established to limit the time period of reporting requirements on former registrants, along the lines suggested by various commenters (see further discussion of § 150.160 in Unit G of this preamble.). EPA explained in the preamble to the proposed rule its belief that section 6(a)(2) could be interpreted to put a continuing burden on registrants after a product registration is canceled or transferred. In the case of a transferred registration, for example, the pesticide product may continue to be widely used. Even in the case of canceled products, existing stocks may continue to be sold or used for a long period of time. Thus, the Agency's responsibilities with respect to whether sale or use of a pesticide should be permitted and, if so, under what conditions, do not necessarily end when a registration is sold or canceled. A former registrant may continue to receive information about its former products from consumer complaints or information about accidents well after a product is canceled or transferred. Since this information can affect continued Agency decision-making with respect to the once-registered product, EPA believes relevant information in the hands of former registrants must be provided to the Agency for a reasonable period of time. In its 1996 draft, EPA did not include a cutoff for reporting by former registrants, but has now decided to accept a cutoff of reporting responsibilities at 5 years after cancellation or transfer of a registration for most information, and shorter requirements under certain circumstances.

In order to minimize the burden on former registrants somewhat, the Agency added a new § 159.160 to the proposed rule, providing that for registrants who have left the pesticide business, i.e., hold no active pesticide product registrations, adverse information associated with their formerly held registrations need only be reported for 1 year after they cease to hold any active registration. Similarly, for a person who continues to hold active pesticide registrations, and may therefore be likely to continue to receive adverse information even about formerly registered products, this rule provides that information need not be reported if it is associated only with inert ingredients, contaminants, impurities, metabolites, or degradates contained in formerly registered products and is obtained more than 1 year after the registrant first ceases to hold the registration. Former registrants will still be required to report adverse information involving the formerly-registered pesticide product itself, as well as information involving any of the active ingredients contained in the formerly-registered product, for up to 5 years. If all registrations containing the active ingredient have been canceled, no reports need to be made concerning products containing the ingredient 3 years after the last registration containing the ingredient was canceled.

Finally, the Agency has added two new provisions to this section that were not contained in the proposed rule or the 1996 draft. One of these new provisions (§ 159.160(b)(4)) is necessary to accommodate the 1996 amendments to FIFRA under the Food Quality Protection Act (Pub. L. 104–170) which removed liquid chemical sterilants from the FIFRA statutory definition of ''pesticide.'' These products are no longer regulated under FIFRA, and former registrants of these products have no obligations for reporting information about them to EPA under this part. The second new provision is that information arising from litigation is not subject to the other time limitations of this section, except for products and active ingredients which are wholly canceled or no longer defined as pesticides. EPA is excepting information developed or obtained during the course of litigation from the 5–year cut-off for several reasons. Litigation can produce information that can be helpful to the Agency and that is rarely obtained by EPA, such as testimony of expert witnesses, and in-depth examination of the causes of an incident. A time limit is inappropriate, because litigation-related information may take a long time to surface because of the nature of litigation schedules. Finally, it would not appear to be particularly burdensome to track information developed during the course of litigation, since the information would be coming from limited, discrete sources, and companies presumably are aware of the conduct of litigation to which they are a party.

As to expanding the scope of coverage to holders of exemptions issued pursuant to section 18, the Agency does not believe that such holders are ''registrants'' within the meaning of FIFRA, and they are thus outside the statutory scope of section 6(a)(2). The Agency does have the authority to include adverse information reporting requirements as part of a section 18 exemption, and the Agency already considers this issue as part of its review of requests for such exemptions.

The Agency believes that supplemental distributors operating pursuant to 40 CFR 152.132 are agents acting for a registrant, and are already covered by section 6(a)(2). Failure of a supplemental distributor to report adverse effects information otherwise covered by this Final Rule can result in enforcement action against both the supplemental distributor and the parent

registrant. Regarding agents, the Agency has always considered registrants responsible for the actions of their agents. Clarifying language has been added to the regulatory text to emphasize that registrants will be held liable for the actions of their agents. The new language also makes it clear that for the purposes of reporting under this rule, the Agency considers an agent of the registrant to be a person who is likely to receive information about the effects of pesticides, and who is acting for the registrant at the time the information is received. Such agents could include consultants, contract laboratory researchers, attorneys, investigators, and others. However, the Agency does not consider every direct or indirect employee of a registrant as likely to receive such information. Financial and personnel workers, or even workers in a pesticide manufacturing plant, for example, would not be dealing with pesticide effects information nor would they normally be in contact with product users or other persons who are likely to report pesticide effects information. As a general matter, the issue of whether a retailer or distributor of pesticides is an agent of a registrant will depend upon the nature of the relationship between the retailer/distributor and the registrant. A retailer or distributor that sells a wide variety of pesticide products produced by many different registrants would generally not be considered an agent of any of the registrants. On the other hand, a retailer or distributor that exclusively (or nearly exclusively) distributes or sells a particular registrant's products would generally be considered an agent of that particular registrant.

Water reference level. The water reference level is the level at or above which the Agency wants to be informed of a pesticide's presence in surface water or groundwater. The proposed rule defined water reference level as the limit of detection of a pesticide in water; or alternatively, 10 percent of the Maximum Contaminant Level (MCL) if one has been established by EPA, 10 percent of the most recent draft or final long-term Health Advisory Level (HAL) if there is no MCL, or the lowest detectable amount if there is neither an MCL nor an HAL. Commenters that raised objections to the water reference level argued that the level would result in excessive reporting to the Agency. Commenters suggested that the reference level be set at the MCL or HAL itself rather than at a fraction of the level; the same commenters generally observed that since pesticides for which there is neither an MCL nor an HAL pose less of a concern, the reference level for those should not be set at so low a level as the level of detection.

The terms of this final rule are substantially similar to those of the proposed rule and the 1996 draft. Given the persistence of some pesticides and the sketchy nature of the monitoring of pesticides in surface water and groundwater, the Agency does not believe it appropriate to set the reference level at the MCL or HAL. EPA believes an earlier warning of potential problems with pesticides in water is appropriate and has therefore determined to retain the reference level at 10 percent of the HAL or MCL. The Agency has also decided to retain the level of detection as the reference level for pesticides that have not been assigned an MCL or HAL. EPA believes that, until it has sufficient information about the likelihood of a pesticide making its way into water, it should receive information about detections in water at the earliest possible stage. However, the Agency did modify this provision so that the default requirement to report ''the lowest detectable amount'' when there is no MCL or HAL for a compound does not apply to metabolites, degradates, contaminants or impurities. Detections in water of these components of a pesticide need only be reported when the Agency has identified a specific level of concern in water. Furthermore, this final rule provides that detections below the MCL or HAL do not need to be reported as individual incidents, but are to be reported in aggregated form as described below in relation to incident reporting under § 159.184.

EPA did make one other significant change in the final rule's definition of water reference level. The MCL and HAL levels are based on human toxicity triggers; neither level takes into account the toxicity of pesticides to other life forms. In order to be consistent with other Agency policies related to the protection of water quality, the Agency added to the definition of ''water reference level'' the Ambient Water Quality Criteria for the Protection of Aquatic Life, established under the authority of section 304(a) of the Clean Water Act. If EPA has established such criteria for a specific pesticide, and that level is lower than 10 percent of the MCL or HAL, then the water quality criterion is the reportable reference level. For a compound which is detected in water, the Agency believes the reporting level should be whichever threshold is the most protective of the environment, whether that is the MCL-based trigger derived from estimated toxicity to humans, or water quality criteria derived from estimated risk to aquatic life. Water Quality Criteria documents for over 100 individual compounds, including some pesticides, are published by the Agency and are available from the National Technical Information Service (NTIS) in Springfield, Virginia (telephone 703–487–4650).

B. Section 159.155—When Information Must Be Submitted

The proposed rule and the 1996 draft both required that reportable information be submitted to the Agency within 30 calendar days of the registrant's first becoming aware of the information. A registrant would be considered aware of information when any officer, employee, agent, or other person acting for or employed by the registrant, and considered likely to receive relevant information, first comes into possession of, or knows of, such information.

In this final rule, the Agency is retaining the requirement that information about studies be reported within 30 days. With regard to information concerning incidents, however, the Agency has agreed with many of the commenters that the time frames for reporting should be differentiated based on the relative severity of the incidents being reported. Accordingly, this final rule has adopted a set of reporting schedules (in § 159.184(d)) based on severity ratings which are consistent with those suggested by many commenters. Specifically, incident information involving human fatalities must be reported within 15 days. Information regarding allegations of serious human illness or fatalities to wildlife, serious plant damage, serious property damage, or water contamination above MCLs or HALs, may be accumulated for 30 days, and reported within 30 days after each accumulation period. All other incident information may be accumulated for 90 days and submitted within 60 days after each accumulation period. The Agency believes that this system will alleviate many of the concerns expressed by commenters that incident information could not be properly characterized or efficiently reported if the 30–day time limit were applied to all individual incidents. This system distinguishes between relatively more serious and relatively less serious incidents in a way that will enable EPA to receive and recognize more quickly information about more serious incidents. In addition, the Agency has decided that for the less serious categories of incidents, individual reports do not

need to be submitted. Instead, the Agency will require aggregated statistical reports— counts of the number and type of incidents, listed by product or active ingredient. This will enable EPA to review possible patterns of incidents and require registrants to submit further detailed information on these incidents only if it seems useful to do so.

Section 159.155(a) also provides that the Agency, with written notification to the registrants, can establish a different reporting period for specific types of reportable information or eliminate the reporting requirement altogether. The Agency believes that this provision will allow the Agency to more easily address those situations where the Agency determines that it does not need all the information otherwise required to be submitted by this rule, or that there is a different approach for a particular situation which can help to reduce the reporting burden on registrants while still providing the Agency with the information it needs. The Agency encourages registrants to continue to forward any ideas on ways to reduce the burden of reporting under section 6(a)(2).

A number of commenters objected to the provision that a registrant would be deemed to possess information if any person acting for or employed by the registrant possesses or knows of the information. Instead, these commenters suggested that it would be more appropriate for the Agency to retain the standard contained in the 1985 Interpretive Rule, which provided that a registrant possesses or knows of information only when the information is possessed or known of by a person acting for or employed by the registrant who is ''capable of appreciating the significance of such information.''

The Agency does not agree with these comments and has retained the requirement as proposed, except for adding language to emphasize that an employee or agent must be ''likely to receive'' reportable information, and that they must be acting for the registrant at the time they receive it. The Agency is concerned that the ''capable of appreciating'' standard would lead to disputes over whether a particular individual is or is not capable of appreciating the significance of information in any particular instance. A registrant should take steps to assure that the results of studies performed by the registrant or at the registrant's request are reported promptly to someone responsible for assuring compliance with section 6(a)(2). Similarly, EPA believes that most registrants probably already have particular individuals designated to receive and/or respond to consumer complaints. The Agency does not believe it is unfair to place upon registrants the burden of assuring that such complaints are routed to people who understand the reporting requirements of section 6(a)(2).

The Agency recognizes that even when a registrant has established a reasonable system for tracking reportable information, information may nonetheless be received by individuals working for that registrant who neither appreciate its significance nor pass it on to personnel who would. The Agency anticipates that its enforcement response to such situations will likely depend upon the identity of the person receiving the information and the steps taken to assure compliance with section 6(a)(2). For example, if a person submits reportable information to an employee of a pesticide registrant that could reasonably be expected to receive the information, such as a sales representative who regularly meets pesticide users, dealers and crop consultants, or a person who takes phone calls from the public, the Agency believes that such an employee should be expected to transmit the information to the appropriate personnel working for the registrant, and the Agency would likely take enforcement action for failure to report such information within the appropriate time period. On the other hand, EPA recognizes that many employees of a company would not be expected to receive relevant information. For example, the Agency would not regard as reportable information received by employees in such activities as food services, maintenance, finances and accounting, or personnel. Similarly most employees involved in manufacturing would not be expected to receive reportable information, with the exception of industrial hygienists or safety officers specifically employed to monitor worker health effects.

An example of information that is not reportable is when a registrant hires a scientist to conduct toxicity studies on a particular pesticide, and that scientist has previously worked at a university where he performed research on the toxic properties of the pesticide in question. The scientist's previous work was not performed for the registrant; he was not their agent at the time the previous work was done; the previous work does not become reportable under section 6(a)(2) (assuming that the work would otherwise be reportable) just because the scientist is hired by the registrant to perform a new study. As another example, a consultant is hired by Registrant B to help with the registration of a pesticide (to give general advice, and to review and conduct studies). The consultant previously worked for Registrant A to help with a special review. During the course of the earlier work, the consultant reviewed comparative toxicity studies involving a number of pesticides, including Registrant B's. The consultant was not an agent of Registrant B when this study was performed, and Registrant B has no section 6(a)(2) reporting obligations with respect to that study (unless the consultant provides it to Registrant B at any time, in which case it is reportable because the registrant (rather than the agent) possesses the information).

C. Section 159.156—How Information Must Be Reported

This section establishes guidelines for how reportable information must be submitted to the Agency. A number of minor modifications were made in order to clarify the procedures for identifying and submitting information pursuant to section 6(a)(2). The most significant comments on this section concern summaries and issues involving confidentiality of information.

1. *Paragraph (f).* The requirement in § 159.156(f) to summarize information concerning a study or incident is one that received a great deal of comment, and one that the Agency has modified from the proposed rule. Commenters raised a number of objections to the proposed requirement that registrants summarize ''all known information'' concerning a study or incident on numerous grounds, including that the requirement exceeded the Agency's statutory authority, that it would be unreasonably burdensome, that it would result in the submission of excessive, extraneous, and unreliable information (especially with regard to incidents), that it could be construed as an admission by a registrant that the information contained in a report (particularly an incident report) is correct, and that it could adversely affect the ability of a registrant to obtain information that might be considered proprietary, privileged, or confidential by someone because such information would have to be turned over to EPA.

The Agency has retained a requirement to summarize information, but in the final rule is providing significant additional guidance on what information needs to be included, and what does not need to be included, in such summaries. It will enable the Agency to quickly ascertain the nature of the information being reported and

therefore more quickly and responsibly fulfill its responsibilities under FIFRA.

The Agency does not believe that a summary ought to be construed as an admission by a registrant that the information reported to a registrant and contained in the summary is true and correct. The standard for reportability is not whether the registrant believes a report submitted to it is factual and accurate. The report itself will not automatically be taken by the Agency as an admission by a registrant that it concedes the correctness of information contained in an allegation. Registrants are free to provide with their submissions any information they deem appropriate which may qualify or contest a reported allegation of adverse effects.

As to the suggestion that the proposed rule might hamper registrants' ability to obtain information from individuals, the Agency has little way of knowing whether individuals might not cooperate with registrants or provide them with much information they currently provide if those individuals know that the information might be passed on to EPA. EPA's treatment of any information would be governed by FIFRA section 10 (which involves treatment of Confidential Business Information (CBI) under FIFRA) and by the Freedom of Information Act (FOIA). If the information is not protected under section 10, and if it is not protected from release under FOIA, EPA would be obligated to make it available to members of the public upon request. On the other hand, FOIA does allow agencies to withhold from release medical files and similar material the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and EPA fully intends to protect such information from release. Section 159.156(i) of the regulatory text refers submitters to the already existing procedures for segregating material deemed confidential under FIFRA section 10.

The Agency does not believe it would be appropriate, as some commenters suggested, to delegate to registrants the determination of whether the information in any particular case is so significant that it should be provided to the Agency. As the United States District Court for the District of Columbia found in the case of *CSMA* v. *EPA*, 484 F.Supp. 513 (1980), this determination belongs to EPA rather than to the regulated community. Under the circumstances, EPA cannot allow registrants to withhold otherwise reportable information on the grounds that persons who submitted it to the registrant might prefer that it not be transmitted to EPA.

In regard to summaries themselves, EPA agrees that the proposed rule was too vague and could have lead to reporting of excessive or extraneous information. The Agency also is sensitive to the need to provide registrants with more guidance on what and how to summarize.

The new § 159.156(f) makes the following changes. First, it refers only to incident reporting, and not laboratory studies. Studies are already subject to requirements that they be identified as section 6(a)(2) information, both by the terms of this rule at § 159.156, and by the existing ''flagging'' criteria for certain toxicity studies at 40 CFR 158.34. This will generally be sufficient for an initial determination of whether the study warrants an expedited scientific review. Thus, a further requirement for summarization is unnecessary. This is clearly not the case for incident information.

Incident information may come to a registrant in many different forms, ranging from consumer complaints by telephone, to detailed investigative reports developed in connection with a lawsuit. After considering all comments on this issue, the Agency has decided to identify the specific items of factual information that would best enable EPA to evaluate quickly and accurately the nature and seriousness of the incident being reported. These data elements vary by type of incident, and are listed in the revised § 159.184, which deals with incident reporting. The revised § 159.156(f) simply refers the registrant to § 159.184.

It must be stressed that the information identified in § 159.184 constitutes the optimal set of information the Agency would like to have regarding different types of incidents. If a registrant does not possess certain information, there is no obligation to commence an investigation or to otherwise generate or obtain information. Registrants need only include in summaries those pieces of information which are both requested in this final rule and which they possess. The 1996 draft provided that if a registrant came into possession of an additional piece of information that would have been included in the original summary, the registrant would have to submit the additional information in a second summary within 30 days of receipt, and reference the earlier submission. In response to comments, the Agency now believes that this provision was unnecessarily burdensome. Accordingly, this final rule (in § 159.184(f)) provides that the obligation to submit follow-up information depends in part on the severity of the incident. Thus, any additional information concerning a human fatality needs to be submitted. Follow-up information also needs to be submitted in cases where the information expands on previously reported circumstantial information about a serious human illness or injury (exposure-severity category H-B) or the most serious level of incidents (''A'' level) for any of the non-human exposure categories. Finally, information needs to be submitted if it alters a previously reported moderate or minor severity rating to the H-A or H-B level for humans or the A level for any other exposure type, as defined by the criteria of § 159.184 (c)(5). The Agency retains the authority under § 159.195(b) to require more detailed information about any incident or group of incidents if it seems useful to do so.

2. *Paragraph (i).* In the proposed rule, confidentiality was dealt with in paragraph (g). As a general matter, the confidentiality of information submitted pursuant to the final rule is governed by section 10 of FIFRA. Any claim that material submitted pursuant to FIFRA section 6(a)(2) is entitled to confidentiality for reasons related to trade secrets or CBI must be viewed in light of FIFRA section 10. Section 10(d) provides that certain information, including ''any information concerning the effects of [a] pesticide on any organism or the behavior of such pesticide in the environment, including but not limited to, data on safety to fish and wildlife, humans and other mammals, plants, animals, and soil'' shall be available for disclosure to the public. Section 10 thus makes clear that information concerning the effects of a pesticide on humans or the environment cannot be withheld from the public on grounds of trade secrecy or business confidentiality.

The Agency expects that most material submitted under section 6(a)(2) will continue to be of the type that is not entitled to confidentiality and must be made available to the public pursuant to section 10(d). Accordingly, the final rule includes a provision requiring that, if registrants consider any portion of a section 6(a)(2) submittal to be confidential, they specify the portion for which confidentiality is desired; they explain why such portion is entitled to confidentiality under the applicable provisions of FIFRA section 10; and they provide a ''sanitized'' version of the submittal that can be publicly released with the confidential information omitted. The sanitization process is identical to that codified in

40 CFR 158.33, and which has applied for years to data submitted to the Agency by pesticide registrants. The new paragraph (i) refers registrants to § 158.33 for the appropriate procedures to handle confidentiality claims.

To clarify this issue, the Agency is preparing a notice in the form of a class determination to registrants. The notice will inform registrants that the Agency will not honor routine business confidentiality claims for material submitted pursuant to section 6(a)(2) and covered by the disclosure provision of section 10(d).

Some commenters suggested that the Agency exempt from the reporting requirements of section 6(a)(2) material covered by the attorney-client or attorney work-product privileges. The Agency has no intention to broadly exempt information covered by the attorney work-product doctrine. Exempting attorney work-product from section 6(a)(2) reporting would make the reportability of investigative work hinge on whether the work was generated at the suggestion of an attorney or of a non-attorney associated with a registrant. The Agency does not believe there is any valid policy reason to exempt from section 6(a)(2) reporting valuable information merely because it was developed at the suggestion of an attorney.

Although the Agency does not know what useful information, if any, might be covered by the attorney-client privilege, the same logic applies as to the work-product doctrine. EPA does not believe it should make registration decisions based upon incomplete information in order to avoid the possibility of affecting registrants' positions in litigation.

The commenters raising this issue did not argue that information covered by the attorney work-product doctrine or the attorney-client privilege is outside the statutory scope of section 6(a)(2). Instead, these commenters suggested that the Agency as a matter of policy craft an exemption for such material from the statutory reporting requirements. This the Agency declines to do. However, a registrant is always free to notify the Agency of its possession of potentially privileged information which falls under the scope of section 6(a)(2) and request that the Agency not require the submission of certain specified information in a particular case. EPA does not commit to granting such requests, but neither does it rule out the possibility of exempting otherwise submittable information in particular circumstances where it can be shown that the information is entitled to some privilege, that providing it to the Agency would substantially prejudice a registrant, and that the information would not be helpful to an analysis of a product's registration status. No such request will be honored unless it is made in writing and sent or delivered to one of the addresses listed in § 159.156, and has been granted in writing by a responsible Agency official.

Although it was not raised by any of the commenters, the Agency considered amending this section (§ 159.156), to allow registrants to submit information to the Agency through the use of regular first class mail and electronic transmission. It is important to point out that the regulation already allows the Agency to easily and quickly specify alternate methods for submissions at anytime in the future through the issuance of a Pesticide Registration Notice (PR-Notice).

The Agency did not specify the use of regular first class mail as an acceptable method for section 6(a)(2) submissions, because providing verification of the mailing by the registrant and receipt by the Agency provides important protections to both the registrant and the Agency. It eliminates the possibility of debate over whether an item was actually submitted, and by informing registrants whether an item actually was received, it enables registrants to resubmit materials in a timely manner if a document is not in fact received by the Agency. In addition, the Agency believes that the additional cost is insignificant for sending it return receipt, certified or registered mail, which is only likely to add between $1.10 and $4.85 to the cost of that mailing, with other options, i.e., priority mail or express mail, only costing between $2.25 and $10.00.

As for including electronic transmission as an acceptable method for section 6(a)(2) submissions, the Agency is working hard to establish the necessary framework and policies that will enable EPA to accept electronic submissions of information collections, including those under FIFRA. However, the Agency is still in the process of addressing the major issues associated with allowing electronic submissions in general (including the establishment of a system that also ensures the protection of any CBI, provides a reasonable degree of data integrity to ensure that information contents are not scrambled or misread by the system, and ensures that registrants receive their desired proof of delivery and receipt, etc. Needless to say, the Agency is very committed to the use of electronic transmission as an acceptable mechanism for submitting information to the Agency, and as soon as the issues are resolved, electronic submission will be an option for submissions under section 6(a)(2).

D. Section 159.157—Recordkeeping Requirements

The proposed rule provided for 5 years of record retention for most types of information submitted to comply with the rule, but 10 years retention for certain information, such as information alleging adverse effects to one or two human beings. These retention periods were intended, in part, to enable registrants to determine whether information on certain incidents, which would not have been reportable by itself, would turn out in time to be part of a series of three similar incidents, and would thus have become reportable under the provisions of the proposed rule. Since the ''series of three'' concept has been dropped from this rule, the different record keeping requirements no longer have any purpose, and are deleted from all sections of this rule where they were previously mentioned. The question remains whether any record keeping should be required. The proposed rule provided that a copy of any submission to the Agency, and proof of delivery to the Agency, be retained for 5 years. The Agency considers all information derived from a reportable incident to fall within the scope of section 6(a)(2), but believes that if summaries are provided, additional information will rarely be needed. The Agency also believes that most registrants will retain records of adverse information reported to them for their own needs, and the Agency recommends that they do so. The Agency has concluded, however, that there is little value to EPA in having registrants retain copies of their submissions, and therefore has eliminated this requirement entirely.

E. Section 159.158—What Information Must be Submitted

This section provides guidance on what particular types of information must be submitted. The proposed rule contained four paragraphs. For clarity, the Agency has restructured § 159.158 into only two paragraphs; paragraph (a) identifies the general requirements formerly contained in paragraphs (a) and (b) in the proposed rule, and the new paragraph (b) describes the exceptions to reporting requirements formerly contained in paragraphs (c) and (d) in the proposed rule. The most significant issue for the general reporting requirements of paragraph (a) concerns opinion information.

A number of commenters objected that opinion information is not factual

information, and thus is not subject to the reporting requirements of section 6(a)(2). As support for this objection, they cite the case of *CSMA* v. *EPA*, supra, in which the court opined that opinion information was not subject to reporting under section 6(a)(2).

EPA has determined to retain the proposed provision without change in the final rule. As stated in the preamble to the proposed rule, the Agency does not believe that the issue of opinion information was properly before the District Court in the CSMA case or was any part of the holding or basis for the decision in the case. The Agency also believes that, if the issue were presented to a court today, certain types of opinion information would be found within the scope of section 6(a)(2).

As noted in the preamble to the proposed rule, the Agency is frequently obliged to make decisions in at least partial reliance on expert opinion. Indeed, often the Agency must resolve scientific issues under a ''weight of evidence'' approach, because the state of science makes a more definitive resolution impossible. For example, a conclusion as to whether a particular growth seen in a sacrificed test animal is a benign or malignant growth is not a matter of uncontestable fact, but rather, is the expression of an informed judgment by a trained professional (i.e., an expert opinion). Such expert opinions often serve as the basis for subsequent decisions about whether a chemical might pose a cancer risk to humans. These conclusions are based on a combination of observations and expert opinions; experts can and do disagree, and no conclusion can be considered indisputable fact. Yet such opinions play an important role in whether a pesticide should be registered and under what conditions. Indeed, studies submitted by registrants or applicants for registration frequently contain the conclusions and opinions of experts concerning the results and import of those studies. Where those conclusions and opinions suggest that a pesticide may pose a significant risk or a risk greater than previously presumed, the Agency believes those conclusions and opinions must be reported to the Agency pursuant to section 6(a)(2).

In order to be reportable, an opinion must meet two criteria. First, the opinion must relate to information that is relevant to the risk/benefit balance applicable to a particular registered pesticide. Second, the opinion must be from either an employee or agent of the registrant; a person from whom the registrant requested the opinion; or a person who could be considered an expert with regard to the matter on which the opinion was uttered. The Agency believes opinions from these categories of people are more likely to have credibility and/or warrant further investigation than are opinions from people not falling into these categories.

In terms of whether a conclusion or opinion can be said to have been rendered by an expert, previous publications of the Agency have suggested that registrants should be guided by whether the individual rendering the conclusion or opinion would, by virtue of his or her knowledge, skill, experience, training, or education, be qualified as an expert under Rule 702 of the Federal Rules of Evidence to testify to the opinions or conclusions on the subject at issue.

The Agency considers trained professionals to be experts in their trained field for purposes of section 6(a)(2) reporting. If a medical doctor expresses a conclusion or opinion on a person's medical condition and the causes of that condition, the conclusion or opinion must be reported, regardless of whether the registrant believes the information to be valid or correct, or whether the registrant believes the expert performed an appropriate investigation upon which to base the conclusion or opinion. It must be left to the Agency to evaluate the validity of the conclusion or opinion and determine the appropriate response to the information.

Finally, this discussion of expert opinion does not mean that the Agency intends to exclude reports of adverse effects in cases where an average person would reasonably suspect that pesticide exposure was a likely cause. For example, where someone develops tremors shortly after using a pesticide, common sense would suggest a link between pesticide exposure and the effect. Such an event would be reportable, even if it were not brought to the attention of a trained professional.

The Agency believes that information that does not directly involve the registered pesticide may nonetheless be reportable under section 6(a)(2). For example, if a registrant of a chemical in a particular class receives a study using two other chemicals in the same class (for which the registrant does not hold any registrations), and the study shows that the other two have a similar, reportable feature, if the registrant concludes that the registered pesticide might have the same reportable feature, this information must be submitted under section 6(a)(2), even though the study did not directly involve the registered pesticide itself. The appropriate test is whether the information is relevant to a registered pesticide rather than whether the information is derived from a study or use of the registered pesticide.

In addition, the Agency believes that the registrant is responsible for submitting any reportable information in his possession or control, including any reportable information that the registrant may receive. In other words, registrants are obligated to submit otherwise reportable information which they receive electronically or orally; information need not be submitted to a registrant in writing in order for the information to be reportable.

Section 159.158(b) establishes categories of information that the Agency will exempt from reporting under section 6(a)(2): Information that is clearly erroneous; information that has previously been submitted to the Agency; and published books or articles. The provisions covering clearly erroneous information are unchanged from the proposed rule and the 1996 draft. With regard to previously submitted information, the Agency has added a new paragraph (b)(2)(iv) to § 159.158, which expands the criteria for what constitutes ''previously submitted information'' to include information submitted to EPA's Office of Pollution Prevention and Toxics under the provisions of section 8(e) of the Toxic Substances Control Act (TSCA). Without this change, information on chemicals already submitted under TSCA section 8(e) would also have to be submitted under section 6(a)(2) if the chemical was any constituent part of a pesticide product. As many commenters noted, the manufacturers of chemicals that have a variety of uses, including, but not limited to inert ingredients of pesticide products, are likely to have submitted adverse effects information under TSCA section 8(e), and may not be pesticide registrants, while pesticide registrants may be unaware of such submissions. The Agency agrees with commenters that the Office of Pesticide Programs can identify and obtain TSCA section 8(e) submissions concerning pesticide inert ingredients. In the event, however, that a chemical becomes the subject of an application to be registered as a new active ingredient, this new provision does reference the existing requirement of 40 CFR 152.50(f)(3) that an applicant for registration must submit the same information that would be required under section 6(a)(2) for a registered product.

Many commenters noted that the proposed rule would have required the submission of published information, while the 1985 Interpretive Rule exempted from the reporting

requirements any information contained completely in ''any scientific article or publication which has been abstracted in Biological Abstracts, Chemical Abstracts, Index Medicus, or Pesticides Abstracts'' if the abstract clearly identified the active ingredient or registered pesticide to which the information pertains. The 1996 draft would have required submission of scientific articles or published literature (including those abstracted in the identified abstracts) only if that information pertained to epidemiological studies and incident reports. In response to comments, the Agency has decided to exempt all published articles abstracted in recognized data bases of scientific and medical literature, including articles concerning epidemiological studies and incidents. The Agency believes that conducting its own literature searches will generally be sufficient to identify useful published information. However, in the event that a registrant does become aware of published information concerning one of their pesticide products that would be otherwise reportable under this part, and the material does not appear to be abstracted in any recognized and generally available data base, the information would be reportable.

F. Section 159.159—Information Obtained Before Promulgation of the Rule

The Agency added this new section to the 1996 draft in order to address the issue of reporting previously-obtained information raised by a number of commenters. The proposed rule did not address this issue. If the final rule were silent on the issue, then under the terms of the rule as originally proposed, any previously unsubmitted information which became reportable under the final rule would have to be submitted within 30 days. Such a requirement would probably not be feasible for registrants or EPA. The Agency has decided to limit the scope of reporting previously-obtained information in a number of ways.

The 1996 draft would have required that studies reportable under §§ 159.165, 159.170, 159.179, or 159.188, would be limited to reporting of studies completed within 5 years of the effective date of this rule. It should be understood that registrants are already required to comply with the obligation to report toxicology studies, failure of performance for health-related products, and other information required by previous Agency policy statements and guidance concerning section 6(a)(2) information. The Agency now believes that other data call-in activities are likely to have brought in previously unreported studies likely to be of use to the Agency, and is therefore eliminating this requirement to submit previously obtained studies.

It is important to note that nothing in this final rule relieves any registrant of liability for failure to report information that should have been submitted under previous statements of the section 6(a)(2) policy. However, any registrant who submits previously reportable information pursuant to § 159.159 should note that the Agency's Enforcement Response Policy for FIFRA addresses the Agency's policy for responding to registrants who self-confess violations. Substantial penalty reductions may also be available to registrants who submit previously reportable information under the Agency's Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Final Policy Statement, 60 FR 66708 (December 22, 1995) (''Self-Disclosure Policy'')(FRL–5400–1). The Self-Disclosure Policy has several important goals, including encouraging greater compliance with the laws and regulations which protect human health and the environment through self-policing, discovery, disclosure, correction and prevention of violations. If specific criteria are met, reductions in gravity-based penalties up to 100% are available under the Self-Disclosure Policy. Registrants are advised that the criteria in the Self-Disclosure Policy are strictly applied. In particular, registrants should note that the Self-Disclosure Policy requires notification to EPA of the possible violation within 10 days of discovery.

In addition, the Agency's Final Policy on Compliance Incentives for Small Businesses, which became effective June 10, 1996, provides small businesses with incentives to participate in on-site compliance assistance programs and to conduct environmental audits. Under this policy, EPA will eliminate civil penalties provided that the small business satisfies all of the following four criteria:

(1) The small business has made a good faith effort to comply with applicable environmental requirements (through on-site assistance programs or voluntary audits and disclosures).

(2) The small business was not subject to any enforcement actions for the current violation and has not been subject to two or more enforcement actions for environmental violations in the past 5 years.

(3) The small business corrects the violation and remedies any associated harm within 6 months of discovery (an additional 6 months may be granted if pollution prevention technologies are being used).

(4) The violation has not caused and does not have the potential to cause serious harm to public health, safety or the environment, it does not have the potential to present imminent and substantial endangerment to public health or the environment, and it does not involve criminal conduct.

To further limit the burden of reporting previously obtained information, the final § 159.159(a)(1) provides only for reporting of incident information obtained since January 1, 1994, and that such required incident reporting be limited to human hospitalizations or fatalities, and domestic animal or non-target wildlife fatalities only, since these categories of incident information are more likely to warrant regulatory action by EPA.

Section 159.159 further eases the burden of reporting previously held information by providing a full year for registrants to respond, and by also providing that registrants shall submit an inventory of reportable material, rather than submitting individual incident reports. This will enable the Agency to selectively decide when to ask for more detailed submissions if it seems likely that information valuable for regulatory decision-making can be retrieved. As described in § 159.159(b)(2), an inventory is a listing of the number and kind of incidents associated with a particular ingredient or product, using the exposure type and severity categories set forth in the rule in § 159.184(c)(5).

G. Section 159.160—Exceptions Relating to Former Registrants

This new section was added to the 1996 draft to clarify that former registrants are not obligated to report adverse information on their formerly-registered products more than 1 year after they cease to hold the registration, provided that they hold no active pesticide registrations. A former registrant who has entirely left the pesticide business is considered less likely to receive reportable information than an active registrant, and it would be a greater burden on such companies to keep a reporting system in place. In this final rule the obligations of former registrants have been further limited in several ways. For a person who continues to hold one or more active pesticide registrations, information need not be reported if it is associated with inert ingredients, contaminants, impurities, metabolites, or degradates contained in formerly-registered products more than 1 year after the

registrant first ceases to hold the registration. Former registrants who still hold one or more active registrations will still be required to report adverse information involving the formerly-registered pesticide product itself, as well as information involving any of the active ingredients contained in the formerly-registered product, for a period of 5 years after they cease to hold the registration, but not indefinitely, as the 1996 draft would have required. Finally, a provision has been added to require that information arising from litigation is reportable regardless of the time elapsed after the registrant ceases to hold the registration (except in the case of wholly canceled active ingredients). The Agency believes this would not be unduly burdensome, since the former-registrant would clearly be aware of receiving the information through the litigation process, and it pertains only to pesticide chemicals that have recently been or are still being actively marketed, for which EPA has an on-going interest in receiving reportable information.

H. Section 159.165—Toxicological and Ecological Studies

This section identifies the parameters for reporting information from toxicological and ecological studies. The proposed rule dealt with toxicological and ecological studies together, and provided that the results of an incomplete or complete study of the toxicity of a pesticide to any human or non-target organism be reported if it showed a toxic effect, when compared to a previously submitted, valid study:

(1) In a different organ or tissue of the test organism.

(2) At a lower dosage, or after a shorter exposure period, or after a shorter latency period.

(3) At a higher incidence or frequency.

(4) In a different species, strain, sex, or generation of test organism.

(5) By a different route or medium of exposure.

(6) Through a different pharmacokinetic, metabolic, or biological mechanism.

Many commenters argued that EPA should only require the submission of studies that show significantly greater or different toxic effects than previously submitted studies. In particular, they suggested that the Agency not require studies showing a similar toxic effect in the same species of test organism. Commenters also suggested that the Agency not require the submission of acute toxicity studies unless the information would result in a change in toxicity category of the chemical. Some commenters alleged that the registrants of generic products—those no longer protected by patents and manufactured by more than one company—would not necessarily know whether a particular test result was new or more serious than previously reported information, thus making compliance difficult.

In response to some of these comments, the Agency has made a number of changes in the final rule. The most significant revision is that EPA has established separate standards for studies designed to determine the toxicity of pesticides to humans (revised § 159.165(a)), and for studies designed to determine the toxicity of pesticides to non-target plants and wildlife (new § 159.165(b)). The requirements for submission of toxicological studies are not substantially changed. However, as suggested by some commenters, this final rule exempts reporting of acute toxicity studies if the results would not lead to a more restrictive toxicity category for labeling as provided in 40 CFR 156.10(h).

The Agency has made greater changes in the requirements for submission of ecological studies. The proposed rule simply referred to ''non-target organisms'' and applied the same standards as for studies relating to potential human toxicity. The new § 159.165(b) specifies what the Agency wants in the areas of acute toxicity, chronic toxicity, and phytotoxicity. The Agency believes these revisions will give much clearer guidance to registrants, and result in submissions most likely to be of value to Agency decision-making. The Agency has also provided some flexibility in relation to acute toxicity studies using the same or similar species.

In relation to incomplete studies, a number of commenters noted that the 1996 draft did not provide any guidance concerning reporting information from incomplete studies. In this final rule, the Agency has expanded § 159.165(d) to clarify the situations in which results of an incomplete study need to be reported. The language of this paragraph is essentially the same as the Agency used in its 1985 interpretive rule. These provisions are designed to ensure that severe adverse effects appearing in test organisms before the completion of a study are reportable, and also that results must be reported before the final analysis of a study is completed, if enough time has elapsed since the end of actual testing that a final analysis could have been completed.

The Agency does not agree that manufacturers of generic chemicals are at any unreasonable disadvantage in complying with the rule. The requirement to report new or more serious effects has been in place since 1979, and is not changed by this rule. If a registrant is in any doubt about the significance of a study result, they can ask EPA to provide the Data Evaluation Reviews (DERs) for their chemical. DERs are summaries of reviews of studies submitted to EPA in support of pesticide chemical registrations. These documents are available on request to the public, and provide EPA's conclusions about study results, including such numerical parameters as No Observed Effect Levels (NOELs) which can be used to determine whether a new study is showing a more serious effect than previously reported information. There is no significant burden to registrants to obtain these documents.

I. Section 159.170—Human Epidemiological and Exposure Studies

The proposed rule required that registrants submit any information concerning any study upon which a person described in § 159.158(b) has concluded, or an expert would conclude, that a positive correlation or association may exist between exposure to a pesticide and either a toxic effect in humans or residues of the pesticide in human tissue or body fluid, whether or not the registrant considers any observed correlation to be significant. This provision is largely unchanged. The final rule slightly modifies the description of exposure monitoring studies; such studies are reportable if they indicate exposure which is higher than indicated by previously available reports, data, or exposure estimates.

J. Section 159.178—Information about Pesticides on Food or Feed, or in Water

The proposed rule would have required the reporting of information by registrants relating to the presence of pesticides in food or feed if the level of pesticide detected in the food or feed was in excess of an established tolerance, food additive regulation, or action level with the exception of information regarding residues resulting solely from studies conducted under authority of FIFRA section 5 (experimental use permits). In response to comments, the Agency has expanded this exemption to make clear that controlled studies designed to test a pesticide product are generally exempt from this requirement provided that treated crops bearing excess residue levels as a result of experimental applications are not marketed as food or feed.

Information concerning the presence of pesticides in water would have to have been reported if the presence of the

pesticide in most surface waters, groundwater, or drinking water exceeded the water reference level. These provisions are essentially unchanged in the final rule. However, the 1996 draft and this final rule include a provision that detections of metabolites, degradates, contaminants or impurities in water need not be reported unless EPA has identified a specific reference point, such as a draft or final MCL or HAL, or has estimated an HAL based on an established Reference Dose, and notified registrants of that estimated HAL.

A number of commenters thought that the rule as proposed and the 1996 draft version would result in an excessive number of reports of questionable value, particularly of detections in water. The Agency recognizes that there may be a large number of detects of pesticides in water, and that the value of each incremental report may be small. The Agency also recognizes that there may be duplicate reports of the same detect submitted by different registrants. The Agency has established water reference levels that are designed to provide EPA with an early warning that a pesticide may be present in water before that presence has reached impermissible levels. However, in response to comments, and in order to assure that the information received is as useful as possible to the Agency, EPA is requiring in this final rule, that detections below MCLs or HALs be aggregated into quarterly statistical summaries to help reduce the burden of reporting for registrants.

In response to comments received, the Agency would like to clarify its position on reporting residues of inerts, metabolites, degradates, impurities, or contaminants on food or feed commodities. This issue hinges on whether the presence of the residue on food or in feed would require a tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA). Under the FFDCA, food is considered adulterated if chemical residues are detected on the food unless the chemical residues are covered by a tolerance, or the chemical has been specifically exempted from needing a tolerance, or the chemical is generally considered safe. At 40 CFR 180.2, EPA identified a number of chemicals considered ''safe'' under the meaning of section 408 of the FFDCA, and has also exempted (40 CFR 180.1001) a number of substances from the requirements of a tolerance.

K. Section 159.179— Metabolites, Degradates, Contaminants, and Impurities

The purpose of the section is to ensure that the Agency is informed when registrants learn of toxicologically significant new breakdown products or when they learn of higher levels of contamination than were previously known to be associated with their pesticide products. In response to comments, the provisions of this section in this final rule have been modified to better reflect the Agency's intention that this provision be consistent with the Agency's policy on cross-contamination (PR Notice 96–8, October 31, 1996) and the requirements governing when impurities must be identified in a product's composition (see, e.g., 40 CFR 158.155, 158.167 and 158.175). In PR-Notice 96–8, EPA set out the Agency's interpretation of the term ''toxicologically significant'' as it applies to contaminants in pesticide products that are also pesticide active ingredients (Ais). That PR-Notice provides risk-based concentration levels of such contaminants that will generally be considered toxicologically significant. The concentrations are defined according to the type of the pesticide that is contaminated and the pesticide category of the contaminant. As provided by this regulation, registrants must report to EPA any contaminant exceeding the toxicologically significant levels using the procedures for reporting such contamination that were established in the PR-Notice.

In general, the cited regulations in part 158 and the cross-contamination policy serve to assure that all batches of a given pesticide product meet certain standards of uniformity and that the Agency has information about all the significant components of a product's composition. At the same time, these regulations and policies recognize that it could be either impossible or prohibitively expensive to manufacture a pesticide product without any detectable impurities in it. The Agency therefore allows the presence of certain impurities in pesticide products below various levels without requiring that the registrant include information about the impurities in its formula or elsewhere in its application, and without considering the product containing such impurities to be inconsistent with the composition of the registered product. Section 159.179 provides that registrants do not have to notify EPA pursuant to section 6(a)(2) of the presence of any impurities or contaminants that would not have to be discussed in an application for registration or where the Agency has concluded that the presence of the contaminant does not render a product's composition inconsistent with the composition accepted by the Agency as part of the product's registration. However, where the presence of an impurity or contaminant would have to have been identified in the application materials or if the presence exceeds the levels allowed in the cross-contamination policy (or any similar policy issued by the Agency in writing), registrants are required under § 159.179 to report the presence of the contaminant or impurity to EPA.

The Agency notes that impurities which are not also pesticide active ingredients that occur during manufacture of a pesticide are already subject to certain reporting requirements under the provisions of 40 CFR 158.167 and/or 158.175. For purposes of reporting under the present rule, any detection of a manufacturing impurity at levels greater than the expected level reported to the Agency pursuant to § 158.167 or greater than a certified limit established pursuant to § 158.175 must be reported as section 6(a)(2) information.

L. Section 159.184—Toxic or Adverse Effect Incident Reports

One of the most important routes by which adverse effects information can come to the attention of the Agency is through toxic or adverse effect incident reports. Many of the Agency's registration decisions are predictive in nature. In contrast, incident reports can provide the Agency with information depicting the practical impacts of pesticide use, including real-world effects of pesticide use. The Agency considers incident reporting to be a vital component of section 6(a)(2).

The 1992 proposed rule version of § 159.184 imposed different reporting requirements for single incidents as opposed to a series of incidents involving three or more organisms. Incidents involving a single person or non-target organism were only reportable if the registrant (or other qualified person) had concluded that a causal relationship might exist between exposure to the pesticide and the toxic effect, or if the alleged effect were previously unreported or more severe than previously reported effects. If the ''three or more'' trigger was met, an incident or incidents had to be reported without regard to whether the registrant had concluded that a causal relationship existed between exposure and the effect or whether the toxic effect had previously been reported to the Agency.

The proposed § 159.184 was the subject of a large number of comments challenging the provision alternatively as too broad as well as too narrow. The Agency reconsidered § 159.184 in the light of recent experience, as well as the comments received on both the 1992 and 1996 versions, and has determined that the threshold for reporting incident information needed to be changed in a number of ways and that registrants could benefit from more specific guidance in this preamble.

The provision for reporting incident information in this final rule requires the reporting of any single incident involving humans or nontarget organisms if:

1. The registrant has been informed that a person or non-target organism may have been exposed to a pesticide.

2. The registrant has been informed that the person or nontarget organism has suffered or may suffer (or may have suffered) a toxic effect.

3. The registrant has a certain minimum level of information enabling them to pursue further information on the incident if they wish, such as the identity of the product involved, the location where the incident occurred, and the name of a person to contact concerning the incident.

This third provision was added in response to comments on the 1996 draft, and is designed to eliminate completely anonymous or very incomplete reports that can not be deemed meaningful by either registrants or EPA.

Individual incidents otherwise meeting the general standard need not be reported if they meet any of six criteria for exemption. Most of these exemptions concern effects which are already warned of on the label. The most significant exemption, in EPA's view, is to allow an exemption for reporting of skin or eye irritation effects warned of on the label of a product which is registered for use in residential use sites, and the incident was alleged to occur in a residential use site. Many commenters suggested this exemption. EPA's reason for accepting this suggestion is that the burden of reporting the information and for EPA to process it probably outweighs its value. There may be numerous allegations of such effects because of the high volume of products involved, but such incidents are relatively minor in terms of health effects significance. Moreover, such reports are nearly impossible to verify, and are not likely to lead to regulatory action in the absence of clear and specific evidence that the labeling or packaging of the product in question is inadequate to protect the public.

This rationale, however, does not support including non-residential use sites in this exemption, i.e., uses in institutional, industrial, and agricultural settings. In contrast to homeowners, the customer base for non-residential uses is likely to be familiar with pesticide hazards and the importance of the label directions, and in many cases, the users are actually trained in their use. Thus, if it is determined that a significant number of adverse effects continues to occur in this group regardless of label warnings, the Agency might well require changes to the terms and conditions of registration (such as requiring different warning statements, application methods, or the use of personal protective equipment) to respond to the situation. The Agency will reexamine the application of reporting requirements to non-residential products for minor effects warned about on the label in 3 years. If EPA determines that this information is no longer needed for some or all non-residential situations, the Agency will notify registrants accordingly pursuant to § 159.155(a).

In this final rule, the Agency has eliminated the distinction between single incidents and a series of incidents. The Agency also eliminated the requirement, for single incidents, that the registrant or an employee, consultant, or expert, must have determined that the reported effect may have resulted from the reported exposure. These changes were made partly in response to comments received, and partly because the Agency determined that much valuable information was not submitted to the Agency while the higher threshold embodied in previous policies was in effect.

Under the 1996 draft, incidents would have been reported whenever a registrant was informed that a human or other organism had been exposed to a pesticide and the registrant had been informed either that the human or other organism had thereafter suffered an adverse effect or that the exposure that occurred was unexpected and an adverse effect may have occurred thereafter or may occur in the future.

In this final rule, the term ''unexpected exposure'' has been eliminated. Many commenters felt that it was too ambiguous, and also that it was unfair to require reporting of ''unexpected exposures'' in situations in which no specific symptoms or adverse effects were alleged, since this would not be evidence of an adverse effect. In EPA's view, there are two separate issues here. With regard to ''unexpected exposures'', EPA is willing to eliminate this language as a criterion for routine reporting requirements under this final rule, on the grounds that it is ambiguous, and in most cases would not result in useful information being submitted. However, the Agency wishes to make it very clear that on some occasions it may have an interest in ''unexpected exposure'' information, and may require it to be submitted as section 6(a)(2) information at its discretion. For example, in regulating certain highly toxic pesticides EPA has required such measures as special protective clothing for applicators, restricted reentry intervals for treated fields, the use of closed mixing and loading systems, closed cabs for applicators or flaggers, and related measures, all designed to minimize the likelihood of exposure. Since one of the purposes of section 6(a)(2) is to obtain information that will show whether previous registration decisions are effectively protecting health and the environment, the Agency believes that information about ''unexpected exposures,'' even when these exposures are the subject of label warnings, is within the purview of section 6(a)(2). In those circumstances where the Agency considers it important to receive information concerning unexpected exposures, EPA will notify registrants that such information must be submitted pursuant to § 159.195(b).

The second issue raised by commenters concerns whether specific symptoms have been reported. Some commenters felt that in the absence of concrete evidence of adverse effects to exposed individuals there is no basis for a report under section 6(a)(2). In essence, these commenters are objecting to the reporting criteria of § 159.184(a)(2) that the registrant has been informed that a person ''may have suffered or may suffer'' an adverse effect. The Agency disagrees with these comments. The standard for reporting an incident is that there be both an allegation of exposure and an allegation of possible harm. This does not mean that the exposed person must be visibly ill for an incident to be reportable. Many pesticides are associated with health risks which are not necessarily those of acute toxicity. Exposure to certain pesticides may pose risks of birth defects, reproductive disorders, chronic nerve, liver, thyroid, heart, or other organ damage, or cancer. Any of these effects would be a legitimate cause of concern to exposed individuals, and none of them would necessarily be visible or apparent in the short term. Accordingly, the Agency rejects the

argument that only overt evidence of adverse effects is reportable.

The Agency recognizes that the lower threshold for reporting of incidents contained in this final rule might result in the submission of information which is not sufficiently reliable or detailed to warrant regulatory action. On the other hand, such information might well provide the Agency with advance warning of potential problems and could identify issues that warrant increased review and investigation. The Agency is aware of a number of instances in the past in which information that could well have resulted in regulatory action or investigation was not reported under previous policy determinations on incident reporting under section 6(a)(2). These include instances in which litigation involving allegations of adverse effects caused by pesticide products has not been promptly reported by registrants pursuant to section 6(a)(2).

Registrants should be aware that the Agency considers information related to a lawsuit involving an allegation of adverse effects due to a pesticide to be clearly reportable under the terms of the final rule, unless the registrant is aware of facts which establish that the alleged exposure and effect did not or will not occur. The Agency expects to be informed of incident information in a timely manner, regardless of whether the registrant agrees with the substance of the incident report.

In addition to changing the threshold for reporting incident information, the Agency has identified in this section of the final rule the information elements that must be included in incident reports if the information is available to the registrant. For the convenience of both registrants and Agency reviewers, EPA hopes to develop new and more efficient ways to submit this type of information, such as direct electronic submission of data. The Agency has elected to delay the effective date of this final rule to 9 months after publication primarily in order to work with all interested parties to seek the least burdensome and most efficient ways to implement reporting requirements. Until alternative reporting methods are adopted, the Agency urges registrants to use the simple list format set out in the final rule.

As noted earlier, registrants are not obligated to investigate incidents in order to acquire information to satisfy any particular data element. If a registrant lacks information, it does not need to be provided. In its 1996 draft, the phrasing of the rule text appeared to require that if, after an initial report is made, a registrant acquired information related to any element previously unreported, the information should be reported and reference the earlier submission. Many commenters on the 1996 draft noted that this provision could result in numerous submissions of minor factual information of little use to the Agency. EPA agrees, and has accepted commenters' suggestions to modify this final rule to provide that follow-up information need only be submitted when it pertains to human fatalities, materially alters the circumstance information concerning serious human injuries/illnesses or wildlife fatalities, or alters previously reported low severity levels up to the ''A'' or ''B'' level of severity for human incidents, or the ''A'' level for all other incidents, as defined by the exposure type and severity labeling criteria set out in the rule text at § 159.184(c)(5).

Unless directed otherwise by the Agency, registrants are not obligated to provide the Agency with any additional information on an incident other than what is summarized in providing the relevant data elements. The Agency may ask for additional information in the registrant's possession pursuant to § 159.195, but in the absence of such a request, providing the information called for in the data elements is all that a registrant must do in submitting incident information under section 6(a)(2).

Finally, the rule requires the registrant to assign an ''exposure type and severity label'' to each incident. These labels categorize what was exposed (i.e., humans, domestic animals, fish or wildlife, plants, or involves contamination of water), and the severity of the alleged incident. The assignment of a label will not be interpreted by the Agency as agreement by the registrant with the substance of any incident reported, nor will it be interpreted as registrant agreement with the particular rating assigned. The purposes of the ratings are for registrants to determine reporting requirements and time frames and for the Agency to quickly categorize the nature and scope of the adverse effect being alleged.

The Agency offers the following response to the significant comments received on the issue of incident reporting:

A large number of commenters argued that the proposed rule would result in the submission of much information of dubious value that would overwhelm Agency review resources. The Agency shares the commenters' concern that section 6(a)(2) information be properly managed and that significant submissions not be overwhelmed. The Agency does not believe (as many of the commenters seem to imply) that the appropriate response is to exempt most incident information from reporting requirements. Instead, the Agency has liberalized the time frames for reporting, and instituted aggregated statistical reporting for incidents of a relatively less serious nature, in order to make the incoming information easier to manage for both registrants and the Agency. The Agency also hopes to develop more sophisticated and efficient methods such as electronic submission. EPA also expects to use the authority in § 159.155 to reduce the number of certain types of repetitive reports.

A few commenters argued that a requirement to report unsubstantiated and uninvestigated incidents is unreasonable, excessively burdensome, and excessively expensive. Many registrants, however, routinely receive incident reports or consumer complaints and already have procedures for gathering and evaluating such reports. Keeping the Agency informed of these reports should not impose a significant additional burden, particularly since less severe incidents can be reported as aggregated counts and not as individual reports.

The Agency appreciates that the threshold for reporting incidents is far less than conclusive assurance that a reported toxic effect was caused by reported pesticide exposure, and expects that its regulatory decisions will be based upon an appropriate evaluation of all the relevant information available to the Agency. The Agency understands that with the elimination of the provision that called for registrant judgment as to whether there is a cause and effect relationship between reported exposure and a reported toxic effect, registrants are being directed to report information with which they may disagree. Regulatory decisions will take into account the quality and reliability of any information received. The Agency neither presumes the validity of incident reports nor views such reports as admissions against interest by the submitter.

A number of commenters suggested that the reporting criteria be narrowed so that only additional or new unreasonable adverse effects are reported to the Agency, and that registrants should not be required to report incidents involving effects anticipated or warned about on pesticide labels. To the extent that the commenters are suggesting that additional reports of previously

understood effects ought not to be reported, the Agency strongly disagrees. The frequency of occurrence of an adverse effect is extremely important information to pesticide decision-making. The Agency also generally disagrees that incidents involving effects warned about on labels should not be reported. Such incidents can provide important information about the adequacy of label warnings and whether additional steps need to be taken to provide the desired protection. However, the Agency recognizes that minor skin or eye irritation effects warned of on the label of home-use products are not likely to be the source of reports warranting regulatory action, and will exempt this category of incidents from routine reporting requirements at this time.

Similarly, the Agency has a responsibility to consider misuse of pesticides as a factor in determining whether a product is adequately labeled, or should be registered at all. If misuse incidents involving non-target organisms were exempted, as the proposed rule would have provided, potentially significant information for recognizing problem pesticides could be lost. Therefore the Agency has eliminated that proposed exemption.

One commenter suggested that the rule include a provision exempting from reporting incidents involving non-labeled pests. The Agency agrees, and has added such a provision in the final rule. Incidents involving toxic effects to non-labeled pests that are similar in kind to pests on the label (e.g., insects or weeds) need not be reported. However, if an event involves a toxic effect to an unrelated species (e.g., an insecticide kills birds or mammals, even if regarded as pests) the incident must be reported.

M. Section 159.188—Failure of Performance Information

Section 6(a)(2) requires the submission of information concerning unreasonable adverse effects on the environment. The term ''unreasonable adverse effects'' is statutorily described as a risk/benefit balance. Thus, although section 6(a)(2) reporting has primarily focused upon the risks posed by pesticide use, the statutory language includes within its scope information concerning the benefits of pesticide use.

In its 1979 Policy Statement, the Agency announced that it would consider it an actionable violation of section 6(a)(2) to fail to report information that a pesticide may not have performed efficaciously when used against organisms which pose a potential threat to public health. At that time, the Agency essentially exempted from reporting all failure of efficacy information involving pesticides used against organisms that did not pose a potential threat to human health.

The provision in the 1992 proposed rule involving the reporting of failure of performance information required that such information be reported in three circumstances:

1. Information concerning incidents in which a pesticide allegedly failed to perform as claimed against target organisms which, if not controlled, might pose an immediate risk to human health and the registrant has been provided with sufficient information to investigate the allegation and was unable to establish that the reported failure of performance did not occur.

2. Information concerning a series of three or more incidents occurring within 10 years involving allegations that the pesticide did not perform as claimed against target organisms which, if not controlled, might pose a risk to human health and the registrant has been provided with sufficient information to investigate the allegations and was unable to establish that the reported failures of performance did not occur; or information concerning studies demonstrating that the pesticide may not perform in accordance with any public health claims.

3. Information concerning a series of three or more incidents occurring within 10 years involving allegations that a pesticide that has been the subject of a special review or cancellation or suspension proceeding pursuant to sections 6(b) or 6(c) of FIFRA failed to perform as claimed, or showed a reduction in efficacy, involving a use that was a subject of the special review or suspension or cancellation proceeding.

The Agency received a large number of comments addressing this provision of the proposed rule. Some commenters objected to the scope of the provision because it did not require the submission of all efficacy failure information. Other commenters objected to the requirement to submit any failure of efficacy information. Many commenters objected to any requirement to submit consumer complaints that a product might not have worked as effectively as the consumer would have desired, especially in the context of household use products. A number of commenters asked for clarification of many of the provisions of the proposed rule, including the differentiation between uses that might pose an immediate risk to human health and uses which might only pose a risk to human health.

The Agency has decided to restructure and clarify the provisions of this section in the final rule. The 1996 draft rule would have required the submission of information concerning failure of efficacy in the situations enumerated below. The revisions adopted by EPA in this final rule are noted in each case.

1. Information concerning incidents involving the failure of a pesticide to perform as claimed against target microorganisms which, if uncontrolled, might pose a threat to human health if the pesticide's function is not a residential use and the registrant has or could obtain information concerning where the incident occurred, the pesticide or product involved, and the name of a person to contact regarding the incident; and information concerning any study indicating that a pesticide might not perform as claimed when used to control microorganisms that might pose a risk to human health, including any of the public health antimicrobials identified in 40 CFR part 158. This provision is retained in the final rule, except to note that certain liquid chemical sterilants that would have been covered by this provision have been removed from FIFRA jurisdiction by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

2. For pesticides used for the purpose of controlling animals (including insects) that might cause disease in humans (either directly or as disease vectors), produce toxins that are harmful to humans, or cause direct physical harm to humans, information must be submitted concerning incidents in which the registrant has been informed by a municipal, State, or Federal public health official that the product may not have performed as claimed and the registrant has or could obtain sufficient information concerning where the incident occurred, the pesticide or product involved, and the name of a person to contact regarding the incident; and information must be submitted concerning studies that indicate that the pesticide may not perform as claimed when used to control animals or insects that might pose a risk to human health. This provision has been retained without change from the 1996 draft version of the rule.

3. Under the 1996 draft, information would have to have been submitted concerning studies involving the failure of a pesticide to perform against a pest as claimed if the performance of the pesticide in the study was less than the

performance standard specified in the Pesticide Assessment Guidelines for Product Performance (Subdivision G) or, if no performance standard is specified or suggested in the Guidelines, if the performance of the pesticide was less than or equal to that of an untreated control, and the pesticide label does not warn the user that the pest control failure might occur when the pesticide is used under the conditions in which the failure occurred. In this final rule, this provision has been eliminated. Many commenters noted that ''failure of performance'' information would often arise from deliberate product testing studies, which would be irrelevant for regulatory purposes, since they do not reflect actual use conditions, or from consumer allegations, which would be very difficult to evaluate. The Agency agrees, and has eliminated this provision.

4. The 1996 draft would have required submission of information concerning substantiation of any incident of pest resistance to any pesticide which occurs in actual use according to the label, whether or not the pesticide has any health-related uses. Under the 1996 draft, an incident of pest resistance would be considered substantiated if the survival of the suspected pesticide-resistant pest was significantly higher than that of a known susceptible pest when both the suspected resistant and susceptible pests were treated with the pesticide under the same conditions, or biochemical tests or DNA sequencing indicate that a pest has developed resistance to a pesticide. Under the 1996 draft, incidents involving suspected pest resistance to a pesticide would have been reported if the incident occurred in the same state or in a state adjacent to a state where a substantiated incident or study has taken place and the incident involved the same pest as the substantiated incident.

In this final rule, the Agency is retaining the requirement for information concerning substantiated incidents of pest resistance. It is clear to EPA that pest resistance is a very significant factor in determining the benefits of specific pesticides, and that such information may be critical to specific regulatory decisions that weigh the risks and benefits of pesticide products. However, the Agency does recognize that unsubstantiated allegations of resistance would be of questionable value and is willing to dispense with routine reporting of such allegations, since they would be difficult to use in decision making.

Several commenters on the 1996 draft were concerned that there is no generally agreed upon standard for identifying a ''significantly higher'' survival rate for an allegedly resistant pest species, and that this may make it difficult for registrants to comply with the requirement to report ''substantiated incidents.'' The Agency believes that the concept of a ''significantly higher'' survival rate for suspected resistant pests is the correct place to begin to define a standard for substantiated incidents. The Agency acknowledges that this is an area of science where there is at present no clear cut standard. Accordingly, the Agency will work to develop guidance on this issue with input from all interested parties.

The provision for submitting failure of performance of public health antimicrobial pesticides requires registrants to submit information concerning all incidents and all studies involving the possible failure of efficacy of any public health use of an antimicrobial pesticide unless the registrant cannot obtain minimal specified information regarding an incident or if the use involved in the efficacy failure is a residential use. EPA does not believe that residential uses are likely to be important public health uses, and it believes that the people most likely to be reporting such incidents (ordinary consumers instead of trained health professionals) have less expertise than those that are likely to be involved in reporting incidents involving non-residential uses.

The Agency has eliminated the distinction between uses that might pose an immediate risk to human health and uses that might pose a risk to human health, and is requiring the submission of all reportable incidents rather than a series of three. In reviewing the Proposed Rule, the Agency discovered that it was ambiguous on the subject of whether studies involving efficacy failures of public health pesticides were reportable under section 6(a)(2). The final rule makes clear that any study indicating a lack of efficacy of a public health antimicrobial pesticide must be reported to the Agency, except for those chemicals which are liquid chemical sterilants no longer regulated as pesticides pursuant to the FIFRA amendments of 1996.

The Agency established a separate provision for the reporting of incidents and studies involving non-antimicrobial public health pesticides. These pesticides include many insecticides, rodenticides, and other pesticides that control living organisms (other than microbial organisms) that pose a potential health risk to humans. Again, the Agency has eliminated the distinction between an immediate risk to public health and a risk to public health. All incidents meeting the provisions of this final rule must be reported. In order to avoid the submission of potentially less reliable reports, however, the Agency has decided to require the submission of incident allegations only if the allegation has been made by a government employee (at the Federal, State, or local level) involved in the public health field. For example, an incident involving efficacy failure of a mosquitocide reported by an employee of a mosquito control district would be reportable under this provision; a similar incident reported to a registrant by a private citizen would not be reportable. As with antimicrobial pesticides, any study indicating a lack of efficacy of a public health non-antimicrobial pesticide must be reported to the Agency.

For uses of pesticides other than public health uses, the Agency is not requiring the reporting of information concerning incidents where a product is asserted not to have performed in accordance with label claims. In its 1996 draft, the Agency considered requiring the submission of studies that indicate that a pesticide's performance failed to meet the guidelines established by the Agency for product performance or, in the absence of a performance guideline, failed to achieve greater pest control than occurred without any pesticide use. However, in response to comments, the Agency now believes that most failure of performance information would be difficult to evaluate, and this type of information is not being required except in the case of substantiated incidents of pest resistance.

The Agency has decided not to differentiate in this provision between pesticide uses that were once the subject of a special review or cancellation or suspension hearing and all other pesticide uses. If the Agency determines that it needs additional information concerning possible failure of performance of any pesticide, including one that was the subject of a special review or cancellation or suspension hearing, the Agency can request that information pursuant to § 159.195 of this final rule. In addition, if the conclusion of a special review or cancellation or suspension hearing clearly provides (or provided) that the pesticide product was being allowed to remain on the market only because the product was significantly more effective than alternative products, registrants would be obligated to provide information calling into question the

continuing efficacy of the product under § 159.195.

Finally, the Agency has determined that substantiated information about pest resistance is another area where failure of performance information may assist the Agency in the performance of its regulatory role. The Agency is therefore requiring the submission of information concerning the occurrence of pest resistance under actual conditions of use, where such information meets a defined standard of reliability. The 1996 draft would also have required reporting of unsubstantiated allegations of pest resistance if they involved the same pest/crop combinations as substantiated incidents, and occurred in the same or adjacent states as substantiated incidents. However, the Agency now believes that this requirement would result in submissions that would be difficult to evaluate and of dubious value, and prefers to rely on controlled studies of pest resistance that are more likely to produce useful information. As noted above, EPA will work to develop guidance for the regulated community to define the level of results in a study that can be considered substantiation of resistance.

Several commenters, noting that efficacy against pests is the primary benefit offered by pesticide products, argued that EPA has no authority to require information on efficacy failure (or any other lack of benefits information) under section 6(a)(2). To support this position, one commenter cited the District Court decision in the CSMA case. The Agency appreciates that the court in that case opined that benefits information was outside the scope of section 6(a)(2). However, the Agency believes that the court was clearly incorrect on this point. Section 2(bb) of FIFRA defines unreasonable adverse effects on the environment as including the consideration of information on benefits as well as risks. It is clear under FIFRA that a failure of efficacy of a product could tip the risk/benefit balance in favor of cancellation of a product or specific uses of a product. Under such circumstances, the Agency believes there is no question that failure of efficacy information falls within the statutory scope of material covered by section 6(a)(2).

N. Section 159.195—Reporting of Other Information

The 1992 proposed rule required the submission of information not included within any of the other provisions of the rule if the registrant is not aware of facts which establish that the information is incorrect and the registrant knows, or should know, that if the information should prove to be correct, EPA would regard the information either alone or in conjunction with other information as having the potential to raise questions about the continued registration of a product or about the appropriate terms and conditions of registration of a product. Similar general provisions have been included in all previous Agency policy statements and interpretations of section 6(a)(2).

In response to a comment, the Agency added one example to the types of information that must be reported under § 159.195(a) of this final rule. Specifically, the Agency is making it clear that it considers any information which might tend to invalidate in any way a study submitted to the Agency to support a pesticide registration, to be reportable under section 6(a)(2).

The Agency intends to take enforcement action pursuant to this provision only when it believes a registrant clearly should have known that information would have been considered important by the Agency in its evaluation of a pesticide product registration. If a registrant is aware that the registration decision for one of its products was based upon an assumption by the Agency that is called into question by some new piece of information, that information must be provided under this provision if it is not already reportable under some other provision of this final rule. In situations where a registrant is unsure how this provision applies to specific information, the Agency encourages the registrant to seek advice from EPA.

The Agency on occasion may notify a registrant that it considers a particular type of information to be reportable pursuant to section 6(a)(2). Such a notification to the registrant removes any question concerning whether the registrant should know that the Agency considers the information important. In order to eliminate any possible confusion on this point, EPA has added a specific provision spelling out a registrant's obligation when it is informed that the Agency desires the submission of specific information pursuant to section 6(a)(2).

III. Statutory Review Requirements

In accordance with section 25 of FIFRA, a copy of the final rule was provided to the Secretary of the Department of Agriculture (USDA), the FIFRA Scientific Advisory Panel (SAP), the Committee on Agriculture, Nutrition and Forestry of the U.S. Senate, and the Committee on Agriculture of the U.S. House of Representatives. EPA did not receive any comments.

IV. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) determined that this rule was a ''significant regulatory action'' because there was a potential for it to raise novel legal or policy issues related to the implementation of a statutory mandate. The Agency determined that this final rule is unlikely to have a major economic impact on pesticide registrants, and no impact on any other sector of the economy, or on any other government entities, programs or policies. The aggregate annual impact on the private sector is estimated to be about $15.7 million in the first year, and about $8 million annually thereafter. The basis for EPA's determination is contained in the Information Collection Request prepared for this rule (see Unit IV.D. below).

In addition, the rule is consistent with the purposes of FIFRA, and does not conflict with any other statutory mandate or with the principles of the Executive Order. This action was submitted to OMB for review pursuant to this Executive Order, and any comments or changes made during that review have been documented in the public record.

B. Unfunded Mandates Reform Act and Executive Order 12875

This final rule does not contain any ''Federal mandate'' that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any 1 year. Therefore, this action is not subject to the requirements of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, or Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993).

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This determination is based on the burden analysis included in the Information Collection Request discussed in Unit IV. D. below. In summary, EPA estimates that in the first year of implementation this regulation will impose a total cost of about $15.7 million and a total burden of 195,942 hours, which would decrease in year two to about $8 million

and 83,172 burden hours annually for subsequent years. Since the estimated cost and burden is distributed among approximately 2,100 pesticide registrants, the average per registrant cost and burden in the first year of implementation is estimated to be $7,461 and 93.31 burden hours, decreasing in subsequent years to an annual cost of $3,870 and 39.61 burden hours. Naturally, this average estimate may not be reflective of an individual registrants costs and burdens, since the individual costs and burdens are directly related to such things as the number of products, the number of employees, and the number of incident reports or studies the individual registrant receives and therefore must provide to EPA. In addition, the basis for estimating the anticipated increase in cost and burden includes several assumptions that may have artificially inflated the estimates. The Agency will reevaulate these estimates in 3 years, when the Agency seeks an extension of the Information Collection Request.

Our expectation, based on actual reporting under the existing requirements, is that the registrants with significant market share will most likely experience most of the burden. We therefore expect only a fraction of the registrants that are impacted to be small businesses, particularly with regard to the retroactive report provision, which requires registrants to provide information that is in their possession and not previously submitted to EPA with regard to a complaint involving fatalities or hospitalizations related to their pesticide which occurred during the last 3½ years. Registrants are only required to submit summaries and have up to an entire year to submit the information to EPA. The Agency does not believe that this requirement will have any significant adverse impacts on either small or large registrants, since allegations involving such serious adverse effects like fatalities or hospitalizations are relatively rare and are most likely to be easily recognizable by the registrants, given their own need to know this information.

The Agency discussed this determination with the Chief Counsel for Advocacy of the Small Business Administration (SBA), during the OMB review under Executive Order 12866. A copy of the SBA comments, and EPA's response, has been placed in the docket for this rulemaking.

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the current information collection activities relating to section 6(a)(2) are conducted under an Information Collection Request (EPA ICR No. 1204) approved by the Office of Management and Budget (OMB) under OMB Control No. 2070–0039. An amendment to this ICR to cover the information collection requirements contained in this final rule was submitted to OMB under the provisions of 5 CFR 1320.11. Comments addressing the Agency's costs and burden estimates in the proposed rule and in response to the Agency's request for additional comments last summer, were taken into consideration and are reflected in the final ICR, which was submitted and subsequently approved by OMB.

The reporting burden for the first year of this collection of information includes an estimated 5.9 hours per submission of scientific studies, 2.3 hours per submission of incident reports, 9.3 hours per registrant for reviewing their records for, and submitting to the Agency, any fatality and hospitalizations not previously submitted to the Agency, 0.3 hours per registrant for the potential need to track a submission in order to provide subsequent follow-up, and 4.8 hours per registrant for rule familiarization and training. The annual reporting burden for this collection of information in subsequent years is estimated to be 5.9 hours per submission of scientific studies, 2.3 hours per submission of incident reports, 0.3 hours per registrant for the potential need to track a submission in order to provide subsequent follow-up, and 2.6 hours per registrant for continued training. 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, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing 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. OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

A copy of the final ICR has been placed in the docket for this final rule and may also be obtained from Sandy Farmer, Regulatory Information Division, OPPE, U.S. Environmental Protection Agency (2137), 401 M St., SW., Washington, DC 20460, by calling (202) 260–2740, or by e-mail to farmer.sandy@epamail.epa.gov. If you should have any additional comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, increasing electronic submissions, etc.., please address them to the Director of the Regulatory Information Division at the address listed above for Sandy Farmer. Please be sure to include the EPA and OMB ICR number in any correspondence.

E. Executive Order 12898

Pursuant to Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities and has determined that this final rule will not adversely affect environmental justice.

F. Executive Order 13045

This final rule will not have an economic impact of $100 million or more and, therefore, does not require special considerations or OMB review under Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

V. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 159

Environmental protection, Pesticides and pests, Policy statements, Reporting and recordkeeping requirements.

Dated: September 11, 1997.

Carol M. Browner,

Administrator.

Therefore, 40 CFR chapter I is amended as follows:

1. By adding a new part 159 consisting of subparts A, B, and C, which are reserved, and subpart D to read as follows:

PART 159—STATEMENTS OF POLICIES AND INTERPRETATIONS

Subparts A—C [Reserved]

Subpart D—Reporting Requirements for Risk/Benefit Information

Sec.
159.152 What the law requires of registrants.
159.153 Definitions.
159.155 When information must be submitted.
159.156 How information must be submitted.
159.158 What information must be submitted.
159.159 Information obtained before promulgation of the rule.
159.160 Exception relating to former registrants.
159.165 Toxicological and ecological studies.
159.167 Discontinued studies.
159.170 Human epidemiological and exposure studies.
159.178 Information on pesticides in or on food, feed, or water.
159.179 Metabolites, degradates, contaminants, and impurities.
159.184 Toxic or adverse effect incident reports.
159.188 Failure of performance information.
159.195 Reporting of other information.

Authority: 7 U.S.C. 136–136y.

Subparts A—C [Reserved]

Subpart D—Reporting Requirements for Risk/Benefit Information

§ 159.152 What the law requires of registrants.

(a) Section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) states: ''If at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, he shall submit such information to the Administrator.''

(b) Section 152.50(f)(3) of this chapter requires applicants to submit, as part of an application for registration, any factual information of which he is aware regarding unreasonable adverse effects of the pesticide on humans or the environment, which would be required to be reported under section 6(a)(2) if the product were registered.

(c) Compliance with this part will satisfy a registrant's obligations to submit additional information pursuant to section 6(a)(2) and will satisfy an applicant's obligation to submit additional information pursuant to § 152.50(f)(3) of this chapter.

§ 159.153 Definitions.

(a) For the purposes of reporting information pursuant to FIFRA section 6(a)(2), the definitions set forth in FIFRA section 2 and in 40 CFR part 152 apply to this part unless superseded by a definition in paragraph (b) of this section.

(b) For purposes of reporting information pursuant to FIFRA section 6(a)(2), the following definitions apply only to this part:

Established level means a tolerance, temporary tolerance, food additive regulation, action level, or other limitation on pesticide residues imposed by law, regulation, or other authority.

Formal Review means Special Review, Rebuttable Presumption Against Registration (RPAR), FIFRA section 6(c) suspension proceeding, or FIFRA section 6(b) cancellation proceeding, whether completed or not.

Hospitalization means admission for treatment to a hospital, clinic or other health care facility. Treatment as an out-patient is not considered to be hospitalization.

Maximum contaminant level (MCL) means the maximum permissible level, established by EPA, for a contaminant in water which is delivered to any user of a public water system.

Non-target organism means any organism for which pesticidal control was either not intended or not legally permitted by application of a pesticide.

Pesticide means a pesticide product which is or was registered by EPA, and each active ingredient, inert ingredient, impurity, metabolite, contaminant or degradate contained in, or derived from, such pesticide product.

Qualified expert means one who, by virtue of his or her knowledge, skill, experience, training, or education, could be qualified by a court as an expert to testify on issues related to the subject matter on which he or she renders a conclusion or opinion. Under Rule 702 of the Federal Rules of Evidence, a person may be qualified as an expert on a particular matter by virtue of ''knowledge, skill, experience, training, or education.'' In general, EPA wants registrants to report information when a person has relevant expert credentials, e.g., a medical doctor giving a medical opinion, a plant pathologist giving an opinion on plant pathology, etc.

Registrant includes any person who holds, or ever held, a registration for a pesticide product issued under FIFRA section 3 or 24(c), including any employee or agent of such a person; provided that any employee or agent who is not expected to perform any activities related to the development, testing, sale or registration of a pesticide, and who could not reasonably be expected to come into possession of information that is otherwise reportable under this part, shall not be considered a registrant for purposes of this part; and provided further that information possessed by an agent shall only be considered to be possessed by a registrant if the agent acquired such information while acting for the registrant.

Similar species means two or more species belonging to the same general taxonomic groups: The general taxonomic groups for purposes of this requirement are: mammals, birds, reptiles, amphibians, fish, aquatic invertebrates, insects, arachnids, aquatic plants (including macrophyte, floating, and submerged plants), and terrestrial (all non-aquatic) plants.

Water reference leve means the level specified in paragraph (1) or (2) of this definition, whichever is lower.

(1) Ten percent of the maximum contaminant level (MCL) established by EPA, or if no MCL has been established by EPA, 10 percent of the most recent draft or final long-term health advisory level (HAL) established by EPA, or if EPA has not published or proposed an MCL or HAL, the lowest detectable amount of the pesticide.

(2) The ambient water quality criteria for the protection of aquatic life, established by EPA pursuant to section 304(a) of the Clean Water Act.

§ 159.155 When information must be submitted.

(a) Reportable information concerning scientific studies must be received by EPA not later than the 30th calendar day after the registrant first possesses or knows of the reportable information. Reportable information concerning adverse effects incidents must be reported according to the schedules set forth in § 159.184(d), which differentiates reporting times depending on the severity of the incident. EPA may, in its discretion, notify a registrant in writing of a different reporting period that will apply to specific types of reportable information or eliminate reporting requirements entirely. Such notification supersedes otherwise-applicable reporting requirements set forth in this part.

(b) For purposes of this part a registrant possesses or knows of information at the time any officer, employee, agent, or other person acting for the registrant first comes into possession of, or knows of, such information.

§ 159.156 How information must be submitted.

A submission under FIFRA section 6(a)(2) must be delivered as specified in either paragraph (a) or (b) of this section, and must meet the other requirements of this section:

(a) Be mailed by certified or registered mail to the following address, or such other address as the Agency may subsequently specify in writing:

Document Processing Desk—6(a)(2), Office of Pesticide Programs—7504C, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(b) Be delivered in person or by courier service or by such other methods as the Agency deems appropriate to the following address, or to such other address as the Agency may subsequently specify in writing: Document Processing Desk—6(a)(2), Office of Pesticide Programs, Room 266A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

(c) Include a cover letter which contains the information requested in paragraphs (d) and (e) of this section, and a prominent statement that the information is being submitted in accordance with FIFRA section 6(a)(2).

(d) Contain the name of the submitter, registrant name and registration number, date of transmittal to EPA, the type of study or incident being reported under §§ 159.165 through 159.195, and a statement of why the information is considered reportable under this part.

(e) Identify the substance tested or otherwise covered by the information (including, if known, the EPA registration number(s) to which the information pertains, and if known, the CAS Registry Number).

(f) In reporting incidents, provide the data listed in § 159.184, to the extent such information is available.

(g) In submitting scientific studies, follow the procedures set forth in § 158.32 of this chapter.

(h) If the information is part of a larger package being submitted in order to comply with another provision of FIFRA (e.g., sections 3(c)(2)(B), 4(e)(1)(E)), identify in the transmittal the individual studies being submitted under this part.

(i) If a claim of confidentiality is made under FIFRA section 10 for information relating to any part of a study or incident report contained in the submission, follow the procedures set forth in § 158.33 of this chapter regarding the identification and segregation of information claimed to be confidential.

(j) If a submission includes a study subject to the flagging requirements of § 158.34 of this chapter, comply with the requirements of that section, and, if the flagging statement is positive, identify it as 6(a)(2) information in the transmittal.

(k) If a submission is a follow-up to an earlier study or incident report submitted to EPA, the transmittal must state that fact, and must cite the earlier submission, as follows:

(1) If the earlier submission was a study to which EPA assigned a Master Record Identifier number (MRID), cite the MRID.

(2) If the previous submission was an incident report to which no MRID number was assigned, cite the date of the initial submission of the incident information or report.

§ 159.158 What information must be submitted.

(a) *General.* Information which is reportable under this part must be submitted if the registrant possesses or receives the information, and the information is relevant to the assessment of the risks or benefits of one or more specific pesticide registrations currently or formerly held by the registrant. Information relevant to the assessment of the risks or benefits also includes conclusion(s) or opinion(s) rendered by a person:

(1) Who was employed or retained (directly or indirectly) by the registrant, and was likely to receive such information.

(2) From whom the registrant requested the opinion(s) or conclusion(s) in question.

(3) Who is a qualified expert as described in § 159.153(b).

(b) *Exceptions*—(1) *Clearly erroneous information.* Information need not be submitted if before the date on which the registrant must submit such information all of the following conditions are met:

(i) The registrant discovers that any analysis, conclusion, or opinion was predicated on data that were erroneously generated, recorded, or transmitted, or on computational errors.

(ii) Every author of each such analysis, conclusion, or opinion, or as many authors as can be contacted through the use of reasonable diligence, has acknowledged in writing that the analysis, conclusion, or opinion was improper and has either corrected the original analysis, conclusion, or opinion accordingly, or provided an explanation as to why it cannot be corrected.

(iii) As a result of the correction, the information is no longer required to be reported under FIFRA section 6(a)(2), or if no correction was possible, the authors agree that the original analysis, conclusion or opinion has no scientific validity.

(2) *Previously submitted information.* Information regarding an incident, study, or other occurrence need not be submitted if before the date on which the registrant must submit such information, the registrant is aware that the reportable information concerning that incident, study, or other occurrence is contained completely in one of the following:

(i) Documents officially logged in by the EPA Office of Pesticide Programs.

(ii) EPA publications, EPA hearing records, or publications cited in EPA **Federal Register** notices.

(iii) Any other documents which are contained in the official files and records of the EPA Office of Pesticide Programs.

(iv) Any documents officially logged in by the EPA Office of Pollution Prevention and Toxics under the provisions of section 8(e) of the Toxic Substances Control Act, provided that if the information pertains to a chemical compound which, subsequent to the submission of data under section 8(e), becomes the subject of an application for registration as a pesticide active ingredient, information is submitted to the Office of Pesticide Programs as required by 40 CFR 152.50(f)(3).

(3) *Publications.* A published article or report containing information otherwise reportable under this part need not be submitted if it fits into either of the categories described in paragraphs (b)(3)(i) or (b)(3)(ii) of this section.

(i) Any scientific article or publication which has been abstracted in a recognized database of scientific and medical literature, such as Medline, ENBASE, Toxline or Index Medicus, if the abstract in question clearly identified the active ingredient or the registered pesticide(s) to which the information pertains. Otherwise reportable information received by or known to the registrant prior to publication of an abstract concerning the information must be reported and may not be withheld pending such publication.

(ii) Reports or publications which have been made available to the public by any of the following Federal agencies: Centers for Disease Control and Prevention, Consumer Products Safety Commission, Department of Agriculture, Department of the Interior, Food and Drug Administration or any other agency or institute affiliated with the Department of Health and Human Services. Otherwise reportable

information concerning research which was performed, sponsored, or funded by the registrant which may also appear in forthcoming Government reports or publications must be reported and may not be withheld pending publication.

(4) *Information concerning former inerts, contaminants or impurities.* Notwithstanding any other provisions of this part, a registrant need not report information concerning a chemical compound that was at one time an inert ingredient or a contaminant or impurity of a pesticide product, and would otherwise be reportable under this part, if:

(i) The compound has been eliminated from its registered product due to changes in manufacturing processes, product formulation or by other means.

(ii) The registrant has informed the appropriate product manager in the Office of Pesticide Programs in writing of the presence previously of the inert, contaminant or impurity in the product and its subsequent elimination from the product.

§ 159.159 Information obtained before promulgation of the rule.

(a) Notwithstanding any other provision of this part, information held by registrants on June 16, 1998 which has not been previously submitted to the Agency, but which is reportable under the terms of this part, must to be submitted to the Agency if it meets any of the following criteria.

(1) Information is otherwise reportable under § 159.184, and pertains to an incident that is alleged to have occurred on or after January 1, 1994, and to have involved:

(i) A fatality or hospitalization of a human being.

(ii) A fatality of a domestic animal.

(iii) A fatality or fatalities to fish or wildlife, if the incident meets the criteria for the exposure type and severity category designation ''W-A'' set forth in § 159.184(c)(5)(iii).

(2) Submission of the information is requested by the Agency pursuant to § 159.195(b).

(b) If a registrant possesses information required to be submitted by paragraph (a)(1) of this section, the registrant must submit on or before June 16, 1999 in accordance with § 159.156(c), (d), and (e) an inventory of the incidents that meet the requirements of paragraphs (a)(1) of this section. Such an inventory must include the separate number of incidents that meet the requirements of paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this section, and for each type of incident, the total numbers of fatalities or hospitalizations involved.

(c) If a registrant possesses information required to be submitted by paragraph (a)(2) of this section, the information must be submitted in accordance with any schedule contained in the Agency's request for the information.

§ 159.160 Obligations of former registrants.

(a) *General.* A former registrant is obliged to continue to submit information concerning the registration of a pesticide product previously held by the registrant and otherwise reportable under the provisions of this part for a period of 5 years after the registration of the pesticide product has been canceled or transferred to another registrant, with the exceptions provided by paragraph (b) of this section.

(b) *Exceptions.* Notwithstanding the provisions of paragraph (a) of this section, a former registrant is not obligated to report information pursuant to this part if any of the following conditions are applicable:

(1) The information is first obtained by the person more than 1 year after the date on which the person ceased to hold the registration of the product to which the information pertains, and the person holds no active pesticide registrations, or for some other reason cannot reasonably be expected to receive information concerning the formerly-registered product.

(2) The information is associated solely with an inert ingredient, contaminant, impurity, metabolite, or degradate contained in a product, and the information is first obtained by the person more than 1 year after the date upon which the person ceased to hold the registration of the product.

(3) The information is associated with an active ingredient or a formerly-registered product, and the active ingredient or every active ingredient contained in the formerly-registered product has not been contained in any pesticide product registered in the United States for any part of the 3–year period preceding the date on which the person first obtained the information.

(4) The information pertains solely to a formerly-registered product that no longer meets the definition of ''pesticide'' in section 2(u) of FIFRA (7 U.S.C. section 136(u)).

(c) *Information arising from litigation.* Notwithstanding any other provisions of this section, a former registrant is obliged to submit information otherwise reportable under this part concerning formerly-registered pesticide products which arises in the course of litigation concerning the effects of such products, regardless of when the information is first acquired, provided that neither of the provisions of paragraphs (b)(3) or (b)(4) of this section are met. Such information shall be submitted in the same manner and according to the same schedules as it would have to be submitted by a current registrant of a pesticide product to which the information pertained.

§ 159.165 Toxicological and ecological studies.

Adverse effects information must be submitted as follows:

(a) *Toxicological studies.* (1) The results of a study of the toxicity of a pesticide to humans or other non-target domestic organisms if, relative to all previously submitted studies, they show an adverse effect under any of the following conditions:

(i) That is in a different organ or tissue of the test organism.

(ii) At a lower dosage, or after a shorter exposure period, or after a shorter latency period.

(iii) At a higher incidence or frequency.

(iv) In a different species, strain, sex, or generation of test organism.

(v) By a different route of exposure.

(2) Acute oral, acute dermal, acute inhalation or skin and eye irritation studies in which the only change in toxicity is a numerical decrease in the median lethal dose (LD_{50}), median lethal concentration (LC_{50}) or irritation indices, are not reportable under this part unless the results indicate a more restrictive toxicity category for labeling under the criteria of 40 CFR 156.10(h).

(b) *Ecological studies.* The results of a study of the toxicity of a pesticide to terrestrial or aquatic wildlife or plants if, relative to all previously submitted studies, they show an adverse effect under any of the following conditions:

(1) At levels 50 percent or more lower than previous acute toxicity studies with similar species, including determinations of the median lethal dose (LD_{50}), median lethal concentration (LC_{50}), or median effective concentration (EC_{50}).

(2) At lower levels in a chronic study than previous studies with similar species.

(3) In a study with a previously untested species the results indicate the chronic no observed effect level (NOEL) is 10 percent or less of the lowest LC_{50} or LD_{50} for a similar species.

(4) For plants when tested at the maximum label application rate or less, if:

(i) More than 25 percent of terrestrial plants show adverse effects on plant life

cycle functions and growth such as germination, emergence, plant vigor, reproduction and yields.

(ii) More than 50 percent of aquatic plants show adverse effects on plant life cycle functions and growth such as germination, emergence, plant vigor, reproduction and yields.

(c) Results from a study that demonstrates any toxic effect (even if corroborative of information already known to the Agency), must be submitted if the pesticide is or has been the subject of a Formal Review based on that effect within 5 years of the time the results are received. Within 30 calendar days of the publication of a Notice of Commencement of a Formal Review in the **Federal Register**, all information which has become reportable due to the commencement of the Formal Review must be submitted.

(d) *Incomplete studies.* Information from an incomplete study of the toxicity to any organism of a registered pesticide product or any of its ingredients, impurities, metabolites, or degradation products which would otherwise be reportable under paragraphs (a), (b) or (c) of this section must be submitted if the information meets any one of the folowing three sets of criteria:

(1) *Short-term studies.* A study using a test regimen lasting 90 calendar days or less, and:

(i) All testing has been completed.

(ii) A preliminary data analysis or gross pathological analysis has been conducted.

(iii) Final analysis has not been completed.

(iv) A reasonable period for completion of the final analysis not longer than 90 calendar days following completion of testing has elapsed.

(v) Comparable information concerning the results of a completed study would be reportable.

(2) *Long-term studies.* A study using a test regimen lasting more than 90 calendar days, and:

(i) All testing has been completed.

(ii) A preliminary data analysis or gross pathological analysis has been conducted.

(iii) Final analysis has not been completed.

(iv) A reasonable period of completion of final analysis (not longer that 1 year following completion of testing) has elapsed.

(v) Comparable information concerning the results of a completed study would be reportable.

(3) *Serious adverse effects.* Any study in which testing or analysis of results is not yet complete but in which serious adverse effects have already been observed which may reasonably be attributed to exposure to the substances tested, because the effects observed in exposed organisms differ from effects observed in control organisms, are atypical in view of historical experience with the organism tested, or otherwise support a reasonable inference of causation, and 30 days have passed from the date the registrant first has the information.

§ 159.167 Discontinued studies.

The fact that a study has been discontinued before the planned termination must be reported to EPA, with the reason for termination, if submission of information concerning the study is, or would have been, required under this part.

§ 159.170 Human epidemiological and exposure studies.

Information must be submitted which concerns any study that a person described in § 159.158(a) has concluded, or might reasonably conclude, shows that a correlation may exist between exposure to a pesticide and observed adverse effects in humans. Information must also be submitted which concerns exposure monitoring studies that indicate higher levels of risk or exposure than would be expected based on previously available reports, data, or exposure estimates. Such information must be submitted regardless of whether the registrant considers any observed correlation or association to be significant.

§ 159.178 Information on pesticides in or on food, feed or water.

(a) *Food and feed.* Information must be submitted if it shows that the pesticide is present on food or feed at a level in excess of established levels, except that information on excess residues resulting solely from studies conducted under authority of FIFRA section 5 or under other controlled research studies conducted to test a pesticide product need not be submitted, provided that the treated crop is not marketed as a food or feed commodity.

(b) *Water.* (1) Information must be submitted if it shows that a pesticide is present above the water reference level in:

(i) Waters of the United States , as defined in § 122.2 of this chapter, except paragraph (d) of § 122.2.

(ii) Ground water.

(iii) Finished drinking water.

(2) If the lowest detectable amount of the pesticide is reported, the detection limit must also be reported.

(3) Information need not be submitted regarding the detection of a pesticide in waters of the United States or finished drinking water if the pesticide is registered for use in finished drinking water or surface water and the amount detected does not exceed the amounts reported by a registrant in its application for registration, as resulting in those waters from legal applications of the pesticide.

(4) Information need not be submitted concerning detections of pesticides in waters of the United States, ground water or finished drinking water if the substance detected is an inert ingredient, or a metabolite, degradate, contaminant or impurity of a pesticide product, unless EPA has established or proposed a maximum contaminant level (MCL) or health advisory level (HAL) for that substance, or has estimated a health advisory level based on an established reference dose (RfD) for that substance, and notified registrants of that level.

§ 159.179 Metabolites, degradates, contaminants, and impurities.

(a) *Metabolites and degradates.* Information which shows the existence of any metabolite or degradate of a pesticide product must be submitted if:

(1) The metabolite or degradate may occur or be present under conditions of use of the pesticide product, and the existence of the metabolite or degradate or the association of the metabolite or degradate with the pesticide product has not been previously reported to EPA.

(2) The metabolite or degradate has been previously reported, but it is detected at levels higher than any previously reported; and one of the conditions in paragraph (a)(3)(i) or (ii) of this section is met:

(i) Any person described in § 159.158(a) has concluded that the metabolite or degradate may pose a toxicological or ecological risk based on any one or more of the following:

(A) The physical or chemical properties of the metabolite or degradate.

(B) Data regarding structurally analogous chemicals.

(C) Data regarding chemical reactivity of the metabolite or degradate and structurally analogous substances.

(D) Data on the metabolite or degradate.

(ii) The registrant has concluded, or has been advised by any person described in § 159.158(a) that the metabolite or degradate, or analogous chemicals, may have any experimentally determined half-life greater than 3 weeks as shown from laboratory aerobic soil metabolism studies or field dissipation studies, or may have any experimentally

determined resistance to hydrolytic degradation, or photolytic degradation on soil or in water, under any conditions, resulting in degradation of less than 10 percent in a 30-day period.

(b) *Contaminants and impurities.* The presence in any pesticide product of a contaminant or impurity not previously identified by the registrant as part of the pesticide product's approved composition must be reported pursuant to this part if the contaminant or impurity is present in the product in any of the following quantities:

(1) Quantities greater than 0.1 percent by weight (1,000 parts per million).

(2) Quantities that EPA considers, and so informs registrants, to be of toxicological significance.

(3) Quantities that the registrant considers to be of toxicological significance.

(4) Quantities above a level for which the registrant has information indicating that the presence of the contaminant or impurity may pose a risk to health or the environment.

(5) Quantities that a person described in § 159.158(a) has informed the registrant is likely to be of toxicological significance.

§ 159.184 Toxic or adverse effect incident reports.

(a) *General.* Information about incidents affecting humans or other non-target organisms must be submitted if the following three conditions are met:

(1) The registrant is aware, or has been informed that a person or non-target organism may have been exposed to a pesticide.

(2) The registrant is aware, or has been informed that the person or non-target organism suffered a toxic or adverse effect, or may suffer a delayed or chronic adverse effect in the future.

(3) The registrant has or could obtain information concerning where the incident occurred, the pesticide or product involved, and the name of a person to contact regarding the incident.

(b) *Exceptions.* Information regarding an incident need not be submitted if any of the following conditions are met:

(1) The registrant is aware of facts which clearly establish that the reported toxic effect, or reported exposure, did not or will not occur.

(2) The registrant has been notified in writing by the Agency that the reporting requirement has been waived for this incident or category of incidents, and the registrant has not been notified in writing by the Agency that the waiver is rescinded.

(3) It concerns a toxic effect to non-target plants, which were at the use site at the time the pesticide was applied, if the label provides adequate notice of such a risk.

(4) It concerns non-lethal phytotoxicity to the treated crop if the label provides an adequate notice of such a risk.

(5) It concerns a toxic effect to pests not specified on the label, provided that such pests are similar to pests specified on the label.

(6) It concerns minor skin or eye irritation effects warned of on the label of a product which is registered for use in residential use sites, and the effects occurred as a result of use in a residential site.

(c) *Required information on individual incidents.* To the extent that the registrant has any of the information listed in paragraphs (c)(1) through (c)(4) of this section, the registrant must supply the information on each pesticide incident that meets the requirements outlined in paragraph (a) of this section. If the registrant acquires additional information concerning an incident previously reported to the Agency under this part, such information shall be reported if it meets the criteria set forth in paragraph (f) of this section. In the future, the Agency may by notice specify a format for such submissions. The Administrative, Pesticide, Circumstance and Exposure Type(s) of information must be reported for individual incidents, except where the provisions of paragraph (e) of this section allow for aggregated summary forms of reporting, or if EPA in the future grants permission in writing for alternative reporting formats. The registrant must also provide one or more Exposure Type and Severity categories and their designations for each incident as set forth in paragraph (c)(5) of this section, depending on the applicability of the criteria listed below. The criteria listed should be used in assigning a category. For example, an incident which allegedly caused serious but non-fatal effects to human beings and domestic animals might be designated ''H-B: D-B.'' When a single incident involves multiple pesticides, the registrant need only report on their specific product. However, if a single incident involves more than one type of non-target organism -- for example, both humans and domestic animals are involved -- all appropriate available information dealing with each of the victims must also be reported. The informational items below are grouped by sections for ease in reporting pesticide incidents.

(1) *Administrative.* Pesticide incident reports must be submitted if the registrant possesses or receives any of the following information, and the incident meets the minimum requirements set forth in paragraph (a) of this section:

(i) Name of reporter, address, and telephone number.

(ii) Name, address, and telephone number of contact person (if different than reporter).

(iii) Incident report status (e.g., new or update); if update, include the date of original submission.

(iv) Date registrant became aware of the incident.

(v) Date of incident (if appropriate, list start and end dates).

(vi) Location of incident (city, county and state).

(vii) Is incident part of a larger study.

(viii) Source if different from reporting registrant.

(2) *Pesticide.* Pesticide incident reports must be submitted if the registrant possesses or receives any of the following information, and the incident meets the minimum requirements set forth in paragraph (a) of this section:

(i) Product name.

(ii) Active ingredient(s).

(iii) EPA Registration Number.

(iv) Diluted for use, or concentrate.

(v) Formulation, if known.

(vi) List the same information under paragraphs (c)(2)(i) through (c)(2)(v) for other pesticides that may have contributed to this incident.

(3) *Circumstance.* Pesticide incident reports must be submitted if the registrant possesses or receives any of the following information, and the incident meets the minimum requirements set forth in paragraph (a) of this section:

(i) Evidence the label directions were not followed (e.g., yes, no, unknown).

(ii) How exposed (e.g., spill, drift, equipment failure, container failure, mislabeling, runoff, etc.).

(iii) Situation (e.g., household use, mixing/loading, application, reentry, disposal, transportation, other (describe)).

(iv) Use site (e.g., home, yard, commercial turf, agricultural (specify crop), industrial, building/office, school, nursery, greenhouse, pond/lake/stream, well, forest/woods, other.

(v) Applicator certified (yes, no, unknown).

(vi) A brief description of the circumstances of the incident.

(4) *Other incident specific information.* Pesticide incident reports must be submitted if the registrant possesses or receives any of the following information, and the incident meets the minimum requirements set forth in paragraph (a) of this section:

(i) If the incident involves humans:

(A) Route of exposure (skin, eye, respiratory, oral).

(B) List signs/symptoms/adverse effects.

(C) If laboratory tests were performed, list name of test(s) and results.

(D) If available, submit laboratory report(s).

(E) Time between exposure and onset of symptoms.

(F) Was adverse effect the result of suicide/homicide or attempted suicide/homicide.

(G) Type of medical care sought, (e.g., none, Poison Control Center, hospital emergency department, hospital inpatient, private physician, clinic, other).

(H) Demographics (sex, age, occupation).

(I) If female, pregnant?

(J) Exposure data: amount of pesticide; duration of exposure; weight of victim.

(K) Was exposure occupational; days lost due to illness.

(L) Was protective clothing worn (specify).

(ii) If domestic animal:

(A) Type of animal (e.g., livestock, poultry, bird, fish, household pet e.g., dog/cat etc.).

(B) List signs/symptoms/adverse effects.

(C) Breed/species (name and number affected, per adverse effect).

(D) Route of exposure (e.g., skin, eye, respiratory, oral).

(E) Time between exposure and onset of symptoms.

(F) If laboratory test(s) performed, list name of tests and results.

(G) If available, submit laboratory report(s).

(iii) If fish, wildlife, plants or other non-target organisms:

(A) List species affected, and number of individuals per species.

(B) List symptoms or adverse effects.

(C) Magnitude of the effect (e.g., miles of streams, square area of terrestrial habitat).

(D) Pesticide application rate, intended use site (e.g., corn, turf), and method of application.

(E) Description of the habitat and the circumstances under which the incident occurred.

(F) If plant, type of plant life (i.e., crop, forest, orchard, home garden, ornamental, forage).

(G) Formulation of pesticide if not indicated by brand name (granular, flowable).

(H) Distance from treatment site.

(I) If laboratory test(s) performed, list name of test(s) and results.

(J) If available, submit laboratory report(s).

(iv) If surface water:

(A) If raw water samples, water bodies sampled and approximate locations in each water body.

(B) If raw water samples, proximity of sampling locations to drinking water supply intakes and identities of systems supplied.

(C) If finished water samples, water supply systems sampled.

(D) If finished water samples, percent surface water source by specific surface water sources to water supply system(s).

(E) Sample type (grab, composite).

(F) Sampling times/frequency.

(G) Pesticides and degradates analyzed for and their detection limits.

(H) Method of analysis.

(v) If ground water:

(A) Pesticide and degradates analyzed for and the analytical methods and detection limits.

(B) Sample date.

(C) Amount pesticide applied (lbs-ai/acre).

(D) Date of last application.

(E) Depth to water.

(F) Latitude/longitude.

(G) Soil series and texture (sand/silt/clay).

(H) Frequency of applications per year.

(I) Aquifer description (confined/unconfined).

(J) Method of application.

(K) Years pesticide used.

(L) Well use and well identifier.

(M) Screened interval.

(N) Annual cumulative rainfall (inches).

(O) Maximum rainfall and date.

(P) Cumulative irrigation (inches).

(Q) Hydrologic group.

(R) Hydraulic conductivity.

(S) pH.

(T) Organic matter or organic carbon (percent).

(vi) If property damage.

(A) Provide description.

(B) [Reserved]

(5) *Exposure types and severity category designations*—(i) *Humans.* If an effect involves a human, provide the appropriate 2-letter exposure types and severity categories and their designations, based upon the following categories:

(A) H-A: If the person died.

(B) H-B: If the person alleged or exhibited symptoms which may have been life-threatening, or resulted in adverse reproductive effects or in residual disability.

(C) H-C: If the person alleged or exhibited symptoms more pronounced, more prolonged or of a more systemic nature than minor symptoms. Usually some form of treatment of the person would have been Indicated. Symptoms were not life threatening and the person has returned to his/her pre-exposure state of health with no additional residual disability.

(D) H-D: If the person alleged or exhibited some symptoms, but they were minimally traumatic. The symptoms resolved rapidly and usually involve skin, eye or respiratory irritation.

(E) H-E: If symptoms are unknown, unspecified or are alleged to be of a delayed or chronic nature that may appear in the future.

(ii) *Domestic animals.* If an effect involves a domestic animal, provide the appropriate 2-letter notation based upon the following categories:

(A) D-A: If the domestic animal died or was euthanized.

(B) D-B: If the domestic animal exhibited or was alleged to have exhibited symptoms which may have been life-threatening or resulted in residual disability.

(C) D-C: If the domestic animal exhibited or was alleged to have exhibited symptoms which are more pronounced, more prolonged or of a more systemic nature than minor symptoms. Usually some form of treatment would have been indicated to treat the animal. Symptoms were not life threatening and the animal has returned to its pre-exposure state of health with no additional residual disability.

(D) D-D: If the domestic animal was alleged to have exhibited symptoms, but they were minimally bothersome. The symptoms resolved rapidly and usually involve skin, eye or respirator irritation.

(E) D-E: If symptoms are unknown or not specified.

(iii) *Fish or wildlife.* If an alleged effect involves fish or wildlife, label the incident W-A if any of the criteria listed in paragraphs (c)(5)(iii)(A) through (c)(5)(iii)(G) of this section are met, or W-B if none of the criteria are met:

(A) Involves any incident caused by a pesticide currently in Formal Review forecological concerns.

(B) Fish: Affected 1,000 or more individuals of a schooling species or 50 or moreindividuals of a non-schooling species.

(C) Birds: Affected 200 or more individuals of a flocking species, or 50 or moreindividuals of a songbird species, or 5 or more individuals of a predatory species.

(D) Mammals, reptiles, amphibians: Affected 50 or more individuals of a relativelycommon or herding species or 5 or more individuals of a rare or solitary species.

(E) Involves effects to, or illegal pesticide treatment (misuse) of a

substantial tract of habitat (greater than or equal to 10 acres, terrestrial or aquatic).

(F) Involves a major spill or discharge (greater than or equal to 5,000 gallons) of apesticide.

(G) Involves adverse effects caused by a pesticide, to federally listed endangered orthreatened species.

(iv) *Plants.* If an alleged effect involves damage to plants, label the incident P-A if the single criterion listed in paragraph (c)(5)(iv)(A) of this section is met, or P-B if the criterion is not met:

(A) The effect is alleged to have occurred on more than 45 percent of the acreage exposed to the pesticide.

(B) [Reserved]

(v) *Other non-target organisms.* If an alleged effect involves damage to non-target organisms other than fish, wildlife or plants (for example, beneficial insects), label the incident ONT.

(vi) *Water contamination.* If a pesticide is alleged to have been detected in groundwater, surface water or finished drinking water, label the incident in accordance with the following criteria:

(A) G-A: If the pesticide was detected at levels greater than the maximum contaminant level (MCL) or health advisory level (HAL) or an applicable criterion for ambient water quality.

(B) G-B: If the pesticide was detected at levels greater than 10 percent of the MCL, HAL or a criterion for ambient water quality but does not exceed the MCL or other applicable level.

(C) G-C: If the pesticide was detected at levels less than 10 percent of the MCL, HAL, or other applicable level, or there is no established level of concern.

(vii) *Property damage.* If an incident involves alleged property damage the applicable term(s) shall be included along with any other applicable effect category label; for example, ''H-B: property damage.'' Label the incident in accordance with the following criteria:

(A) PD-A: The product is alleged to have caused damage in a manner that could have caused direct human injury, such as fire or explosion.

(B) PD-B: The product is alleged to have caused damage in excess of $5,000.

(C) PD-C: Any allegation of property damage that does not meet the criteria of paragraphs (c)(5)(vii)(A) or (B) of this section, including cases in which the level of damages is not specified.

(d) *Time requirements for submitting incident information.* Information concerning incidents reportable under this section must be submitted within the time frames listed for different exposure and severity categories, as follows:

(1) For allegations involving human fatality (H-A), registrants must submit the required information, to the extent it is available, no later than 15 days after learning of an allegation.

(2) Information concerning incidents which meet the criteria for the following exposure and severity category labels described in paragraph (c)(5) of this section may be accumulated for a 30-day period, and submitted to the Agency within 30 days after the end of each 30-day accumulation period: for Humans, H-B, and H-C; for Wildlife, W-A; for Plants, P-A; for Water, G-A; for Property Damage, PD-A.

(3) For incidents meeting all other exposure and severity label categories, information may be accumulated by registrants for 90 days and submitted within 60 days of the end of each 90-day accumulation period.

(e) *Aggregated reports.* For incidents that are reportable under the schedule requirements of paragraph (d)(3) of this section, in lieu of individual reports containing the information listed in paragraphs (c)(1) through (c)(4) of this section, registrants must provide an aggregated report listing:

(1) The time period covered by the report.

(2) For each exposure and severity label category, a count of the number of incidents, listed by product registration number (if known) or active ingredient.

(3) A count of domestic animal incidents in categories, other than D-A or D-B, which can be added together and reported as a single number.

(f) *Reporting additional information.* If, after the submission of an incident report to the Agency, a registrant acquires additional information concerning that incident, the information should be submitted within the same time frame as applied to the original incident report, if any of the following conditions apply:

(1) The information concerns an alleged human fatality (H-A), and the information consists of any of the elements listed in paragraphs (c)(1) through (c)(4) of this section.

(2) The information concerns an incident originally reported as alleging a major human illness or injury (H-B), or fatality to a domestic animal (D-A), or wildlife (W-A), and the additional information consists of pesticide or circumstance information listed in paragraphs (c)(2) or (c)(3) of this section, or is a laboratory report concerning persons or animals involved in the incident.

(3) The information concerns any incident not originally reported with one of the exposure and severity labels H-A, or H-B for human incidents, or at the ''A'' level of severity for any other exposure or incident type, and the new information would result in labeling the incident H-A or H-B for a human incident, or at the ''A'' level of severity for any other exposure or incident type listed in paragraph (c)(5) of this section.

§ 159.188 Failure of performance information.

(a) *Microorganisms that pose a risk to human health.* Information must be submitted which concerns either incidents described in paragraph (a)(1) of this section or a study described in paragraph (a)(2) of this section:

(1) Information which concerns an incident which meets all of the following conditions:

(i) The registrant has been informed that a pesticide product may not have performed as claimed against target microorganisms.

(ii) The possible failures of the pesticide to perform as claimed involved the use against microorganisms which may pose a risk to human health.

(iii) The pesticide product's use site is other than residential.

(iv) The registrant has or could obtain information concerning where the incident occurred, the pesticide or product involved, and the name of a person to contact regarding the incident.

(2) A study which indicates that the pesticide may not perform in accordance with one or more claims made by the registrant regarding uses intended for control of microorganisms that may pose a risk to human health, including any of the public health antimicrobials identified in part 158 of this chapter.

(b) *Animals that pose a risk to human health.* For the purposes of this section, any animal (including insects) poses a risk to human health if it may cause disease in humans, either directly or as a disease vector; produce toxins that are harmful to humans; or cause direct physical harm to humans. Information must be submitted which concerns either incidents described in paragraph (b)(1) of this section or a study described in paragraph (b)(2) of this section.

(1) Information which concerns an incident which meets all of the following conditions:

(i) The registrant has been informed by municipal, State, or Federal public health officials that a pesticide product may not have performed as claimed against target animals.

(ii) The possible failures of the pesticide to perform as claimed involved the use against animals that pose a risk to human health.

(iii) The registrant has or could obtain information concerning where the

incident occurred, the pesticide or product involved, and the name of a person to contact regarding the incident.

(2) A study which indicates that the pesticide may not perform in accordance with one or more claims by the registrant regarding uses intended for control of animals that pose a risk to human health, including any of the public health pesticides identified in part 158 of this chapter.

(c) *Development of pesticide resistance.* Information must be submitted concerning substantiation of any incident of a pest having developed resistance to any pesticide (both public health and non-public health) that occurred under conditions of use, application rates and methods specified on the label if either of the following conditions is met:

(1) The survival of the suspected pesticide-resistant pest was significantly higher than that of a known susceptible pest when both the suspected resistant and susceptible pests were treated with the pesticide under controlled conditions.

(2) Biochemical tests or DNA sequencing indicate that the pest is resistant to the pesticide.

§ 159.195 Reporting of other information.

(a) The registrant shall submit to the Administrator information other than that described in §§ 159.165 through 159.188 if the registrant knows, or reasonably should know, that if the information should prove to be correct, EPA might regard the information alone or in conjunction with other information about the pesticide as raising concerns about the continued registration of a product or about the appropriate terms and conditions of registration of a product. Examples of the types of information which must be provided if not already reportable under some other provision of this Part include but are not limited to information showing:

(1) Previously unknown or unexpected bioaccumulation of a pesticide by various life forms.

(2) Greater than anticipated drift of pesticides to non-target areas.

(3) Use of a pesticide may pose any greater risk than previously believed or reported to the Agency.

(4) Use of a pesticide promotes or creates secondary pest infestations.

(5) Any information which might tend to invalidate a study submitted to the Agency to support a pesticide registration.

(b) A registrant is not obligated under paragraph (a) of this sectioin to provide information to the Administrator if the registrant is aware of facts which establish that otherwise-reportable information is not correct.

(c) The registrant shall submit to the Administrator information other than that described in §§ 159.165 through 159.188 if the registrant has been informed by EPA that such additional information has the potential to raise questions about the continued registration of a product or about the appropriate terms and conditions of registration of a product.

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federal register

Friday
September 19, 1997

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Species; Review of Plant and Animal Taxa; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Plant and Animal Taxa That Are Candidates or Proposed for Listing as Endangered or Threatened, Annual Notice of Findings on Recycled Petitions, and Annual Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this document, the Fish and Wildlife Service (Service) presents an updated list of plant and animal taxa native to the United States that are regarded as candidates or proposed for possible addition to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended (Act). Identification of candidate taxa can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and thereby possibly remove the need to list taxa as endangered or threatened. Even if a candidate taxon is subsequently listed, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to the taxon.

The Service requests additional status information that may be available for the identified candidate taxa and information indicating that taxa not presently regarded as candidates should be included in future updates of this list. This information will be considered in preparing listing documents and future revisions to the notice of review. It will also help the Service monitor changes in the status of candidate taxa and in candidate conservation activities.

The Service announces the availability of listing priority assignment forms for candidate taxa and listing priority determinations for proposed taxa. These documents describe the status and threats which were evaluated in order to assign a listing priority number to each taxon.

The Service also announces its findings on recycled petitions and describes its progress in revising the Lists of Endangered and Threatened Wildlife and Plants during the period February 28, 1996, to September 3, 1997.

DATES: Comments on the candidate notice of review will be accepted at any time. The information on candidate taxa will be revised and updated continually by the Regional Offices identified as having lead responsibility for the particular taxa. The Service anticipates publishing annually an update of the candidate notice of review, annual notice of findings on recycled petitions, and annual description of progress on listing actions.

ADDRESSES: Interested persons or organizations should submit comments regarding a particular taxon to the Regional Director of the Region identified as having the lead responsibility for that taxon. Comments of a more general nature may be submitted to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, NW., Mail Stop 452 ARLSQ, Washington, DC 20240. Information regarding the range, status, and habitat needs of and listing priority assignment for a particular taxon is available for review at the appropriate Regional Office listed below or at the Division of Endangered Species, 4401 N. Fairfax Drive, Room 452, Arlington, Virginia 22203 (703/358–2171). Written comments and materials received in response to this document will be available for public inspection by appointment at the appropriate Regional Office listed below.

Region 1. California, Commonwealth of the Northern Mariana Islands, Hawaii, Idaho, Nevada, Oregon, Pacific Territories of the United States, and Washington.

Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6131).

Region 2. Arizona, New Mexico, Oklahoma, and Texas.

Regional Director (TE), U.S. Fish and Wildlife Service, 500 Gold Avenue S.W., P.O. Box 1306, Albuquerque, New Mexico 87103–1306 (505/248–6671).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Regional Director (TE), U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056 (612/725–3276).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.

Regional Director (TE), U.S. Fish and Wildlife Service, 75 Spring Street, SW, Suite 1276, Atlanta, Georgia 30345–3319 (404/679–7096).

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589 (413/253–8615).

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486 (303/236–7398).

Region 7. Alaska.

Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503–6199 (907/786–3605).

FOR FURTHER INFORMATION CONTACT: The Endangered Species Coordinator(s) in the appropriate Regional Office(s) (see phone numbers in **ADDRESSES** section) or E. LaVerne Smith, Chief, Division of Endangered Species, (703) 358–2171.

SUPPLEMENTARY INFORMATION:

Background

Candidate Notice of Review

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires the Service to identify taxa of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. As part of the program to accomplish this, the Service has maintained a list of taxa regarded as candidates for listing. The Service maintains this list for a variety of reasons, including: to provide advance knowledge of potential listings that could affect decisions of environmental planners and developers; to solicit input from interested parties to identify those candidate taxa that may not require protection under the Act or additional taxa that may require the Act's protections; and to solicit information needed to prioritize the order in which taxa will be proposed for listing. At present, there are 207 taxa included in Table 1 of this notice that are considered by the Service as candidates for possible addition to the Lists of Endangered and Threatened Wildlife and Plants, as well as 99 taxa for which proposed rules to list have been published. The Service encourages their consideration in environmental planning, such as in environmental impact analysis under the National Environmental Policy Act of 1969 (implemented at 40 CFR parts 1500–1508). Table 2 of this notice contains taxa identified as candidates in the 1996 Candidate Notice of Review which have

been removed from candidate status, taxa identified as proposed species in the 1996 notice which have been listed as threatened or endangered, and taxa identified as proposed species in the 1996 notice for which proposed rules have been withdrawn. The Service intends to publish an updated combined notice of review for animals and plants annually in the **Federal Register**.

Findings on Recycled Petitions

Section 4(b)(3) of the Act sets out required procedures for responding to petitions under the Act (i.e., petitions to revise the lists of Endangered and Threatened Wildlife and Plants or to designate or revise critical habitat for listed taxa). Section 4(b)(3)(B) requires the Service to make one of the following 12-month findings on each petition presenting substantial information: (i) The petitioned action is not warranted; (ii) the petitioned action is warranted and will be proposed promptly; or (iii) the petitioned action is warranted but precluded by other actions to revise the lists. A taxon for which a petition to list is found to be not warranted is not added to the list of candidates, or is removed from the list of candidates if it was a candidate at the time the petition was received. Petitioned actions found to be warranted are the subjects of proposed rules that are published promptly in the **Federal Register**. Taxa for which a petition to list is determined to be warranted but precluded by other actions to revise the lists are maintained as candidates. Petitions for which a finding of ''warranted but precluded'' was made require a new finding within a year after the most recent ''warranted but precluded'' finding; these petitions are then called recycled petitions. This notice reports administrative findings on recycled petitions that became due during the period February 28, 1996, to September 3, 1997. Although it has not published notices of its findings on recycled petitions annually in the past, the Service intends to publish these notices annually beginning with this notice.

Progress in Revising the Lists

As described in section 4(b)(3)(B)(iii) of the Act, in order for the Service to make a ''warranted but precluded'' finding on a petitioned action, the Service must be making expeditious progress to add qualified taxa to the Lists of Endangered and Threatened Wildlife and Plants and to remove from the lists taxa for which the protections of the Act are no longer necessary. This notice describes the Service's annual progress in revising the lists during the period February 28, 1996, to September 3, 1997. Although it has not published descriptions of its annual progress on listing actions in the past, the Service intends to publish these descriptions annually beginning with this notice.

Findings on Recycled Petitions

The Service reviewed the current status of and threats to the taxa which were the subjects of the 18 recycled petitions that became due during the period February 28, 1996, to September 3, 1997, to determine whether any changes to the listing priority assignments for these taxa were necessary. As a result of this review, the Service has made continued ''warranted but precluded'' findings on all of these petitions. These taxa are maintained as candidates and are identified in Table 1 by the code ''C(w)'' in the category column on the left side of the table.

Progress in Revising the Lists

The Service's progress in listing and delisting qualified taxa during the period February 28, 1996, to September 3, 1997, is represented by the publication in the **Federal Register** of final listing actions for 152 taxa, proposed listing actions for 23 taxa, a proposed delisting action for 1 taxon, and withdrawals of proposed rules for 13 taxa. One taxon proposed for listing as threatened due to similarity of appearance, the southern population of the bog turtle (*Clemmys muhlenbergii*), is not included in the counts above.

The relatively small number of proposed listing actions for the subject time period is a consequence of the Service's listing priority guidance, published on May 16, 1996 (61 FR 24722), September 17, 1996 (61 FR 48962), and December 5, 1996 (61 FR 64475), which was developed in response to two related events: (1) The lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance clarifies the order in which the Service will process rulemakings giving highest priority to handling emergency situations, second highest priority to resolving the listing status of the outstanding proposed listings, third highest priority to processing new proposals to add species to the lists and processing administrative findings on petitions to add species to the lists, and lowest priority to processing final or proposed critical habitat designations, delistings, and reclassifications from endangered to threatened status. Because of the large backlog of outstanding proposed listings (second highest priority actions) caused by the listing moratorium, the Service was able to process only 23 new proposals to add species to the lists (third highest priority actions).

Notice of Review

Previous Notices of Review

The Act directed the Secretary of the Smithsonian Institution to prepare a report on endangered and threatened plant taxa, which was published as House Document No. 94–51. The Service published a notice in the **Federal Register** on July 1, 1975 (40 FR 27823), in which it announced that more than 3,000 native plant taxa named in the Smithsonian's report and other taxa added by the 1975 notice would be reviewed for possible inclusion in the List of Endangered and Threatened Plants. The 1975 notice was superseded on December 15, 1980 (45 FR 82479), by a new comprehensive notice of review for native plants that took into account the earlier Smithsonian report and other accumulated information. On November 28, 1983 (48 FR 53640), a supplemental plant notice of review noted changes in the status of various taxa. The Service published complete updates of the plant notice on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), September 30, 1993 (58 FR 51144), and, as part of a combined animal and plant notice, on February 28, 1996 (61 FR 7596).

Previous animal notices of review included many of the animal taxa in the accompanying Table 1. The Service published earlier comprehensive reviews for vertebrate animals in the **Federal Register** on December 30, 1982 (47 FR 58454), and on September 18, 1985 (50 FR 37958). An initial comprehensive review for invertebrate animals was published on May 22, 1984 (49 FR 21664). The Service published a combined animal notice of review on January 6, 1989 (54 FR 554), and with minor corrections on August 10, 1989 (54 FR 32833). The Service again published comprehensive animal notices on November 21, 1991 (56 FR 58804), November 15, 1994 (59 FR 58982), and, as part of a combined animal and plant notice, on February 28, 1996 (61 FR 7596). This revised notice supersedes all previous animal, plant, and combined notices of review.

Relation to Prior Notices of Review

Two classes of taxa, candidate taxa and proposed taxa, are included in Table 1 of this notice. Candidate taxa are those taxa for which the Service has on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list, but issuance of the proposed rule is precluded. The Service emphasizes that these candidate taxa are not being proposed for listing by this notice, but development and publication of proposed rules for such candidate taxa are anticipated. The Service encourages other Federal agencies to give consideration to these taxa in environmental planning. The Service determines the relative listing priority of candidate taxa in accordance with general listing priority guidelines published in the **Federal Register** on September 12, 1983 (48 FR 43098), and with Fiscal Year 1997 listing priority guidelines published on December 5, 1996 (61 FR 64475).

Proposed taxa are those taxa for which a proposed rule to list as endangered or threatened has been published in the **Federal Register** (exclusive of taxa for which the proposed rule has been withdrawn or finalized).

Current Notice of Review

The Service gathers data on plants and animals native to the United States that appear to merit consideration for addition to the Lists of Endangered and Threatened Wildlife and Plants. This notice identifies those taxa (including, by definition, biological species, subspecies, and certain distinct population segments of vertebrate animals, and biological species, subspecies, and varieties of plants) that are presently regarded by the Service as candidates for addition to the Lists of Endangered and Threatened Wildlife and Plants. In issuing this compilation, the Service relies on information from status surveys conducted for candidate assessment and on information from State Natural Heritage Programs, other State and Federal agencies (such as the Forest Service and the Bureau of Land Management), knowledgeable scientists, public and private natural resource interests, and comments received in response to previous notices of review.

Tables 1 and 2 are arranged alphabetically by names of genera, species, and relevant subspecies and varieties under the major group headings for animals first, then plants. Animals are grouped by class or order. Plants are subdivided into three groups: flowering plants, conifers and cycads, and ferns and their allies. Useful synonyms and subgeneric scientific names appear in parentheses (the synonyms preceded by an equal sign). Several taxa that have not yet been formally described in the scientific literature have been included; such taxa are identified by a generic or specific name (in italics) followed by ''sp.'' or ''ssp.'' Standardized common names are incorporated in these notices as they become available. The flux in common names, the inclusion of vernacular and composite subspecific names, and the fact that a majority of invertebrates still lack a standardized name combine to make common names relatively useless for organizing the tables.

Table 1 lists all taxa regarded by the Service as candidates for listing and all taxa proposed for listing under the Act. Table 2 lists those taxa that were classified either as candidates or proposed for listing in the 1996 notice of review, but are no longer classified as candidates or proposed taxa.

Taxa in Table 1 of this notice are assigned to several status categories, noted in the ''Category'' column at the left side of the table. Codes for the category status column of taxa in Table 1 are explained below:

PE—Taxa proposed to be listed as endangered.

PT—Taxa proposed to be listed as threatened.

Y—Synonyms of taxa that are listed elsewhere in Table 1.

C—Candidates: Taxa for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened taxa. Proposed rules have not yet been issued because this action is precluded at present by other listing activity. This category includes taxa for which a ''warranted but precluded'' 12-month petition finding has been issued. This category also includes taxa for which a ''warranted but precluded'' 12-month petition finding has been recycled; these taxa are identified by the code ''C(w)'' in the category column. Development and publication of proposed rules for candidate taxa are anticipated. The Service encourages State and other Federal agencies as well as other affected parties to give consideration to these taxa in environmental planning.

The column labeled ''Priority'' indicates the listing priority number for candidate taxa. This number is assigned on the basis of immediacy and magnitude of threats as well as taxonomic status. A complete description of the Service's listing priority system was published in a September 21, 1983, **Federal Register** notice (48 FR 43098); additional guidelines for assigning listing priorities during Fiscal Year 1997 were published on December 5, 1996 (61 FR 64475).

The third column identifies the Regional Office (numeric code) to which comments or questions should be directed (see **ADDRESSES** section). Comments received in response to the 1996 notice of review were provided for review to the Region having lead responsibility for each candidate taxon mentioned in the comment. The Service will likewise consider all information provided in response to this notice of review in deciding whether to propose taxa for listing and when to undertake necessary listing actions. Comments received will become part of the administrative record for the taxa mentioned.

Following the scientific name of each taxon (fourth column) is the family designation (fifth column) and any common name (sixth column). The seventh column provides the known historical range for each included taxon, indicated by postal code abbreviations for States and U.S. territories (many taxa no longer occur in all of the areas shown). In the section on birds, the abbreviation ''N'' indicates the nesting range of the taxon, and the abbreviation ''V'' indicates additional areas in which the taxon spends other parts of its life cycle.

Taxa in Table 2 of this notice were included either as proposed taxa or as candidates in the 1996 notice of review but have since been removed from such status for a variety of reasons. Many of the taxa listed in the last notice of review as proposed have now been added to the Lists of Endangered or Threatened Wildlife and Plants. The first column indicates the present status of the taxa, using the following codes:

E—Taxa that have been listed as endangered.

T—Taxa that have been listed as threatened.

R—Taxa for which currently available information does not support issuance of a proposed listing and taxa for which a proposed listing has been withdrawn.

Y—Synonyms of taxa listed elsewhere in Table 2.

The second column provides a coded explanation of why the taxon is no longer regarded as a candidate taxon. Descriptions of the codes are as follows:

A—Taxa that have proven to be more abundant or widespread than previously believed and taxa that

have proven not to be subject to a degree of threats sufficient to warrant issuance of a proposed listing or continuance of candidate status.

F—Taxa removed from candidate status because the range is no longer a U.S. Territory.

I—Taxa for which the Service has insufficient information on biological vulnerability and threats to support issuance of a proposed rule to list.

L—Taxa added to the Lists of Endangered or Threatened Wildlife and Plants.

M—Taxa mistakenly included as candidates in the last notice of review.

N—Taxa that on the basis of current taxonomic understanding do not meet the Act's definition of ''species.''

X—Taxa that are believed to be extinct.

The columns describing lead region, scientific name, family, common name, and historic range include information as previously described for Table 1.

One taxon included in Table 2 of this notice, *Sclerocactus brevispinus* (Pariette cactus), was mistakenly included in Table 1 in the 1996 candidate notice of review. Until it was described as a new species in 1994, *S. brevispinus* was included in *Sclerocactus glaucus* (Uinta Basin hookless cactus), a threatened species. Because *S. brevispinus* was a part of *S. glaucus* when the latter species was listed as threatened, those plants now referred to as *S. brevispinus* are still considered to be listed as threatened. Therefore, including *S. brevispinus* as a candidate in the 1996 notice of review was inappropriate and unnecessary. To address the recent change in taxonomy, a proposed rule to add *S. brevispinus* to the List of Endangered and Threatened Plants will be published in the **Federal Register** at a later time.

Summary

Over the past year, the Service reviewed the available information on candidate taxa to ensure that issuance of a proposed listing is justified for each taxon and to reevaluate the relative listing priority assignment of each taxon. The Service undertook this effort to ensure that it was focusing conservation efforts on those taxa at greatest risk. As of September 3, 1997, there are 51 plants and 20 animals proposed for endangered status; 20 plants and 8 animals proposed for threatened status; and 107 plant and 100 animal candidates awaiting preparation of proposed rules (see Table 1). There are 181 taxa that were classified as either proposed for listing or candidates in the 1996 notice of review that are no longer classified in those categories (see Table 2).

Request for Information

The Service hereby requests that any further information on the taxa named in this notice be submitted as soon as possible or whenever it becomes available. Especially sought is information:

(1) indicating that a taxon should be removed from this list;

(2) indicating that a taxon not included in the notice should be added to the list of candidate taxa;

(3) recommending an area as critical habitat for a candidate taxon, or indicating that a proposal of critical habitat would not be prudent for a taxon;

(4) documenting threats to any of the included taxa;

(5) describing the immediacy or magnitude of threats facing candidate taxa;

(6) pointing out taxonomic or nomenclatural changes for any of the taxa;

(7) suggesting appropriate common names; or

(8) noting any mistakes, such as errors in the indicated historical ranges.

Authors

This notice was compiled from evaluations by staff biologists in the Service's Regional and Field offices. It was compiled and edited by Dr. Joan Canfield, Martin Miller, Dr. Joy Nicholopoulos, and Dr. George Drewry of the Service's Headquarters Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Authority

This notice is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: September 3, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

TABLE 1.—CANDIDATE AND PROPOSED ANIMALS AND PLANTS

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
			MAMMALS.			
C	3	R1	*Dipodomys merriami parvus*	Heteromyidae	Kangaroo rat, San Bernardino Merriam's.	U.S.A. (CA)
C	3	R1	*Emballonura semicaudata*	Emballonuridae	Bat, sheath-tailed (Aguijan, American Samoa pops.).	U.S.A. (AS, GU, MP (Aguijan))
C(w)	3	R6	*Lynx canadensis*	Felidae	Lynx, Canada (contiguous U.S. pop.).	U.S.A. (CO, ID, ME, MA, MI, MN, MT, NH, NY, OR, PA, UT, VT, WA, WI, WY)
C	3	R1	*Neotoma fuscipes riparia*	Muridae	Woodrat, riparian (=San Joaquin Valley).	U.S.A. (CA)
PE	12	R1	*Ovis canadensis cremnobates*	Bovidae	Bighorn sheep (Peninsular Ranges pop.).	U.S.A. (CA), Mexico
C	3	R4	*Peromyscus polionotus peninsularis*	Muridae	Mouse, St. Andrew beach	U.S.A. (FL)
C(w)	3	R1	*Pteropus mariannus mariannus*	Pteropodidae	Bat, Mariana fruit (=Mariana flying fox) (Aguijan, Tinian, Saipan pops.).	U.S.A. (MP)
C	3	R1	*Sorex ornatus relictus*	Soricidae	Shrew, Buena Vista Lake ornate	U.S.A. (CA)
C	3	R1	*Spermophilus brunneus brunneus*	Sciuridae	Squirrel, Northern Idaho ground	U.S.A. (ID)
C	3	R1	*Sylvilagus bachmani riparius*	Leporidae	Rabbit, riparian brush	U.S.A. (CA)

TABLE 1.—CANDIDATE AND PROPOSED ANIMALS AND PLANTS—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C(w)	12	R4	*Ursus americanus floridanus*	Ursidae	Bear, Florida black	U.S.A. (AL, FL, GA)
C(w)	9	R6	*Vulpes velox*	Canidae	Fox, swift (U.S. pop.)	U.S.A. (CO, IA, KS, MN, MT, ND, NE, NM, OK, SD, TX, WY)
PE	3	R6	*Zapus hudsonius preblei*	Zaponidae	Mouse, Preble's meadow jumping	U.S.A. (CO, WY)
			BIRDS.			
C	2	R6	*Charadrius montanus*	Charadriidae	Plover, mountain	N=CO, KS, MT, ND, NE, NM, OK, SD, TX, UT, WY; V=AZ, CA, NV, Mexico
Y		R1	*Chasiempis sandwichensis gayi*	*** see ***	*Chasiempis sandwichensis ibidus*	
C	3	R1	*Chasiempis sandwichensis ibidus*	Musicapidae	Elepaio, Oahu	U.S.A. (HI)
C	3	R7	*Diomedea albatrus*	Diomedeidae	Albatross, short-tailed (U.S. pop.)	North Pacific Ocean—U.S.A. (AK, CA, HI, OR, WA), Canada, Japan, Russia
C	6	R1	*Gallicolumba stairi*	Columbidae	Dove, friendly ground (American Samoa pop.).	U.S.A. (AS)
C	5	R1	*Oreomystis bairdi*	Fringillidae	Creeper, Kauai	U.S.A. (HI)
C	6	R1	*Porzana tubuensis*	Rallidae	Crake, spotless (American Samoa pop.).	U.S.A. (AS)
C	6	R1	*Ptilinopus perousii perousii*	Columbidae	Dove, many-colored fruit	U.S.A. (AS)
C	6	R1	*Zosterops conspicillata rotensis*	Zosteropidae	White-eye, Rota bridled	U.S.A. (MP)
			REPTILES.			
PE	3	R1	*Anniella pulchra nigra*	Anniellidae	Lizard, black legless	U.S.A. (CA)
PT	3	R5	*Clemmys muhlenbergii*	Emydidae	Turtle, bog (northern pop.)	U.S.A. (CT, DE, GA, MA, MD, NC, NJ, NY, PA, SC, TN, VA)
C(w)	5	R2	*Graptemys caglei*	Emydidae	Turtle, Cagle's map	U.S.A. (TX)
C	3	R2	*Kinosternon sonoriense longifemorale.*	Kinosternidae	Turtle, Sonoyta mud	U.S.A. (AZ), Mexico
PE	3	R1	*Masticophis lateralis euryxanthus*	Colubridae	Whipsnake (=striped racer), Alameda.	U.S.A. (CA)
PT	6	R3	*Nerodia sipedon insularum*	Colubridae	Snake, Lake Erie water	U.S.A. (OH), Canada
			AMPHIBIANS.			
C(w)	8	R1	*Ambystoma californiense (=A. tigrinum c.).*	Ambystomatidae	Salamander, California tiger	U.S.A. (CA)
C(w)	3	R6	*Bufo boreas boreas*	Bufonidae	Toad, boreal (southern Rocky Mountain pop.).	U.S.A. (CO, NM, WY)
C	2	R2	*Rana chiricahuensis*	Ranidae	Frog, Chiricahua leopard	U.S.A. (AZ, NM), Mexico
C(w)	3	R6	*Rana luteiventris* (formerly incl. in *R. pretiosa*).	Ranidae	Frog, Columbia spotted (formerly spotted) (Wasatch Front pop.).	U.S.A. (UT)
C(w)	6	R6	*Rana luteiventris* (formerly incl. in *R. pretiosa*).	Ranidae	Frog, Columbia spotted (formerly spotted) (West Desert pop.).	U.S.A. (UT)
C(w)	9	R1	*Rana luteiventris* (formerly incl. in *R. pretiosa*).	Ranidae	Frog, Columbia spotted (formerly spotted) (Great Basin pop.).	U.S.A. (ID, NV, OR)
C(w)	2	R1	*Rana pretiosa*	Ranidae	Frog, Oregon spotted (formerly spotted frog (W. Coast pop.)).	U.S.A. (CA, OR, WA), Canada
Y		R6	*Rana pretiosa* (3 pops., not West Coast).	*** see ***	*Rana luteiventris* (3 pops.).	
			FISHES.			
C	8	R1	*Catostomus santaanae*	Catostoidae	Sucker, Santa Ana	U.S.A. (CA)
C	2	R2	*Cyprinodon pecosensis*	Cyprinodontidae	Pupfish, Pecos	U.S.A. (NM, TX)
C	2	R2	*Dionda diaboli*	Cyprinidae	Minnow, Devils River	U.S.A. (TX), Mexico
C	5	R6	*Etheostoma cragini*	Percidae	Darter, Arkansas	U.S.A. (AR, CO, KS, MO, OK)
C	3	R1	*Gila bicolor vaccaceps*	Cyprinidae	Chub, Cowhead Lake tui	U.S.A. (CA)
C	2	R2	*Gila intermedia*	Cyprinidae	Chub, Gila	U.S.A. (AZ, NM), Mexico
PE	1	R6	*Iotichthys phlegethontis*	Cyprinidae	Chub, least	U.S.A. (UT)
C	2	R6	*Macrhybopsis (=Hybopsis) gelida*	Cyprinidae	Chub, sturgeon	U.S.A. (AR, IA, IL, KY, KS, LA, MO, MS, MT, NE, ND, SD, TN, WY)

TABLE 1.—CANDIDATE AND PROPOSED ANIMALS AND PLANTS—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C	2	R6	*Macrhybopsis (=Hybopsis) meeki*	Cyprinidae	Chub, sicklefin	U.S.A. (AR, IA, IL, KS, KY, LA, MO, MS, MT, NE, ND, SD, TN)
PE	2	R2	*Notropis girardi*	Cyprinidae	Shiner, Arkansas River (native pop. only).	U.S.A. (AR, KS, NM, OK, TX)
C	2	R6	*Notropis topeka (=tristis)*	Cyprinidae	Shiner, Topeka	U.S.A. (IA, KS, MN, MO, NE, SD)
C	3	R1	*Oncorhynchus (=Salmo) mykiss* ssp.	Salmonidae	Trout, McCloud River redband	U.S.A. (CA)
PT	2	R1	*Pogonichthys macrolepidotus*	Cyprinidae	Splittail, Sacramento	U.S.A. (CA)
PT	9	R5	*Salmo salar*	Salmonidae	Salmon, Atlantic (distinct pop. in 7 Maine rivers).	U.S.A. (CT, MA, ME, NH, RI), Canada, Greenland, western Europe
PT	9	R1	*Salvelinus confluentus*	Salmonidae	Trout, bull (Columbia R. pop.)	U.S.A. (CA, ID, MT, NV, OR, WA), Canada
PE	3	R1	*Salvelinus confluentus*	Salmonidae	Trout, bull (Klamath R. pop.)	U.S.A. (CA, ID, MT, NV, OR, WA), Canada
C	5	R4	*Scaphirhynchus suttkusi*	Acipenseridae	Sturgeon, Alabama	U.S.A. (AL, MS)
Y	.....	R6	*Thymallus arcticus montanus*	*** see ***	*Thymallus arcticus*	
C(w)	9	R6	*Thymallus arcticus*	Salmonidae	Grayling, Arctic (Upper Missouri R. fluvial pop.).	U.S.A. (MT, WY)
			CLAMS.			
PE	2	R4	*Amblema neislerii* (I. Lea, 1858)	Unionidae	Mussel, fat three-ridge	U.S.A. (FL, GA)
PT	8	R4	*Elliptio chipolaensis* (Walker, 1905)	Unionidae	Slabshell, Chipola	U.S.A. (AL, FL)
PT	7	R4	*Elliptoideus sloatianus* (I. Lea, 1840)	Unionidae	Bankclimber, purple	U.S.A. (AL, GA, FL)
PE	2	R4	*Lampsilis subangulata* (I. Lea, 1840)	Unionidae	Pocketbook, shinyrayed	U.S.A. (AL, FL, GA)
PE	2	R4	*Medionidus penicillatus* (I. Lea, 1857).	Unionidae	Moccasinshell, Gulf	U.S.A. (AL, FL, GA)
PE	2	R4	*Medionidus simpsonianus* (Walker, 1905).	Unionidae	Moccasinshell, Ochlockonee	U.S.A. (FL, GA)
PE	2	R4	*Pleurobema pyriforme* (I. Lea, 1857)	Unionidae	Pigtoe, oval	U.S.A. (AL, FL, GA)
			SNAILS.			
C	7	R3	*Antrobia culveri* (Hubricht, 1971)	Hydrobiidae	Cavesnail, Tumbling Creek	U.S.A. (MO)
C(w)	11	R2	*Assiminea pecos* Taylor, 1987	Assimineidae	Snail, Pecos assiminea	U.S.A. (NM, TX), Mexico
C	5	R4	*Campeloma decampi*	Viviparidae	Campeloma, slender	U.S.A. (AL)
C	5	R4	*Elimia crenatella* (I. Lea, 1860)	Pleuroceridae	Elimia, lacy	U.S.A. (AL)
PT	7	R1	*Erinna newcombi*	Lymnaeidae	Snail, Newcomb's	U.S.A. (HI)
C	2	R1	*Eua zebrina*	Partulidae	Snail, Tutuila tree	U.S.A. (AS)
Y	.....	R2	*''Fontelicella'' spp.*	*** see ***	*Pyrgulopsis (=''Fontelicella'') spp.*	
C	5	R4	*Leptoxis ampla* (Anthony, 1855)	Pleuroceridae	Rocksnail, round	U.S.A. (AL)
C	5	R4	*Leptoxis plicata* (Conrad, 1834)	Pleuroceridae	Rocksnail, plicate	U.S.A. (AL)
C	5	R4	*Leptoxis taeniata* (Conrad, 1834)	Pleuroceridae	Rocksnail, painted	U.S.A. (AL)
C	5	R4	*Lepyrium showalteri* (I. Lea, 1861)	Hydrobiidae	Pebblesnail, flat	U.S.A. (AL)
C	5	R4	*Lioplax cyclostomaformis* (I. Lea, 1841).	Viviparidae	Lioplax, cylindrical	U.S.A. (AL, GA, LA)
C	9	R6	*Oreohelix peripherica wasatchensis*	Oreohelicidae	Mountainsnail, Ogden Deseret (=Ogden Rocky).	U.S.A. (UT)
C	2	R1	*Ostodes strigatus*	Potaridae	Sisi	U.S.A. (AS)
C	2	R1	*Partula gibba*	Partulidae	Snail, humped tree	U.S.A. (GU, MP)
C	2	R1	*Partula langfordi*	Partulidae	Snail, Langford's tree	U.S.A. (MP)
C	2	R1	*Partula radiolata*	Partulidae	Snail, Guam tree	U.S.A. (GU)
C	2	R1	*Partulina semicarinata*	Achatinellidae	Snail, Lanai tree or pupu kani oe	U.S.A. (HI)
C	2	R1	*Partulina variabilis*	Achatinellidae	Snail, Lanai tree or pupu kani oe	U.S.A. (HI)
C(w)	8	R2	*Pyrgulopsis (=''Fontelicella'') chupaderae* Taylor, 1987.	Hydrobiidae	Springsnail, Chupadera	U.S.A. (NM)
C(w)	11	R2	*Pyrgulopsis (=''Fontelicella'') gilae* Taylor, 1987.	Hydrobiidae	Springsnail, Gila	U.S.A. (NM)
C	2	R2	*Pyrgulopsis morrisoni* Hershler, 1988.	Hydrobiidae	Springsnail, Page	U.S.A. (AZ)
C	5	R4	*Pyrgulopsis pachyta*	Hydrobiidae	Snail, armored	U.S.A. (AL)
C(w)	11	R2	*Pyrgulopsis (=''Fontelicella'') roswellensis* Taylor, 1987.	Hydrobiidae	Springsnail, Roswell	U.S.A. (NM)
C(w)	11	R2	*Pyrgulopsis (=''Fontelicella'') thermalis* Taylor, 1987.	Hydrobiidae	Hotspringsnail, New Mexico	U.S.A. (NM)

TABLE 1.—CANDIDATE AND PROPOSED ANIMALS AND PLANTS—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
C	5	R2	*Pyrgulopsis thompsoni* Hershler, 1988.	Hydrobiidae	Springsnail, Huachuca	U.S.A. (AZ), Mexico
C	2	R1	*Samoana fragilis*	Partulidae	Snail, fragile tree	U.S.A. (GU, MP)
PE	2	R2	*Sonorella eremita* (Pilsbry & Ferris, 1915).	Helminthoglyptidae	Talussnail, San Xavier	U.S.A. (AZ)
C	5	R2	*Sonorella macrophallus* Fairbanks & Reeder, 1980.	Helminthoglyptidae	Talussnail, Wet Canyon	U.S.A. (AZ)
C	2	R6	*Stagnicola bonnevillensis* (Call, 1884).	Lymnaeidae	Pondsnail, Bonneville (=fat-whorled)	U.S.A. (UT)
C	5	R2	*Tryonia adamantina* Taylor, 1987	Hydrobiidae	Snail, Diamond Y Spring	U.S.A. (TX)
C(w)	11	R2	*Tryonia kosteri* Taylor, 1987	Hydrobiidae	Tryonia, Koster's	U.S.A. (NM)
C	5	R2	*Tryonia stocktonensis* Taylor, 1987	Hydrobiidae	Springsnail, Gonzales	U.S.A. (TX)
			INSECTS.			
C	3	R6	*Cicindela limbata albissima*	Cicindelidae	Beetle, Coral Pink Sand Dunes tiger	U.S.A. (UT)
C	2	R1	*Drosophila aglaia*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
C	2	R1	*Drosophila attigua*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
C	2	R1	*Drosophila differens*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
C	2	R1	*Drosophila digressa*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
C	2	R1	*Drosophila hemipeza*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
C	2	R1	*Drosophila heteroneura*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
C	2	R1	*Drosophila montgomeryi*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
C	2	R1	*Drosophila mulli*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
C	2	R1	*Drosophila musaphila*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
C	2	R1	*Drosophila neoclavisetae*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
C	2	R1	*Drosophila obatai*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
C	2	R1	*Drosophila ochrobasis*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
C	2	R1	*Drosophila substenoptera*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
C	2	R1	*Drosophila tarphytrichia*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
PE	2	R2	*Heterelmis comalensis*	Elmidae	Beetle, Comal Springs riffle	U.S.A. (TX)
C	3	R1	*Hypolimnas octucula mariannensis*	Nymphalidae	Butterfly, Mariana eight-spot	U.S.A. (GU, MP)
C	3	R1	*Icaricia icarioides fenderi*	Lycaenidae	Butterfly, Fender's blue	U.S.A. (OR)
PE	2	R1	*Manduca blackburni*	Sphingidae	Moth, Blackburn's sphinx	U.S.A. (HI)
C	2	R1	*Megalagrion leptodemus*	Coenagrionidae	Damselfly, crimson Hawaiian (=leptodemas megalagrion).	U.S.A. (HI)
C	2	R1	*Megalagrion nesiotes*	Coenagrionidae	Damselfly, flying earwig Hawaiian (=nesiotes megalagrion).	U.S.A. (HI)
C	9	R1	*Megalagrion nigrohamatum nigrolineatum.*	Coenagrionidae	Damselfly, blackline Hawaiian (=blackline megalagrion).	U.S.A. (HI)
Y		R1	*Megalagrion nigrolineatum*	*** see ***	*Megalagrion nigrohamatum nigrolineatum.*	
C	2	R1	*Megalagrion oceanicum*	Coenagrionidae	Damselfly, oceanic Hawaiian (=oceanic megalagrion).	U.S.A. (HI)
C	2	R1	*Megalagrion pacificum*	Coenagrionidae	Damselfly, Pacific Hawaiian (=Pacific megalagrion).	U.S.A. (HI)
C	8	R1	*Megalagrion xanthomelas*	Coenagrionidae	Damselfly, orangeblack Hawaiian (=orangeblack megalagrion).	U.S.A. (HI)
C	5	R1	*Phaeogramma* sp.	Tephritidae	Gall fly, Po'olanui	U.S.A. (HI)
C	8	R5	*Pseudanophthalmus holsingeri*	Carabidae	Beetle, Holsinger's cave	U.S.A. (VA)
PE	3	R1	*Speyeria callippe callippe*	Nymphalidae	Butterfly, Callippe silverspot	U.S.A. (CA)
PE	3	R1	*Speyeria zerene behrensii*	Nymphalidae	Butterfly, Behren's silverspot	U.S.A. (CA)
PE	1	R2	*Stygoparnus comalensis*	Dryopidae	Beetle, Comal Springs dryopid	U.S.A. (TX)
C	2	R1	*Vagrans egestina*	Nymphalidae	Butterfly, Mariana wandering	U.S.A. (GU, MP)
C	11	R6	*Zaitzevia thermae*	Elmidae	Beetle, warm springs zaitzevian riffle	U.S.A. (MT)
			ARACHNIDS.			
C	1	R1	*Adelocosa anops*	Lycosidae	Spider, Kauai cave wolf or pe'e pe'e maka 'ole.	U.S.A. (HI)
C	2	R2	*Cicurina wartoni*	Dictynidae	Spider, Warton's cave	U.S.A. (TX)
			CRUSTACEANS.			
PE	2	R3	*Gammarus acherondytes*	Gammaridae	Amphipod, Illinois cave	U.S.A. (IL)
C	1	R1	*Spelaeorchestia koloana*	Talitridae	Amphipod, Kauai cave	U.S.A. (HI)
PE	2	R2	*Stygobromus (=Stygonectes) pecki*	Crangonyctidae	Amphipod, Peck's cave	U.S.A. (TX)
			FLOWERING PLANTS.			
C	11	R1	*Abronia alpina*	Nyctaginaceae	Ramshaw Meadows sand-verbena	U.S.A. (CA)
PE	2	R1	*Acanthomintha ilicifolia*	Lamiaceae	San Diego thornmint	U.S.A. (CA), Mexico
C	8	R2	*Allium gooddingii*	Liliaceae	Goodding's onion	U.S.A. (AZ, NM)
PE	2	R1	*Allium munzii*	Liliaceae	Munz's onion	U.S.A. (CA)
PT	8	R1	*Allium tuolumnense*	Liliaceae	Rawhide Hill onion	U.S.A. (CA)

TABLE 1.—CANDIDATE AND PROPOSED ANIMALS AND PLANTS—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
PE	3	R1	*Alopecurus aequalis* var. *sonomensis.*	Poaceae	Sonoma alopecurus	U.S.A. (CA)
PT	8	R1	*Arabis johnstonii*	Brassicaceae	Johnston's rock-cress	U.S.A. (CA)
C	5	R6	*Arabis pusilla*	Brassicaceae	Small rock-cress	U.S.A. (WY)
PT	8	R1	*Arctostaphylos myrtifolia*	Ericaceae	Ione manzanita	U.S.A. (CA)
PT	2	R1	*Arctostaphylos pallida*	Ericaceae	Pallid manzanita	U.S.A. (CA)
PT	2	R1	*Arenaria ursina*	Caryophyllaceae	Bear Valley sandwort	U.S.A. (CA)
C	2	R1	*Astelia waialealae*	Liliaceae	Pa'iniu	U.S.A. (HI)
PE	5	R1	*Astragalus clarianus*	Fabaceae	Clara Hunt's milk-vetch	U.S.A. (CA)
C	2	R6	*Astragalus desereticus*	Fabaceae	Deseret milk-vetch	U.S.A. (UT)
C	8	R6	*Astragalus equisolensis*	Fabaceae	Horseshoe milk-vetch	U.S.A. (UT)
C	3	R6	*Astragalus eremiticus* var. *ampullarioides.*	Fabaceae	Shem milk-vetch	U.S.A. (UT)
C	2	R6	*Astragalus holmgreniorum*	Fabaceae	Holmgren milk-vetch	U.S.A. (AZ, UT)
PE	2	R1	*Astragalus jaegerianus*	Fabaceae	Lane Mountain (=Coolgardie) milk-vetch.	U.S.A. (CA)
PE	9	R1	*Astragalus lentiginosus* var. *coachellae.*	Fabaceae	Coachella Valley milk-vetch	U.S.A. (CA)
PT	9	R1	*Astragalus lentiginosus* var. *micans*	Fabaceae	Shining (=shiny) milk-vetch	U.S.A. (CA)
PE	9	R1	*Astragalus lentiginosus* var. *piscinensis.*	Fabaceae	Fish Slough milk-vetch	U.S.A. (CA)
PT	3	R1	*Astragalus lentiginosus* var. *sesquimetralis.*	Fabaceae	Sodaville milk-vetch	U.S.A. (CA, NV)
PE	9	R1	*Astragalus magdalenae* var. *peirsonii.*	Fabaceae	Peirson's milk-vetch	U.S.A. (CA)
C	12	R1	*Astragalus oophorus* var. *clokeyanus.*	Fabaceae	Clokey's egg-vetch	U.S.A. (NV)
PE	3	R1	*Astragalus tener* var. *titi*	Fabaceae	Coastal dunes milk-vetch	U.S.A. (CA)
C	2	R6	*Astragalus tortipes*	Fabaceae	Sleeping Ute milk-vetch	U.S.A. (CO)
PE	8	R1	*Astragalus tricarinatus*	Fabaceae	Triple-ribbed milk-vetch	U.S.A. (CA)
PE	3	R1	*Atriplex coronata* var. *notatior*	Chenopodiaceae	San Jacinto Valley crownscale (=saltbush).	U.S.A. (CA)
PE	2	R1	*Berberis nevinii*	Berberidaceae	Nevin's barberry	U.S.A. (CA)
C	3	R1	*Bidens campylotheca* ssp. *waihoiensis.*	Asteraceae	Ko'oko'olau	U.S.A. (HI)
C	6	R1	*Bidens micrantha* ssp. *ctenophylla*	Asteraceae	Ko'oko'olau	U.S.A. (HI)
PT	2	R1	*Brodiaea filifolia*	Liliaceae	Thread-leaved brodiaea	U.S.A. (CA)
PE	2	R1	*Brodiaea pallida*	Liliaceae	Chinese Camp brodiaea	U.S.A. (CA)
C	8	R1	*Calochortus umpquaensis*	Liliaceae	Umpqua mariposa lily	U.S.A. (OR)
PE	2	R1	*Calyptridium pulchellum*	Portulacaceae	Mariposa pussy-paws	U.S.A. (CA)
C	2	R1	*Canavalia pubescens*	Fabaceae	'Awikiwiki	U.S.A. (HI)
PE	2	R1	*Carex albida*	Cyperaceae	White sedge	U.S.A. (CA)
PT	7	R1	*Carpenteria californica*	Saxifragaceae	Carpenteria	U.S.A. (CA)
C	5	R6	*Castilleja aquariensis*	Scrophulariaceae	Aquarius paintbrush	U.S.A. (UT)
C	11	R1	*Castilleja christii*	Scrophulariaceae	Christ's paintbrush	U.S.A. (ID)
PT	2	R1	*Castilleja cinerea*	Scrophulariaceae	Ash-gray paintbrush	U.S.A. (CA)
C	2	R2	*Castilleja elongata*	Scrophulariaceae	Tall paintbrush	U.S.A. (TX)
C	2	R4	*Catesbaea melanocarpa*	Rubiaceae	None	U.S.A. (PR, VI), Antigua, Barbuda, Guadeloupe
PT	2	R1	*Ceanothus ophiochilus*	Rhamnaceae	Vail Lake ceanothus	U.S.A. (CA)
C	9	R1	*Chlorogalum purpureum* var. *purpureum.*	Liliaceae	Purple amole	U.S.A. (CA)
C	3	R1	*Chlorogalum purpureum* var. *reductum.*	Liliaceae	Camatta Canyon amole	U.S.A. (CA)
C	5	R2	*Cimicifuga arizonica*	Ranunculaceae	Arizona bugbane	U.S.A. (AZ)
PE	6	R1	*Cirsium hydrophilum* var. *hydrophilum.*	Asteraceae	Suisun thistle	U.S.A. (CA)
C	2	R1	*Cirsium loncholepis*	Asteraceae	La Graciosa thistle	U.S.A. (CA)
PE	2	R1	*Clarkia imbricata*	Onagraceae	Vine Hill clarkia	U.S.A. (CA)
PT	8	R1	*Clarkia springvillensis*	Onagraceae	Springville clarkia	U.S.A. (CA)
C	3	R2	*Clematis hirsutissima* var. *arizonica*	Ranunculaceae	Arizona leatherflower	U.S.A. (AZ)
PE	5	R1	*Clermontia samuelii*	Campanulaceae	'Oha wai	U.S.A. (HI)
PE	3	R1	*Cordylanthus mollis* ssp. *mollis*	Scrophulariaceae	Soft bird's-beak	U.S.A. (CA)
C	2	R1	*Cyanea asplenifolia*	Campanulaceae	Haha	U.S.A. (HI)
PE	3	R1	*Cyanea copelandii* ssp. *haleakalaensis.*	Campanulaceae	Haha	U.S.A. (HI)
C	2	R1	*Cyanea eleeleensis*	Campanulaceae	Haha	U.S.A. (HI)
PE	2	R1	*Cyanea glabra*	Campanulaceae	Haha	U.S.A. (HI)

TABLE 1.—CANDIDATE AND PROPOSED ANIMALS AND PLANTS—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
PE	3	R1	*Cyanea hamatiflora* ssp. *hamatiflora*	Campanulaceae	Haha	U.S.A. (HI)
C	2	R1	*Cyanea kuhihewa*	Campanulaceae	Haha	U.S.A. (HI)
C	2	R1	*Cyanea obtusa*	Campanulaceae	Haha	U.S.A. (HI)
C	2	R1	*Cyrtandra filipes*	Gesneriaceae	Ha'iwale	U.S.A. (HI)
C	2	R1	*Cyrtandra oxybapha*	Gesneriaceae	Ha'iwale	U.S.A. (HI)
C	2	R1	*Cyrtandra sessilis*	Gesneriaceae	Ha'iwale	U.S.A. (HI)
C	2	R2	*Dalea tentaculoides*	Fabaceae	Gentry's indigobush	U.S.A. (AZ)
PE	2	R1	*Delphinium bakeri*	Ranunculaceae	Baker's larkspur	U.S.A. (CA)
PE	2	R1	*Delphinium luteum*	Ranunculaceae	Yellow larkspur	U.S.A. (CA)
PE	6	R1	*Dubautia plantaginea* ssp. *humilis*	Asteraceae	Na'ena'e	U.S.A. (HI)
C	3	R1	*Dubautia plantaginea* ssp. *magnifolia.*	Asteraceae	Na'ena'e	U.S.A. (HI)
PE	2	R1	*Dudleya stolonifera*	Crassulaceae	Laguna Beach liveforever	U.S.A. (CA)
C	6	R2	*Echinomastus erectocentrus* var. *acunensis.*	Cactaceae	Acuna cactus	U.S.A. (AZ), Mexico
C	8	R1	*Erigeron basalticus*	Asteraceae	Basalt daisy	U.S.A. (WA)
C	3	R1	*Erigeron decumbens* var. *decumbens.*	Asteraceae	Willamette daisy	U.S.A. (OR)
C	11	R2	*Erigeron lemmonii*	Asteraceae	Lemmon fleabane	U.S.A. (AZ)
C	2	R1	*Eriodictyon capitatum*	Hydrophyllaceae	Lompoc yerba santa	U.S.A. (CA)
PE	3	R1	*Eriogonum apricum* (incl. vars. *apricum* & *prostratum*).	Polygonaceae	Ione buckwheat (=Irish Hill buckwheat).	U.S.A. (CA)
C	5	R1	*Eriogonum argophyllum*	Polygonaceae	Sulphur Springs buckwheat	U.S.A. (NV)
C	5	R1	*Eriogonum kelloggii*	Polygonaceae	Red Mountain buckwheat	U.S.A. (CA)
PT	3	R1	*Eriogonum kennedyi* var. *austromontanum.*	Polygonaceae	Southern mountain wild buckwheat	U.S.A. (CA)
C	8	R2	*Festuca ligulata*	Poaceae	Guadalupe fescue	U.S.A. (TX), Mexico
PE	11	R1	*Fremontodendron mexicanum*	Sterculiaceae	Mexican flannelbush	U.S.A. (CA), Mexico
C	2	R1	*Fritillaria gentneri*	Liliaceae	Gentner's fritillaria (=Mission-bells)	U.S.A. (OR)
PT	8	R1	*Fritillaria striata*	Liliaceae	Greenhorn adobe-lily	U.S.A. (CA)
C	3	R6	*Gaura neomexicana* ssp. *coloradensis.*	Onagraceae	Colorado butterfly plant	U.S.A. (CO, NE, WY)
C	2	R1	*Geranium kauaiense*	Geraniaceae	Nohoanu	U.S.A. (HI)
C	5	R6	*Gilia caespitosa*	Polemoniaceae	Wonderland alice-flower (=Rabbit Valley gilia).	U.S.A. (UT)
PE	3	R1	*Hedyotis schlechtendahliana* var. *remyi.*	Rubiaceae	None	U.S.A. (HI)
C	5	R5	*Helenium virginicum*	Asteraceae	Virginia sneezeweed	U.S.A. (VA)
C	8	R2	*Helianthus paradoxus*	Asteraceae	Puzzle sunflower	U.S.A. (NM, TX)
PE	2	R1	*Hemizonia conjugens*	Asteraceae	Otay tarplant	U.S.A. (CA)
C	3	R1	*Hemizonia increscens* ssp. *villosa*	Asteraceae	Gaviota tarplant	U.S.A. (CA)
C	5	R2	*Hibiscus dasycalyx*	Malvaceae	Neches River rose-mallow	U.S.A. (TX)
C	2	R1	*Holocarpha macradenia*	Asteraceae	Santa Cruz tarplant	U.S.A. (CA)
PE	1	R1	*Kanaloa kahoolawensis*	Fabaceae	Kohe malama malama o Kanaloa	U.S.A. (HI)
PE	6	R1	*Labordia tinifolia* var. *lanaiensis*	Loganiaceae	Kamakahala	U.S.A. (HI)
PE	2	R1	*Labordia triflora*	Loganiaceae	Kamakahala	U.S.A. (HI)
C	5	R1	*Lathyrus biflorus*	Fabaceae	Two-flowered lathyrus	U.S.A. (CA)
C	5	R2	*Leavenworthia texana*	Brassicaceae	Texas golden gladecress	U.S.A. (TX)
C	5	R4	*Lesquerella stonensis*	Brassicaceae	Stones River bladderpod	U.S.A. (TN)
C	2	R2	*Lesquerella thamnophila*	Brassicaceae	Zapata bladderpod	U.S.A. (TX)
PE	3	R1	*Lilium pardalinum* ssp. *pitkinense*	Liliaceae	Pitkin Marsh lily	U.S.A. (CA)
C	3	R1	*Limnanthes floccosa* ssp. *grandiflora*	Limnanthaceae	Large-flowered wooly meadowfoam	U.S.A. (OR)
C	2	R1	*Lomatium cookii*	Apiaceae	Cook's lomatium	U.S.A. (OR)
PE	3	R1	*Lupinus citrinus* var. *deflexus*	Fabaceae	Mariposa lupine	U.S.A. (CA)
C	2	R1	*Lupinus nipomensis*	Fabaceae	Nipomo Mesa lupine	U.S.A. (CA)
C	2	R1	*Lysimachia venosa*	Primulaceae	None	U.S.A. (HI)
C	2	R1	*Melicope degeneri*	Rutaceae	Alani	U.S.A. (HI)
C	2	R1	*Melicope hiiakae*	Rutaceae	Alani	U.S.A. (HI)
C	2	R1	*Melicope macropus*	Rutaceae	Alani	U.S.A. (HI)
C	2	R1	*Melicope makahae*	Rutaceae	Alani	U.S.A. (HI)
PE	2	R1	*Melicope munroi*	Rutaceae	Alani	U.S.A. (HI)
C	2	R1	*Melicope paniculata*	Rutaceae	Alani	U.S.A. (HI)
PE	8	R1	*Mimulus shevockii*	Scrophulariaceae	Kelso Creek monkey-flower	U.S.A. (CA)
PE	3	R1	*Monardella linoides* ssp. *viminea*	Lamiaceae	Willowy monardella	U.S.A. (CA)
C	2	R1	*Myrsine mezii*	Myrsinaceae	Kolea	U.S.A. (HI)
C	8	R5	*Narthecium americanum*	Liliaceae	Bog asphodel	U.S.A. (DE, NC, NJ, NY, SC)
PT	2	R1	*Navarretia fossalis*	Polemoniaceae	Spreading navarretia	U.S.A. (CA), Mexico
Y	.....	R1	*Navarretia plieantha*	*** see ***	*Navarretia leucocephala* ssp. *plieantha.*	

TABLE 1.—CANDIDATE AND PROPOSED ANIMALS AND PLANTS—Continued

Status		Lead region	Scientific name	Family	Common name	Historic range
Category	Priority					
PT	2	R1	*Navarretia setiloba*	Polemoniaceae	Piute Mountains navarretia	U.S.A. (CA)
C	1	R1	*Nesogenes rotensis*	Verbenaceae	None	U.S.A. (MP)
PT	2	R1	*Nolina interrata*	Liliaceae	Dehesa bear-grass	U.S.A. (CA), Mexico
C	2	R1	*Ochrosia haleakalae*	Apocynaceae	Holei	U.S.A. (HI)
C	12	R1	*Opuntia whipplei* var. *multigeniculata*	Cactaceae	Blue Diamond cholla	U.S.A. (NV)
C	2	R1	*Osmoxylon mariannense*	Araliaceae	None	U.S.A. (MP)
C	11	R2	*Paronychia congesta*	Caryophyllaceae	Bushy whitlow-wort	U.S.A. (TX)
C	2	R2	*Pediocactus paradinei*	Cactaceae	Kaibab plains cactus	U.S.A. (AZ)
C	6	R2	*Pediocactus peeblesianus* var. *fickeiseniae.*	Cactaceae	Fickeisen plains cactus	U.S.A. (AZ)
PE	2	R6	*Pediocactus winkleri*	Cactaceae	Winkler cactus	U.S.A. (UT)
C	5	R6	*Penstemon debilis*	Scrophulariaceae	Parachute beardtongue	U.S.A. (CO)
C	5	R6	*Penstemon grahamii*	Scrophulariaceae	Graham beardtongue	U.S.A. (CO, UT)
C	5	R6	*Penstemon scariosus* var. *albifluvis*	Scrophulariaceae	White River beardtongue	U.S.A. (CO, UT)
C	2	R1	*Peperomia subpetiolata*	Piperaceae	'Ala 'ala wai nui	U.S.A. (HI)
C	11	R6	*Phacelia submutica*	Hydrophyllaceae	DeBeque phacelia	U.S.A. (CO)
C	5	R1	*Phlox hirsuta*	Polemoniaceae	Yreka phlox	U.S.A. (CA)
C	2	R1	*Phyllostegia bracteata*	Lamiaceae	None	U.S.A. (HI)
C	2	R1	*Phyllostegia helleri*	Lamiaceae	None	U.S.A. (HI)
C	2	R1	*Phyllostegia hispida*	Lamiaceae	None	U.S.A. (HI)
C	2	R1	*Phyllostegia imminuta*	Lamiaceae	None	U.S.A. (HI)
PE	8	R1	*Piperia yadonii*	Orchidaceae	Yadon's piperia	U.S.A. (CA)
C	2	R1	*Plagiobothrys hirtus*	Boraginaceae	Rough popcornflower	U.S.A. (OR)
PE	2	R1	*Plagiobothrys strictus*	Boraginaceae	Calistoga allocarya	U.S.A. (CA)
C	2	R1	*Platydesma remyi*	Rutaceae	None	U.S.A. (HI)
C	2	R1	*Pleomele forbesii*	Agavaceae	Hala pepe	U.S.A. (HI)
PE	2	R1	*Poa atropurpurea*	Poaceae	San Bernardino bluegrass	U.S.A. (CA)
PE	2	R1	*Poa napensis*	Poaceae	Napa bluegrass	U.S.A. (CA)
PE	2	R1	*Potentilla hickmanii*	Rosaceae	Hickman's potentilla	U.S.A. (CA)
C	2	R1	*Psychotria grandiflora*	Rubiaceae	Kopiko	U.S.A. (HI)
C	3	R1	*Psychotria hexandra* ssp. *oahuensis*	Rubiaceae	Kopiko	U.S.A. (HI)
C	2	R1	*Psychotria hobdyi*	Rubiaceae	Kopiko	U.S.A. (HI)
PE	2	R2	*Puccinellia parishii*	Poaceae	Parish's alkali grass	U.S.A. (AZ, CA, NM)
C	2	R1	*Ranunculus mauiensis*	Ranunculaceae	Makou	U.S.A. (HI)
C	2	R2	*Rumex orthoneurus*	Polygonaceae	Blumer's dock	U.S.A. (AZ)
C	2	R1	*Schiedea attenuata*	Caryophyllaceae	None	U.S.A. (HI)
C	3	R1	*Schiedea pubescens* var. *pubescens*	Caryophyllaceae	None	U.S.A. (HI)
C	2	R1	*Schiedea salicaria*	Caryophyllaceae	None	U.S.A. (HI)
C	5	R1	*Sedum eastwoodiae*	Crassulaceae	Red Mountain stonecrop	U.S.A. (CA)
C	9	R1	*Sidalcea hickmanii* ssp. *parishii*	Malvaceae	Parish's checkerbloom	U.S.A. (CA)
PE	2	R1	*Sidalcea keckii*	Malvaceae	Keck's checkermallow	U.S.A. (CA)
PE	3	R1	*Sidalcea oregana* ssp. *valida*	Malvaceae	Kenwood Marsh checkermallow	U.S.A. (CA)
PE	3	R1	*Sidalcea oregana* var. *calva*	Malvaceae	Wenatchee Mountains (=Oregon) checkermallow.	U.S.A. (WA)
C	6	R1	*Silene campanulata* ssp. *campanulata.*	Caryophyllaceae	Red Mountain catchfly (=campion)	U.S.A. (CA)
C	2	R1	*Stenogyne cranwelliae*	Lamiaceae	None	U.S.A. (HI)
C	2	R1	*Stenogyne kealiae*	Lamiaceae	None	U.S.A. (HI)
C	2	R1	*Tabernaemontana rotensis*	Apocynaceae	None	U.S.A. (GU, MP)
PE	2	R1	*Taraxacum californicum*	Asteraceae	California dandelion	U.S.A. (CA)
C	3	R1	*Thelypodium howellii* var. *spectabilis*	Brassicaceae	Howell's spectacular thelypody	U.S.A. (OR)
C	2	R1	*Thlaspi californicum*	Brassicaceae	Kneeland Prairie penny-cress	U.S.A. (CA)
PT	9	R1	*Trichostema austromontanum* ssp. *compactum.*	Lamiaceae	Hidden Lake bluecurls	U.S.A. (CA)
PE	2	R1	*Trifolium amoenum*	Fabaceae	Showy Indian clover	U.S.A. (CA)
PE	2	R1	*Trifolium trichocalyx*	Fabaceae	Monterey (=Del Monte) clover	U.S.A. (CA)
PT	8	R1	*Verbena californica*	Verbenaceae	Red Hills vervain	U.S.A. (CA)
C	1	R6	*Yermo xanthocephalus*	Asteraceae	Desert yellowhead	U.S.A. (WY)
C	2	R1	*Zanthoxylum oahuense*	Rutaceae	A'e	U.S.A. (HI)
C	11	R2	*Zanthoxylum parvum*	Rutaceae	Shinner's tickle-tongue	U.S.A. (TX)
			CONIFERS AND CYCADS.			
PT	3	R1	*Cupressus goveniana* ssp. *goveniana.*	Cupressaceae	Gowen cypress	U.S.A. (CA)
			FERNS AND ALLIES.			
C	2	R1	*Doryopteris takeuchii*	Pteridaceae	None	U.S.A. (HI)
C	2	R1	*Dryopteris tenebrosa*	Dryopteridaceae	None	U.S.A. (HI)
C	2	R1	*Microlepia mauiensis*	Dennstaedtiaceae	None	U.S.A. (HI)
C	2	R1	*Phlegmariurus stemmermanniae*	Lycopodiaceae	Lei lani firmoss	U.S.A. (HI)

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS

Status		Lead Region	Scientific name	Family	Common name	Historic range
Code	Expl.					
			MAMMALS.			
R	N	R2	*Conepatus leuconotus texensis*	Mustelidae	Skunk, Gulf Coast hog-nosed	U.S.A. (TX), Mexico
E	L	R2	*Panthera onca*	Felidae	Jaguar (U.S. pop.)	U.S.A. (AZ, CA, LA, NM, TX)
			BIRDS.			
E	L	R2	*Glaucidium brasilianum cactorum*	Strigidae	Pygmy-owl, cactus ferruginous (AZ pop.).	U.S.A. (AZ), Mexico
R	A	R2	*Glaucidium brasilianum cactorum*	Strigidae	Pygmy-owl, cactus ferruginous (TX pop.).	U.S.A. (TX), Mexico
T	L	R7	*Polysticta stelleri*	Anatidae	Eider, Steller's (AK breeding pop.)	U.S.A. (AK), Russia
			REPTILES.			
T	L	R3	*Nerodia erythrogaster neglecta*	Colubridae	Snake, copperbelly water (northern pop.).	U.S.A. (IN, MI, OH)
R	A	R3	*Nerodia erythrogaster neglecta*	Colubridae	Snake, copperbelly water (southern pop.).	U.S.A. (IL, IN, KY)
R	A	R1	*Phrynosoma mcallii*	Iguanidae	Lizard, flat-tailed horned	U.S.A. (AZ, CA), Mexico
			AMPHIBIANS.			
E	L	R2	*Ambystoma tigrinum stebbinsi*	Ambystomatidae	Salamander, Sonoran tiger	U.S.A. (AZ), Mexico
T	L	R4	*Eleutherodactylus cooki*	Leptodactylidae	Guajón or rock frog	U.S.A. (PR)
E	L	R2	*Eurycea sosorum*	Plethodontidae	Salamander, Barton Springs	U.S.A. (TX)
T	L	R1	*Rana aurora draytonii*	Ranidae	Frog, California red-legged	U.S.A. (CA), Mexico
R	A	R2	*Rana subaquavocalis*	Ranidae	Frog, Ramsey Canyon leopard	U.S.A. (AZ)
			FISHES.			
R	X	R1	*Gila bicolor* ssp.	Cyprinidae	Chub, High Rock Spring tui	U.S.A. (CA, NV)
R	A	R1	*Salvelinus confluentus*	Salmonidae	Trout, bull (coastal/Puget Sound pop.).	U.S.A. (CA, ID, MT, NV, OR, WA), Canada
R	A	R1	*Salvelinus confluentus*	Salmonidae	Trout, bull (Jarbidge R. pop.)	U.S.A. (CA, ID, MT, NV, OR, WA), Canada
R	A	R1	*Salvelinus confluentus*	Salmonidae	Trout, bull (Saskatchewan R. pop.)	U.S.A. (CA, ID, MT, NV, OR, WA), Canada
			CLAMS.			
E	L	R4	*Alasmidonta atropurpurea* (Rafinesque, 1831).	Unionidae	Elktoe, Cumberland	U.S.A. (KY, TN)
E	L	R4	*Epioblasma brevidens* (I. Lea, 1831)	Unionidae	Combshell, Cumberlandian	U.S.A. (AL, KY, TN, VA)
E	L	R4	*Epioblasma capsaeformis* (I. Lea, 1834).	Unionidae	Mussel, oyster	U.S.A. (AL, KY, TN, VA)
E	L	R4	*Quadrula cylindrica strigillata* (B.H. Wright, 1898).	Unionidae	Rabbitsfoot, rough	U.S.A. (KY, TN, VA)
E	L	R4	*Villosa perpurpurea* (I. Lea, 1861)	Unionidae	Bean, purple	U.S.A. (TN, VA)
			INSECTS.			
R	A	R1	*Pleocoma conjugens conjugens*	Scarabaeidae	Beetle, Santa Cruz rain	U.S.A. (CA)
R	X	R1	*Drosophila alsophila*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
R	X	R1	*Drosophila psilotarsalis*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
R	X	R1	*Drosophila toxochaeta*	Drosophilidae	Pomace fly, [no common name]	U.S.A. (HI)
E	L	R1	*Euphydryas editha quino (=E. e. wrighti).*	Nymphalidae	Butterfly, Quino checkerspot	U.S.A. (CA), Mexico
R	X	R1	*Euploea eleutho*	Danaidae	Butterfly, Marianas euploea	U.S.A. (GU, MP)
E	L	R1	*Polyphylla barbata*	Scarabaeidae	Beetle, Mount Hermon June	U.S.A. (CA)
E	L	R1	*Pyrgus ruralis lagunae*	Hesperiidae	Skipper, Laguna Mountains	U.S.A. (CA)
E	L	R1	*Trimerotropis infantilis*	Acrididae	Grasshopper, Zayante band-winged	U.S.A. (CA)
			CRUSTACEANS.			
E	L	R1	*Branchinecta sandiegoensis*	Branchinectidae	Fairy shrimp, San Diego	U.S.A. (CA)
			FLOWERING PLANTS.			
E	L	R1	*Achyranthes mutica*	Amaranthaceae	None	U.S.A. (HI)
E	L	R1	*Alsinidendron lychnoides*	Caryophyllaceae	Kuawawaenohu	U.S.A. (HI)
E	L	R1	*Alsinidendron viscosum*	Caryophyllaceae	None	U.S.A. (HI)
E	L	R1	*Amaranthus brownii*	Amaranthaceae	None	U.S.A. (HI)
E	L	R1	*Arabis hoffmannii*	Brassicaceae	Hoffmann's rock-cress	U.S.A. (CA)
E	L	R1	*Arctostaphylos confertiflora*	Ericaceae	Santa Rosa Island manzanita	U.S.A. (CA)
E	L	R1	*Arctostaphylos glandulosa* ssp. *crassifolia.*	Ericaceae	Del Mar manzanita	U.S.A. (CA), Mexico

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS—Continued

Status		Lead Re-gion	Scientific name	Family	Common name	Historic range
Code	Expl.					
R	A	R1	*Arctostaphylos imbricata*	Ericaceae	San Bruno Mountain manzanita	U.S.A. (CA)
E	L	R1	*Astragalus brauntonii*	Fabaceae	Braunton's milk-vetch	U.S.A. (CA)
T	L	R1	*Baccharis vanessae*	Asteraceae	Encinitis baccharis (=coyote bush)	U.S.A. (CA)
E	L	R1	*Berberis pinnata* ssp. *insularis*	Berberidaceae	Island barberry	U.S.A. (CA)
E	L	R1	*Calystegia stebbinsii*	Convolvulaceae	Stebbins' morning-glory	U.S.A. (CA)
T	L	R1	*Castilleja campestris* ssp. *succulenta*	Scrophulariaceae	Fleshy owl's-clover	U.S.A. (CA)
T	L	R1	*Castilleja levisecta*	Scrophulariaceae	Golden paintbrush	U.S.A. (OR, WA), Canada
E	L	R1	*Castilleja mollis*	Scrophulariaceae	Soft-leaved paintbrush	U.S.A. (CA)
E	L	R1	*Ceanothus roderickii*	Rhamnaceae	Pine Hill ceanothus	U.S.A. (CA)
E	L	R1	*Cenchrus agrimonioides*	Poaceae	Kamanomano (=agrimony sandbur)	U.S.A. (HI)
E	L	R1	*Cercocarpus traskiae*	Rosaceae	Catalina Island mountain-mahogany	U.S.A. (CA)
E	L	R1	*Chamaesyce herbstii*	Euphorbiaceae	'Akoko	U.S.A. (HI)
T	L	R1	*Chamaesyce hooveri*	Euphorbiaceae	Hoover's spurge	U.S.A. (CA)
E	L	R1	*Chamaesyce rockii*	Euphorbiaceae	'Akoko	U.S.A. (HI)
R	A	R1	*Cirsium rhothophilum*	Asteraceae	Surf thistle	U.S.A. (CA)
E	L	R1	*Chorizanthe orcuttiana*	Polygonaceae	Orcutt's spineflower	U.S.A. (CA)
R	A	R1	*Clarkia lingulata*	Onagraceae	Merced clarkia	U.S.A. (CA)
E	L	R1	*Clermontia drepanomorpha*	Campanulaceae	'Oha wai	U.S.A. (HI)
R	A	R4	*Coccoloba rugosa*	Polygonaceae	None	U.S.A. (PR)
E	L	R4	*Cordia bellonis*	Boraginaceae	None	U.S.A. (PR)
R	N	R1	*Corethrogyne filaginifolia* var. *linifolia*	Asteraceae	Del Mar sand aster	U.S.A. (CA)
E	L	R1	*Cyanea acuminata*	Campanulaceae	Haha	U.S.A. (HI)
E	L	R1	*Cyanea dunbarii*	Campanulaceae	Haha	U.S.A. (HI)
E	L	R1	*Cyanea grimesiana* ssp. *grimesiana*	Campanulaceae	Haha	U.S.A. (HI)
E	L	R1	*Cyanea (=Rollandia) humboldtiana*	Campanulaceae	Haha	U.S.A. (HI)
E	L	R1	*Cyanea koolauensis*	Campanulaceae	Haha	U.S.A. (HI)
E	L	R1	*Cyanea longiflora*	Campanulaceae	Haha	U.S.A. (HI)
E	L	R1	*Cyanea platyphylla*	Campanulaceae	Haha	U.S.A. (HI)
T	L	R1	*Cyanea recta*	Campanulaceae	Haha	U.S.A. (HI)
E	L	R1	*Cyanea remyi*	Campanulaceae	Haha	U.S.A. (HI)
E	L	R1	*Cyanea (=Rollandia) st-johnii*	Campanulaceae	Haha	U.S.A. (HI)
E	L	R1	*Cyperus trachysanthos*	Cyperaceae	Pu'uka'a	U.S.A. (HI)
E	L	R1	*Cyrtandra cyaneoides*	Gesneriaceae	Mapele	U.S.A. (HI)
E	L	R1	*Cyrtandra dentata*	Gesneriaceae	Ha'iwale	U.S.A. (HI)
E	L	R1	*Cyrtandra subumbellata*	Gesneriaceae	Ha'iwale	U.S.A. (HI)
E	L	R1	*Cyrtandra viridiflora*	Gesneriaceae	Ha'iwale	U.S.A. (HI)
E	L	R1	*Delissea rivularis*	Campanulaceae	'Oha	U.S.A. (HI)
E	L	R1	*Delissea subcordata*	Campanulaceae	'Oha	U.S.A. (HI)
E	L	R1	*Delissea undulata*	Campanulaceae	None	U.S.A. (HI)
R	A	R1	*Downingia concolor* var. *brevior*	Campanulaceae	Cuyamaca Lake downingia	U.S.A. (CA)
T	L	R1	*Dudleya abramsii* ssp. *parva*	Crassulaceae	Conejo dudleya	U.S.A. (CA)
R	A	R1	*Dudleya blochmaniae* ssp. *brevifolia*	Crassulaceae	Short-leaved dudleya	U.S.A. (CA)
R	A	R1	*Dudleya blochmaniae* ssp. *insularis*	Crassulaceae	Santa Rosa Island dudleya	U.S.A. (CA)
T	L	R1	*Dudleya cymosa* ssp. *marcescens*	Crassulaceae	Marcescent dudleya	U.S.A. (CA)
T	L	R1	*Dudleya cymosa* ssp. *ovatifolia*	Crassulaceae	Santa Monica Mountains dudleya	U.S.A. (CA)
R	A	R1	*Dudleya densiflora*	Crassulaceae	San Gabriel Mountains dudleya	U.S.A. (CA)
T	L	R1	*Dudleya nesiotica*	Crassulaceae	Santa Cruz Island dudleya	U.S.A. (CA)
R	A	R1	*Dudleya* sp. nov. /ined. ''East Point''	Crassulaceae	Munchkin dudleya	U.S.A. (CA)
T	L	R1	*Dudleya verityi*	Crassulaceae	Verity's dudleya	U.S.A. (CA)
E	L	R1	*Eragrostis fosbergii*	Poaceae	Fosberg's love grass	U.S.A. (HI)
E	L	R1	*Euphorbia haeleeleana*	Euphorbiaceae	'Akoko	U.S.A. (HI)
E	L	R1	*Fremontodendron californicum* ssp. *decumbens*.	Sterculiaceae	Pine Hill flannelbush	U.S.A. (CA)
E	L	R1	*Galium buxifolium*	Rubiaceae	Island bedstraw	U.S.A. (CA)
E	L	R1	*Galium californicum* ssp. *sierrae*	Rubiaceae	El Dorado bedstraw	U.S.A. (CA)
E	L	R1	*Gardenia mannii*	Rubiaceae	Nanu	U.S.A. (HI)
E	L	R1	*Gilia tenuiflora* ssp. *hoffmannii*	Polemoniaceae	Hoffmann's gilia	U.S.A. (CA)
T	L	R1	*Helianthemum greenei*	Cistaceae	Island rush-rose	U.S.A. (CA)
T	L	R4	*Helianthus eggertii*	Asteraceae	Eggert's sunflower	U.S.A. (AL, KY, TN)
R	A	R1	*Heuchera maxima*	Saxifragaceae	Island alumroot	U.S.A. (CA)
E	L	R1	*Hibiscadelphus giffardianus*	Malvaceae	Hau kuahiwi	U.S.A. (HI)
E	L	R1	*Hibiscadelphus hualalaiensis*	Malvaceae	Hau kuahiwi	U.S.A. (HI)
E	L	R1	*Hibiscadelphus woodii*	Malvaceae	Hau kuahiwi	U.S.A. (HI)
E	L	R1	*Hibiscus waimeae* ssp. *hannerae*	Malvaceae	Koki'o ke'oke'o	U.S.A. (HI)
E	L	R1	*Isodendrion laurifolium*	Violaceae	Aupaka	U.S.A. (HI)
T	L	R1	*Isodendrion longifolium*	Violaceae	Aupaka	U.S.A. (HI)
E	L	R4	*Juglans jamaicensis*	Juglandaceae	Nogal or West Indian walnut	U.S.A. (PR), Cuba, Hispaniola
E	L	R1	*Kokia kauaiensis*	Malvaceae	Koki'o	U.S.A. (HI)

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS—Continued

Status		Lead Re-gion	Scientific name	Family	Common name	Historic range
Code	Expl.					
E	L	R1	*Labordia cyrtandrae*	Loganiaceae	Kamakahala	U.S.A. (HI)
E	L	R1	*Labordia tinifolia* var. *wahiawaensis*	Loganiaceae	Kamakahala	U.S.A. (HI)
E	L	R1	*Lasthenia conjugens*	Asteraceae	Contra Costa goldfields	U.S.A. (CA)
E	L	R1	*Lepidium arbuscula*	Brassicaceae	‘Anaunau	U.S.A. (HI)
E	L	R4	*Lesquerella perforata*	Brassicaceae	Spring Creek bladderpod	U.S.A. (TN)
E	L	R1	*Lessingia germanorum* (=var. *germanorum*).	Asteraceae	San Francisco lessingia	U.S.A. (CA)
E	L	R2	*Lilaeopsis schaffneriana* ssp. *recurva*.	Apiaceae	Huachuca water-umbel	U.S.A. (AZ), Mexico
R	A	R1	*Limnanthes gracilis* ssp. *parishii*	Limnanthaceae	Parish’s meadowfoam	U.S.A. (CA)
E	L	R1	*Lithophragma maximum*	Saxifragaceae	San Clemente Island woodland-star	U.S.A. (CA)
E	L	R1	*Lobelia gaudichaudii* ssp. *koolauensis*.	Campanulaceae	None	U.S.A. (HI)
E	L	R1	*Lobelia monostachya*	Campanulaceae	None	U.S.A. (HI)
E	L	R1	*Lysimachia maxima (=ternifolia)*	Primulaceae	None	U.S.A. (HI)
E	L	R1	*Malacothamnus fasciculatus* var. *nesioticus*.	Malvaceae	Santa Cruz Island bush-mallow	U.S.A. (CA)
E	L	R1	*Malacothrix indecora*	Asteraceae	Santa Cruz Island malocothrix	U.S.A. (CA)
E	L	R1	*Malacothrix squalida*	Asteraceae	Island malacothrix	U.S.A. (CA)
E	L	R1	*Melicope saint-johnii*	Rutaceae	Alani	U.S.A. (HI)
E	L	R1	*Melicope zahlbruckneri*	Rutaceae	Alani	U.S.A. (HI)
E	L	R1	*Myrsine juddii*	Myrsinaceae	Kolea	U.S.A. (HI)
T	L	R1	*Myrsine linearifolia*	Myrsinaceae	None	U.S.A. (HI)
E	L	R1	*Navarretia leucocephala* ssp. *pauciflora*.	Polemoniaceae	Few-flowered navarretia	U.S.A. (CA)
E	L	R1	*Navarretia leucocephala* ssp. *plieantha*.	Polemoniaceae	Many-flowered navarretia	U.S.A. (CA)
T	L	R1	*Neostapfia colusana*	Poaceae	Colusa grass	U.S.A. (CA)
E	L	R1	*Neraudia ovata*	Urticaceae	None	U.S.A. (HI)
T	L	R1	*Orcuttia inaequalis*	Poaceae	San Joaquin orcutt grass	U.S.A. (CA)
E	L	R1	*Orcuttia pilosa*	Poaceae	Hairy (=pilose) orcutt grass	U.S.A. (CA)
T	L	R1	*Orcuttia tenuis*	Poaceae	Slender orcutt grass	U.S.A. (CA)
E	L	R1	*Orcuttia viscida*	Poaceae	Sacramento orcutt grass	U.S.A. (CA)
E	L	R1	*Panicum niihauense*	Poaceae	Lau ‘ehu	U.S.A. (HI)
E	L	R1	*Parvisedum leiocarpum*	Crassulaceae	Lake County stonecrop	U.S.A. (CA)
E	L	R1	*Pentachaeta lyonii*	Asteraceae	Lyon’s pentachaeta	U.S.A. (CA)
E	L	R1	*Phacelia insularis* var. *insularis*	Hydrophyllaceae	Island phacelia	U.S.A. (CA)
E	L	R1	*Phyllostegia hirsuta*	Lamiaceae	None	U.S.A. (HI)
E	L	R1	*Phyllostegia kaalaensis*	Lamiaceae	None	U.S.A. (HI)
E	L	R1	*Phyllostegia knudsenii*	Lamiaceae	None	U.S.A. (HI)
E	L	R1	*Phyllostegia parviflora*	Lamiaceae	None	U.S.A. (HI)
E	L	R1	*Phyllostegia racemosa*	Lamiaceae	Kiponapona	U.S.A. (HI)
E	L	R1	*Phyllostegia velutina*	Lamiaceae	None	U.S.A. (HI)
E	L	R1	*Phyllostegia warshaueri*	Lamiaceae	None	U.S.A. (HI)
E	L	R1	*Phyllostegia wawrana*	Lamiaceae	None	U.S.A., (HI)
E	L	R1	*Platanthera holochila*	Orchidaceae	None	U.S.A. (HI)
E	L	R1	*Pleomele hawaiiensis*	Liliaceae	Hala pepe	U.S.A. (HI)
E	L	R1	*Pritchardia aylmer-robinsonii*	Arecaceae	Wahane (=hawane or lo‘ulu)	U.S.A. (HI)
E	L	R1	*Pritchardia kaalae*	Arecaceae	Lo‘ulu	U.S.A. (HI)
E	L	R1	*Pritchardia napaliensis*	Arecaceae	Lo‘ulu	U.S.A. (HI)
E	L	R1	*Pritchardia remota*	Arecaceae	Lo‘ulu	U.S.A. (HI)
E	L	R1	*Pritchardia schattaueri*	Arecaceae	Lo‘ulu	U.S.A. (HI)
E	L	R1	*Pritchardia viscosa*	Arecaceae	Lo‘ulu	U.S.A. (HI)
E	L	R1	*Pseudobahia bahiifolia*	Asteraceae	Hartweg’s golden sunburst	U.S.A. (CA)
T	L	R1	*Pseudobahia peirsonii*	Asteraceae	San Joaquin adobe sunburst	U.S.A. (CA)
E	L	R1	*Sanicula purpurea*	Apiaceae	None	U.S.A. (HI)
E	L	R1	*Schiedea helleri*	Caryophyllaceae	None	U.S.A. (HI)
E	L	R1	*Schiedea hookeri*	Caryophyllaceae	None	U.S.A. (HI)
E	L	R1	*Schiedea kauaiensis*	Caryophyllaceae	None	U.S.A. (HI)
E	L	R1	*Schiedea kealiae*	Caryophyllaceae	Ma‘oli‘oli	U.S.A. (HI)
E	L	R1	*Schiedea membranacea*	Caryophyllaceae	None	U.S.A. (HI)
E	L	R1	*Schiedea nuttallii*	Caryophyllaceae	None	U.S.A. (HI)
E	L	R1	*Schiedea sarmentosa*	Caryophyllaceae	None	U.S.A. (HI)
E	L	R1	*Schiedea stellarioides*	Caryophyllaceae	Laulihilihi (=ma‘oli‘oli)	U.S.A. (HI)
E	L	R1	*Schiedea verticillata*	Caryophyllaceae	None	U.S.A. (HI)
T	M	R6	*Sclerocactus (=Echinocactus, =Pediocactus) brevispinus (=glaucus)*.	Cactaceae	Pariette cactus	U.S.A. (UT)
T	L	R1	*Senecio layneae*	Asteraceae	Layne’s butterweed	U.S.A. (CA)
E	L	R1	*Sibara filifolia*	Brassicaceae	Santa Cruz Island rockcress	U.S.A. (CA)

TABLE 2.—FORMER CANDIDATE AND FORMER PROPOSED ANIMALS AND PLANTS—Continued

Status		Lead Region	Scientific name	Family	Common name	Historic range
Code	Expl.					
E	L	R1	*Sicyos alba*	Cucurbitaceae	'Anunu	U.S.A. (HI)
E	L	R2	*Spiranthes delitescens*	Orchidaceae	Canelo Hills ladies'-tresses	U.S.A. (AZ)
E	L	R1	*Thysanocarpus conchuliferus*	Brassicaceae	Santa Cruz Island lacepod (=fringepod).	U.S.A. (CA)
E	L	R1	*Trematolobelia singularis*	Campanulaceae	None	U.S.A. (HI)
E	L	R1	*Tuctoria greenei*	Poaceae	Greene's tuctoria (=orcutt grass)	U.S.A. (CA)
T	L	R1	*Verbesina dissita*	Asteraceae	Big-leaved crownbeard	U.S.A. (CA), Mexico
E	L	R1	*Viola kauaiensis* var. *wahiawaensis*	Violaceae	Nani wai'ale'ale	U.S.A. (HI)
E	L	R1	*Viola oahuensis*	Violaceae	None	U.S.A. (HI)
E	L	R1	*Zanthoxylum dipetalum* var. *tomentosum*.	Rutaceae	A'e	U.S.A. (HI)

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federal register

Friday
September 19, 1997

Part VI

Department of Education

Student Assistance General Provisions; Notice

DEPARTMENT OF EDUCATION

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of deadline dates for institutions to use designated electronic processes in order to meet administrative capability requirements for participation in the Student Financial Assistance Programs authorized by title IV of the Higher Education Act of 1965, as amended (HEA).

SUMMARY: In accordance with the provisions of 34 CFR 668.16(o), the Secretary gives notice to institutions of the designated electronic processes in which they must participate, and the respective deadline dates. Table A provides a listing, with deadline dates, of those designated electronic processes. Table B provides institutions with technical hardware and software specifications for both current and future levels of participation in the designated electronic processes.

As provided for by the regulation, the Secretary considers an institution that fails to participate in one or more of the electronic processes listed in this notice by the respective deadline date for that process, to lack administrative capability to administer the title IV, HEA programs properly.

FOR FURTHER INFORMATION CONTACT:

1. *Title IV Federal Student Aid Program Policy:* Jacquelyn C. Butler, U.S. Department of Education, 600 Independence Avenue, S.W. (ROB–3, Room 3045), Washington, DC 20202–5447. Telephone: (202) 708–8242.

2. *Title IV Wide Area Network (TIV WAN):* Title IV WAN Customer Service, P.O. Box 30, Iowa City, IA 52244. Telephone: 1–800–615–1189

3. *''Info for Financial Aid Professionals'' website or the Student Financial Assistance Bulletin Board System (SFA BBS):* Customer Support Branch, U.S. Department of Education, 600 Independence Avenue, SW. (ROB–3, Room 3108A), Washington, DC 20202–5231. Telephone: 1–800–433–7327.

4. *Electronic Application for Approval to Participate in Federal Student Aid Programs:* Patricia Patterson, Institutional Participation and Oversight Services, U.S. Department of Education, 600 Independence Avenue, SW. (ROB–3, Room 3682), Washington, DC 20202–5300. Telephone: (202) 260–5742.

5. *Fiscal Operations Report and Application to Participate (FISAP):* Campus Based Programs State Representatives, Institutional Financial Management Division, U.S. Department of Education, 600 Independence Avenue, SW. (ROB–3, Room 4714), Washington, DC 20020–5458. Telephone: (202) 708–7741.

6. *Federal Pell Grant Reporting:* Financial Management Specialists, Institutional Financial Management Division, 600 Independence Avenue, SW. (ROB–3, Room 4714), Washington, DC 20202–5458. Telephone: (202) 708–9807.

7. *National Student Loan Data System (NSLDS):* F. Lynn Alexander, U.S. Department of Education, 600 Independence Avenue, SW. (ROB–3, Room 4520), Washington, DC 20202–5259. Telephone: (202) 708–8125.

8. *Project EASI (Easy Access for Students and Institutions):* Fred Sellers, U.S. Department of Education, 600 Independence Avenue, SW. (ROB–3, Room 3045), Washington, DC 20202–5447. Telephone: (202) 708–8242.

Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–877–8339 between 9 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Vicki Wilson, U.S. Department of Education, 600 Independence Avenue, SW., (ROB–3, Room 3030), Washington, DC 20202–5352. Telephone: (202) 708–8619.

SUPPLEMENTARY INFORMATION: On November 29, 1996, the Secretary published final regulations in the **Federal Register** (61 FR 60603) that require institutions to participate in the electronic processes that the Secretary identifies and provides during a processing year in order to improve the delivery of title IV, HEA program funds to students and institutions and to protect further the Federal fiscal interest. An institution will be able to use software provided by the Secretary or software developed by the institution, or its vendor, in accordance with specifications provided by the Secretary. The Secretary believes that the savings and benefits from improved business processes made possible by using these electronic processes will more than offset any necessary initial investments by both the Department of Education (Department) and by institutions. To achieve these savings and benefits, it is essential that, to the extent practicable, electronic processes and, in the future, magnetic tape and cartridge data submissions, replace paper processes at both the Department and institutions. The Secretary also believes that most institutions already have the necessary equipment and technical expertise to use these processes, and institutions that have to purchase or replace equipment to meet the standards will be making an investment that will improve their institutional processes at minimal cost.

The Secretary believes that use of these electronic processes is also essential to the implementation of Project EASI. Project EASI is an initiative of the Secretary to pursue a collaborative effort among a diverse group of government, business, and educational leaders to develop an integrated student aid delivery system available not only to students and their families but also institutions, State agencies, and others.

As part of Project EASI, the Secretary is joining with other partners in the student aid delivery system in the development of data standards and standards for electronic transmission of data. Electronic data interchange (EDI) standards of the American National Standards Institute now exist for numerous applications relevant to the student aid delivery system. They include electronic payments, invoices, purchase orders, student transcripts, enrollment verifications, student loan applications, and transfer and status verifications. Using the EDI process, the Secretary with other partners in the student aid delivery system, will provide agreed upon data standards that can be updated as new needs arise. The Secretary believes that EDI standards are an important basis to achieving systems integration and will participate in their development and implementation for the title IV, HEA programs. Additional information about Project EASI can be found at http://easi.ed.gov on the Project EASI World Wide Web home page.

This notice also furthers the implementation of the Secretary's initiatives to reduce burden and improve program accountability by using electronic processes to achieve an integrated student aid delivery system for students and institutions. The Secretary believes that using these electronic processes is essential to simplifying program administration, improving program accountability, and providing institutions with the experience necessary to begin developing an expertise in using the electronic processes that the Department provides. This expertise is essential to the implementation of additional electronic processes that the Secretary expects to use in administering the title IV, HEA programs.

In order to assist institutions with their implementation of these designated processes, the Secretary will be offering a series of informational and hands-on training activities. On October 16, 1997, the Department will broadcast another in its series of video-conferences. That video-conference called, ''SFAP Update: The 1998–99 FAFSA and More,'' will focus on the electronic requirements contained in this notice as well as on changes to the federal student aid delivery system for the 1998–99 award year. In November and December of this year, the Department will, once again, present three on-site conferences where institutions can learn about the electronic processes required by this notice as well as other electronic services available from the Department. The first of these conferences, ''A Second Decade of Partnership Through Electronics,'' will be held in St. Paul, Minnesota from November 4 through November 6. The second will be in Seattle, Washington from November 17 until November 19. The final conference will be from December 16 through December 18 in Boston, Massachusetts. For additional information on these conferences, visit our website at http://edeworkshop.walcoff.com.

The conference sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the conference (e.g., interpreting service, assistive listening device, or materials in an alternate format) should notify Vicki Wilson, U.S. Department of Education, 600 Independence Avenue, SW., (ROB–3, Room 3030), Washington, DC 20202–5352, Telephone: (202) 708–8619, at least two weeks before the scheduled conference date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Finally, the Department will begin training in February 1998 throughout the country on ''The Electronic Financial Aid Office'' focusing on the uses of electronics in the administration of student financial aid programs.

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Note: The official version of this document is the document published in the **Federal Register**.

Table A: Designated Processes and Deadline Dates

This table provides a listing of the electronic processes, and their respective deadline dates, in which institutions must participate in order to be considered administratively capable to participate in the Title IV student assistance programs. The Secretary will provide additional details on these requirements in a letter that will be sent to all participating institutions.

Deadline date	Designated electronic processes
January 1, 1998	1. Participate in the Title IV Wide Area Network (TIV WAN). 2. For the 1998–99 Processing Year [1] and Beyond: a. Receipt of Institutional Student Information Records (ISIRs).[2] b. Adding Your Institution to the Central Processing System Record (CPS). c. On-line Access to the National Student Loan Data System (NSLDS).
July 1, 1998	1. Access to the ''Info for Financial Aid Professionals'' website or the Student Financial Assistance Bulletin Board System (SFA BBS). 2. Submission of the Application for Approval to Participate in Federal Student Aid Programs (recertification, reinstatement, and changes) through the Internet. 3. Submission of the Fiscal Operations Report and Application to Participate (FISAP) to the Title IV Wide Area Network (TIV WAN). Diskettes will be eliminated.
July 1, 1999	1. For the 1999–2000 Award Year and Beyond: Report Federal Pell Grant Payments Electronically or on Magnetic Tape or Cartridge to the Title IV Wide Area Network (TIV WAN). Diskettes will be eliminated. 2. Submit Student Status Confirmation Report (SSCR) data Electronically or on Magnetic Tape or Cartridge to the National Student Loan Data System (NSLDS). Diskettes will be eliminated. 3. Submit Federal Perkins Loan Data Electronically or on Magnetic Tape or Cartridge to the National Student Loan Data System (NSLDS). Diskettes will be eliminated.

[1] The application processing cycle lasts 18 months. For the 1998–99 award year, application processing begins in January 1998 and applications for that year will be accepted until June 30, 1999. (See The 1997–98 Counselor's Handbook for Postsecondary Schools, page 19.)

[2] The Secretary realizes that processing title IV aid upon the receipt of an ISIR, rather than the paper Student Aid Report (SAR), may be new for some institutions. In order to provide these institutions sufficient time to implement electronic procedures to receive ISIRs, the Secretary will not assess any penalties against an institution that is not able to comply with this requirement on January 1, 1998. However, beginning July 1, 1998, all institutions are expected to be receiving ISIRs electronically for any title IV applicant who has listed that institution on the applicant record in the CPS.

Technical Specifications

The technical specifications table that follows provides institutions with information regarding hardware and software requirements that will enable them to participate in these designated electronic processes. Some of the specifications, while not needed to meet the current requirements designated in this notice, will be required in future years as the title IV student aid programs delivery system is upgraded and enhanced. Therefore, institutions should include in their automated data processing budgets, on a regular basis, plans for upgrades and enhancements to their systems.

The table includes two columns of specifications. The left column provides information on the current minimum configuration needed in order for an

institution to maintain a basic level of electronic efficiency. The right column provides information on the configuration that will be needed to support the electronic requirements beginning in January 1999 as designated in this notice. Although many institutions are able to participate electronically using the current minimum configuration, it is recommended that institutions that need to acquire resources in order to meet the requirements of this notice invest in the equipment and software that will be needed in the future (January 1999). Schools that currently participate electronically should prepare to upgrade their equipment and software in time to meet the January 1999 requirements. When reviewing these specifications, institutions should be aware that capacity requirements (processor speed, RAM, hard drive storage, etc.) are greatly affected by specific factors at each institution, including which EDExpress functions the school uses, number of records processed, and institutional database interfaces.

Finally, institutions should particularly note that, beginning on January 1, 1999, for the 1999–2000 processing year, the Department's electronic processes will require a Windows 95 or Windows NT operating system. Neither the Disk Operating System (DOS) or earlier versions of Windows will be supported.

TABLE B.—TECHNICAL SPECIFICATIONS

	Current minimum configuration (depending upon volume and usage)	Minimum configuration required by January 1999
Equipment	IBM or fully IBM-compatible PC	IBM or fully IBM-compatible PC.
	66 MHz Processor 486DX2	200 MHz Pentium Processor or comparable.
	16MB RAM	64MB RAM.
	300MB Hard Disk Space	4.0 GB SCSI Hard Drive.
	14,400 bps or higher baud Hayes or comparable Modem.	56K Analog Modem.
	3.5″/1.44MB Diskette Drive	3.5″/1.44MB Diskette Drive.
	SVGA Monitor	SVGA Monitor.
	Standard Keyboard	Windows 95 Keyboard.
	Printer capable of printing on standard paper (8½″ x 11″).	Laser printer capable of printing on standard paper (8½″ x 11″).
	4x CD–ROM Drive with sound board*	12x CD–ROM Drive with sound board.*
Software	MS–DOS version 6.2 or higher; Windows 3.1, 3.11 or 95.	32 bit operating system (Windows 95 or Windows NT 4.x).
	Internet Service Provider (ISP).**	Internet Service Provider (ISP).**
	Netscape Navigator 3.0 or 3.01 (domestic) or web browser.***.	Netscape Navigator 3.0 or 3.01 (domestic) or web browser.***
Phone Line	Dedicated phone line	Dedicated phone line.
Diskettes	3.5″ high-density double-sided diskettes	3.5″ high-density double-sided diskettes.

* Required if institutions want to use the EDExpress Tutorial and the AWARE software.
** Will be necessary to access the ''Info for Financial Aid Professionals'' website or the Student Financial Assistance Bulletin Board System and for submission of the Application for Approval to Participate in Federal Student Aid Programs (recertification, reinstatement, and changes).
*** Must use Netscape Navigator 3.0 or 3.01 (domestic) in order to utilize FAFSA on the web.

Applicable Regulation

The regulation applicable to this notice is the Student Assistance General Provisions, 34 CFR part 668.

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

Dated: September 9, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

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